

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 February 2016

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from the Foreign and Commonwealth Office ('the FCO') in papers listed in the inventory on the FCO website, referenced as 'Transparency data'. The FCO confirmed that it holds information relevant to the requests. It has repeatedly advised the complainant that it requires further time to consider the public interest test. To date, the FCO has failed to provide the complainant with a substantive response. By failing to do so the Commissioner has concluded that the FCO breached section 17(3) of the 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 her information requests. 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

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4. On 17 July 2015 the complainant wrote to the FCO and requested information in the following terms:

"This is a request for information under the Freedom of Information Act. This is a request for selected documents and files contained in the CSV file on the Foreign and Commonwealth Office website, entitled 'Transparency data: Latest FCO inventory.' Please see:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/418700/Paper\\_file\\_inventory\\_March\\_2015\\_CSV\\_v3\\_final.csv/p\\_review](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418700/Paper_file_inventory_March_2015_CSV_v3_final.csv/p_review)

I would like to be provided copies of the following files and papers in their hard copy form:

- **Nuclear co-operation**, described as: 'A small collection consisting of exchanges with the American authorities in connection with the use of atomic energy for defence purposes. These include original signed copies of the formal agreements with the United States.' 10 loose papers, from 1958-1969.
- **Australian Government Royal Commission into British nuclear tests in Australia: lists of copies of files provided to the Commission**, described as: 'Contains lists of photocopies of documents made available to the Australian Royal Commission (known as the McClelland Royal Commission) into British nuclear weapons.' 32 loose papers, from 1950-1985.
- **Confidential Print; Saudi Arabia**, described as: 'Annual reports; diplomatic reports; leading personalities.' 3 ring binders, from 1970-1996.
- **Confidential Print, Holy See**, described as: 'Annual reports; diplomatic reports.' 2 ring binders, from 1970-1998.

I would like to receive the information electronically, or granted access to inspect the records in their original format. If you feel that a substantive response to this request is not possible within a reasonable time frame, or the request is too broad or too vague, I would be grateful if you could contact me by email or by phone and provide assistance as to how I could refine the request."

5. The FCO contacted the complainant and she agreed that the request was progressed as three separate requests. The focus of this Notice is the separated request; **"Confidential Print; Saudi Arabia"**.
6. The complainant advised the Commissioner that she had received responses to the other elements of the request, treated as two separate requests.
7. In respect of the request; **"Confidential Print; Saudi Arabia"** the FCO responded on 14 August, 14 September, 12 October, 9 November, 7 December 2015 and 7 January 2016. On each occasion the response was identical. It advised that it required more time to consider the Public Interest Test in relation to Section 27 of the FOIA. The FCO included an apology for the further delay in its letter of 7 January 2016. To date no substantive response has been received.

### Scope of the case

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8. The complainant contacted the Commissioner on 18 January 2016 to complain about the way her request for information had been handled. She expressed her concern at the length of time taken to complete a response and considered that the response would continue to be delayed.
9. The Commissioner considered the complainant's correspondence and determined to serve a decision notice.

### Reasons for decision

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10. 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.'
11. 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.
12. 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.

13. In the circumstances of this case, although the FCO has repeatedly informed the complainant of the delay while the public interest is considered, the total time taken has well exceeded 40 working days. Even if exceptional circumstances may prevail, the Commissioner's position is that no public authority should still be deliberation about a substantive response, including the balance of the public interest test, in excess of 140 working days from the date of the request. As the Commissioner does not consider this to be a reasonable timescale he finds that the FCO has not complied with section 17(3).

### **Other matters**

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14. The Commissioner is concerned about the frequency he is receiving complaints about the FCO and its consideration of the public interest test. He notes that the protracted deliberations undertaken appear to be increasingly frequent and not in the spirit of the FOIA.

## Right of appeal

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15. 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 123 4504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

16. 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.
17. 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** .....

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