

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 August 2017

Public Authority: Foreign and Commonwealth Office
Address: King Charles Street
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant submitted a request to the Foreign and Commonwealth Office (FCO) for communications between the British Embassy in Qatar and the FCO concerning worker's conditions on World Cup construction projects. The FCO confirmed that it held information falling within the scope of the request but explained that it needed additional time to consider the balance of the public interest test. To date, the FCO has failed to complete its public interest test deliberations. By failing to complete these deliberations within a reasonable timeframe the Commissioner has concluded that the FCO has breached section 17(3) of FOIA.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a substantive response to his information request. If the FCO decides to withhold any information then the complainant should be provided with a refusal notice giving a full explanation as to why the information will not be disclosed, including details of any public interest test considerations.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

4. The complainant submitted the following request to the FCO on 17 February 2017:

'Please provide communications between the British Embassy Qatar and the FCO concerning worker's conditions on world cup construction projects.

Please provide information from 1st January 2014 to date.'

5. The FCO responded on 17 March 2017 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of section 27 (international relations), section 35 (formulation of government policy) and section 43 (commercial interests) of FOIA. However, the FCO explained that it needed additional time to consider the balance of the public interest test.
6. The FCO sent the complainant similar letters on 18 April, 17 May, 15 June and 10 August 2017 further extending the time it needed to consider its public interest test considerations. In this latter letter, the FCO explained that it hoped to reach a decision in respect of its public interest considerations by 8 September 2017 but if this proved not to be possible it would keep the complainant informed.

Scope of the case

7. The complainant contacted the Commissioner on 13 July 2017 to complain about the FCO's failure to provide him with a substantive response to his request.

Reasons for decision

8. Section 1(1) of the FOIA 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.'

9. Section 10(1) of the FOIA provides that 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.
10. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. The Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken.
11. In the circumstances of this case, if the FCO takes until 8 September 2017, ie the date suggested in its latest update to the complainant, then it would have taken 142 working days to have completed its public interest test considerations. In any event, at the point this decision notice is being issued the time taken by the FCO to complete its public interest test considerations has already well exceeded 40 working days. In the Commissioner's opinion the FCO has therefore failed to complete its public interest test considerations within a reasonable timeframe and therefore she has concluded that the FCO has not complied with section 17(3).

Right of appeal

12. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

13. 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.
14. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jonathan Slee
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SK9 5AF