

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 October 2016

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### Decision (including any steps ordered)

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1. The complainant has requested information about asylum claims based on the grounds of sexual orientation. The Home Office provided some information in respect of the first part of the request, and withheld the information requested at the second part, citing the exemption at section 22 (information intended for future publication). It subsequently withdrew its application of that exemption and said that the information could be disclosed, albeit with redactions to remove personal data. However, it subsequently failed to make any such disclosure.
2. The Commissioner's decision is that the Home Office failed to respond to the second part of the request in accordance with the FOIA and in so doing breached sections 1(1) and 10(1) of the FOIA.
3. The Commissioner requires the Home Office to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the complainant in respect of the second part of the request, which is compliant with Part 1 of the FOIA.
4. The Home Office 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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5. On 2 September 2015, the complainant wrote to the Home Office and requested information in the following terms:

*"In a previous FoI response [Ref: 30269] supplied to me on 26 February 2014 you stated that the Home Office "has been working on a system for recording data on asylum claims based on the grounds of sexual orientation".*

*Please could you provide me with any background documents that explain why the Home Office thought it necessary or desirable to establish such a system?*

*Please provide me with any data that has been prepared on the topic of claiming asylum based on sexual orientation, using the system to any kind of extent?"*

6. The Home Office responded on 29 September 2015. It provided a free-text explanation and web links in response to the first part of the request.
7. In response to the second part of the request, for data, the Home Office said the information was exempt from disclosure under section 22 of the FOIA, with the public interest favouring maintaining the exemption over disclosing the information.
8. The complainant requested an internal review of the application of section 22 on 6 November 2015. The Home Office provided the outcome of the internal review on 14 March 2016. It upheld its application of section 22.

## Scope of the case

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9. The complainant contacted the Commissioner on 24 April 2016 to complain about the way his request for information had been handled. He disputed the Home Office's decision to apply section 22 in respect of the second part of the request.
10. On 18 May 2016 the Commissioner contacted the Home Office and asked it to either issue a fresh response to the second part of the complainant's request, or respond to the ICO explaining why section 22 applied.
11. After extending the timescale for responding several times, the Home Office wrote to the Commissioner on 2 August 2016 stating that it was

withdrawing the application of section 22 and confirming that it would send a fresh response to the complainant's request, albeit with redactions made in respect of section 40 (personal information).

12. Following the combined cases of the Home Office v Information Commissioner (GIA/2098/2010) and DEFRA v Information Commissioner (GIA/1694/2010) in the Upper Tribunal, a public authority is able to claim a new exemption or exception either before the Commissioner or the First-tier Tribunal and both must consider any such new claims.
13. The Home Office did not give a date by which it would issue a fresh response to the complainant's request. In view of the length of time that had elapsed since the complainant's request, and since the Commissioner first raised the matter with the Home Office, the Commissioner telephoned the Home Office on 12 September 2016 and asked it to issue its response to the complainant within 10 working days. The Commissioner asked the Home Office to let her know if, for any reason, it would be unable to meet that deadline.
14. The Home Office contacted the Commissioner on 29 September 2016 and confirmed that it was not yet in a position to issue a fresh response to the complainant. It did not give a date when it would be in a position to issue the response, although it stated that it was hopeful it would not be much longer.
15. The scope of this decision notice covers whether the Home Office has complied with its obligations under the FOIA in respect of the second part of the request.

## Reasons for decision

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### Sections 1 and 10

16. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and "*not later than the twentieth working day following the date of receipt*".
17. In this case the Home Office has breached section 1(1)(b) by failing to communicate to the complainant information which it accepted was not exempt from disclosure and 10(1) by failing to respond in line with the FOIA to the request within 20 working days. The Home Office is now required to issue a fresh response to the request which is compliant with Part 1 of the FOIA.

## **Other matters**

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18. As well as issuing this notice, the Commissioner has made a separate record of the delay by the Home Office in providing an internal review and the delay in responding to the Commissioner's enquiries. These issues may be revisited should evidence from other cases suggest that this is necessary.

## Right of appeal

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

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

20. 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.
21. 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** .....

**Samantha Bracegirdle**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**