

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 15 March 2011

Public Authority: Foreign and Commonwealth Office (FCO)
Address: Old Admiralty Building
London
SW1A 2PA

Summary

The complainant requested information from the Foreign and Commonwealth Office (FCO) relating to the European Arrest Warrant and British citizens serving criminal sentences in foreign jails. The FCO refused to identify the requests as valid requests for recorded information under the Freedom of Information Act (the "Act") and also failed to respond to the complainant under 'normal course of business'. The Commissioner has investigated and finds that the requests should be dealt with under the provisions of the Act, and now requires the FCO to respond to the complainant confirming or denying whether information is held. If it is the case that information is held the FCO should either disclose the information to the complainant or issue a valid refusal notice under section 17 of the Act.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 25 May 2010 the complainant requested the following information from the FCO (previously submitted to the Home Office on 21 January 2010):

"Under the Freedom of Information Act, I request whatever breakdown, or other statistics, you may have as to the nature of the

crimes for which these people have been extradited. I wish to know how many surrendered voluntarily to deportation, and how many people were arrested by Europol agents operating in this country without Parliamentary, or British judicial approval? How many British citizens are serving their sentences in foreign gaols, when they could have equally served their sentences in the UK?"

3. On 25 May 2010 the complainant also widened the scope of the January request and resubmitted a request first sent to the FCO on 4 March 2010 stating:

"...I am widening my request for information to include the following requests.

What steps are being taken to have the European Arrest Warrant discussed in the British Parliament?

What steps are being taken to address the issues raised in the Home Office Report No 1...?

What action is being taken with the European Court of Justice to stop the flagrant breach of its own codes of conduct and breach of [named individual's] human rights?

Have you reported this Greek abuse of the EAW to the EU Commission, and if not, why not?"

4. To date the complainant has not received a response from the FCO.

The Investigation

Scope of the case

5. On 30 June 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the fact that no substantive response had been provided to him.

Chronology

6. On 19 August 2010 the Commissioner contacted the FCO informing it that he had received a complaint regarding the two requests. The Commissioner asked the FCO to confirm whether the requests had been received and processed under the Act.

7. On 19 August 2010 the FCO replied stating that the 4 March request had been received on 11 March 2010 and passed to the Public Correspondence Unit to be dealt with as 'business as usual'.
8. The Public Correspondence Unit confirmed to the Commissioner on the same day that it had forwarded the request to the Home Office. Therefore the FCO had not provided a 'business as usual' response to the complainant.
9. On 6 September 2010 the Commissioner wrote to the FCO stating that the correspondence dated 25 May 2010 did constitute requests made under the Act. He reminded the FCO of its duties under the Act and asked it to respond to the complainant within 10 working days.
10. On 7 September 2010 the FCO contacted the Commissioner restating its position that the requests should not be dealt with under the Act but 'business as usual'. The FCO stated that a proportion of the information was not held by the FCO as it considered the information fell within the remit of the Home Office.
11. On 15 October 2010 the Commissioner wrote to the FCO asking it to respond to the complainant as quickly as possible.
12. On 31 October 2010 the complainant contacted the Commissioner to make him aware that no response from the FCO had been received.
13. On 4 January 2011 the Commissioner contacted the FCO confirming that the requests constituted valid requests for information and advised the FCO to respond to the complainant as soon as possible while work on a Decision Notice began.
14. On 4 January 2011 the FCO responded to the Commissioner asserting that the requests sought views and opinions and as such were not requests for recorded information. The FCO stated the requests should be dealt with as 'business as usual'.
15. On 24 January 2011 the Commissioner wrote to the FCO in an attempt to resolve the dispute over whether the requests were valid under the Act. The Commissioner restated his view that the requests constituted valid requests for information under the Act. He asserted that it was likely that the FCO held recorded information falling within part, if not all, of the scope of the requests. The Commissioner therefore sought answers to a series of questions designed to ascertain to what extent relevant information was held; if it were the case that information was held he sought clarification with regard to the FCO's intentions to either disclose or withhold the information.

16. On 23 February 2011 the FCO responded by restating its view, contrary to the advice provided by the Commissioner, that the only way in which it could respond to the complainant was under 'business as usual' and that no response under the Act could be given. The FCO stated that no information was held and that the issue of extraditions and British Citizens held in European jails, for example, was a matter for the Home Office.

Analysis

17. The full wording of the sections detailed in this Notice can be found in the Legal Annex.

Procedural Requirements

Section 8 - Requests for information

18. Section 8(1) of the Act states that a request for information should be in writing, bear the name and address of the applicant and describe the information requested. The Commissioner considers that the requests in this case can be defined as such and therefore constituted valid requests under the Act for recorded information.
19. The Commissioner holds the view that all communications made in writing to a public authority, including those transmitted by electronic means, may contain or amount to requests for information within the meaning of the Act, and so must be dealt with in accordance with the provisions of the Act. While in many cases such requests can be dealt with under the course of normal business where that is a more efficient way of providing requested information, the Commissioner notes that in this case the FCO failed to provide any information through this route. In the absence of an effective disposal of these requests in the normal course of business, the Commissioner's view is that the FCO was under an obligation to provide a freedom of information response within the statutory timescale.

Section 10 – Time for response

20. Section 10(1) of the Act states that on receipt of a request for information a public authority should respond to the applicant within 20 working days.
21. From the information provided to the Commissioner on this case it is evident that the FCO did not respond to the complainant within the statutory time frame.

The Decision

22. The Commissioner's decision is that the FCO did not deal with the request for information in accordance with the Act. The FCO breached section 10(1) of the Act by failing to provide a response to the request within the statutory timeframe of 20 working days.

Steps Required

23. The Commissioner requires the FCO to take the following steps to ensure compliance with the Act:
- confirm or deny whether the requested information is held to comply with section 1(1)(a);
 - if information is held, either provide the information to comply with section 1(1)(b), or withhold the information by issuing a valid refusal notice under section 17(1) of the Act.
24. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

25. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

26. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

27. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 15th day of March 2011

Signed

**Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Time for Compliance

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Refusal of Request

Section 17(1) provides that -

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (c) states that fact,
- (d) specifies the exemption in question, and
- (e) states (if that would not otherwise be apparent) why the exemption applies."