

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2017

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

Decision (including any steps ordered)

1. The complainant has requested the number of times Rule 40 was applied at each of the UK's immigration removal centres in 2014 and 2015, and the number of times Rule 42 was applied at each of the UK's immigration removal centres in 2015.
2. The Commissioner's decision is that although it has complied with section 17(1) in stating which exemption is to be relied upon, by failing to complete its public interest test considerations within a reasonable time period the Home Office has breached section 17(3) of the FOIA. The Commissioner has also found breaches of sections 1 and 10 of the FOIA.
3. The Home Office is required to issue a substantive response to the complainant's request, either disclosing the requested information or issuing a valid refusal notice as set out in section 17 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 25 January 2016, the complainant wrote to the Home Office and requested information in the following terms:

"- The number of times Rule 40 was applied at each of the UK's immigration removal centres in 2015 (including Dover up till its closure), broken down by month and by centre.

- The number of times Rule 42 was applied at each of the UK's immigration removal centres in 2015 (again, including Dover), broken down by month and by centre.

If it does not exceed costs limits, I would also like to know the number of times Rule 40 was applied at each of the UK's immigration removal centres in 2014, broken down by month and by centre.

I would ideally like to receive this information in spread sheet form, in the style in which I have received similar data from the Home Office, as shown in the attachment "Rule 42 Data 2014."

6. The Home Office acknowledged the request on 22 February 2016 advising the complainant that it aimed to provide a full response by 21 March 2016. The Home Office advised the complainant that it needed more time in which to consider the public interest in disclosure of the requested information, stating that it was considering the exemption at section 43(2) of the FOIA.
7. On the 21 September 2016 the Home Office wrote to the complainant apologising for the delay in responding to the request.

Scope of the case

8. The complainant contacted the Commissioner on 26 January 2017 to complain about the way his request for information had been handled.
9. The Commissioner wrote to the Home Office on 28 March 2017 asking it to provide a response to the complainant within 10 working days. The Home Office did not provide a response to the request.
10. On 23 May 2017 the Commissioner wrote to the Home Office again asking it to respond to acknowledge her correspondence. The Home Office did not acknowledge her correspondence. Furthermore, at the date of this decision notice, the Home Office had yet to respond substantively to the request.

Reasons for decision

Section 10 – time for compliance

Section 17 – refusal of request

11. 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.
12. 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.
13. Section 17(3) states that if a public authority is relying on a qualified exemption, the time limit for compliance may be extended in order to consider the public interest in maintaining the exemption or disclosing the information. A public authority may take such time as is 'reasonable in the circumstances', and must then either disclose the requested information or explain to the applicant why the public interest in maintaining the exemption outweighs the public interest in disclosure.
14. Although the FOIA does not define what a reasonable time is, 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 means that the total time spent dealing with the request should not exceed 40 working days. Any extension beyond 40 working days would require there to be exceptional circumstances, fully justified by the public authority.
15. In the circumstances of this case, although the Home Office has informed the complainant of the delay while the public interest is considered, the total time taken by the Home Office has significantly exceeded 40 working days. No reasons were given for the delay and the Commissioner believes this to be unacceptable. As the Commissioner does not consider this to be a reasonable timescale she finds that the Home Office has not complied with section 17(3).
16. The Commissioner also finds that the Home Office breached sections 1(1) and 10(1) of the FOIA.
17. The Home Office is required to conclude its consideration of the public interest test and either disclose the requested information or explain why the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

Other matters

18. The delay in responding to this request will be logged as part of ongoing monitoring of the Home Office's compliance with the FOIA.

Right of appeal

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

Website: 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

Jon Manners
Group Manager
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Wilmslow
Cheshire
SK9 5AF