

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 October 2022

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Home Office for information relating to the housing of migrants at a named hotel.
2. The Commissioner's decision is that the Home Office correctly applied section 38(2) of FOIA to the request. However in failing to respond to the request within the statutory timescale, the Commissioner has determined that the Home Office breached section 10(1) of FOIA.
3. The Commissioner does not require any further steps.

Request and response

4. On 22 November 2021, the complainant made the following request for information under FOIA:

"Please provide the current contract for housing migrants at [redacted].

As regards this hotel, please provide the scheme in place for providing black London taxis for migrant appointments. Provide a schedule of taxi use since scheme was in place. This should include the total number of fares and total cost."

5. The Home Office responded on 13 January 2022 stating that it could neither confirm nor deny that it held the information referring to section section 38(2).
6. On 14 January 2022, the complainant requested an internal review. The Home Office provided the complainant with its response to the internal review request on 10 February 2022 in which it upheld its response.

Reasons for decision

7. The following analysis explains why the Commissioner is satisfied that the Home Office was entitled to neither confirm nor deny holding the information that had been requested.
8. Section 38(1) states information is exempt if it is likely to endanger the physical or mental health or endanger the safety of an individual.
9. Section 38(2) removes the duty to confirm or deny if compliance with subsection would endanger the physical or mental health of any individual or their safety.
10. The Commissioner's guidance on section 38¹ defines 'endanger' and states that it must have a greater impact than simply causing distress or upset.
11. In its correspondence to the complainant, the Home Office states that "to disclose the addresses and facilities used to accommodate asylum seekers...could lead them to being exposed and threats of harassment." The Commissioner accepts that the Home Office has a duty of care and responsibility to provide safety and protection to asylum seekers wherever they are housed.
12. In correspondence to the Commissioner, the complainant states that it is "public knowledge" that the named hotel is used to house migrants. However, the Commissioner has not found any evidence of this.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-38-health-and-safety/>

13. When considering whether the public interest test favours maintaining the exemption or confirming or denying the requested information is held, the Commissioner has taken into account that there is a public interest in the Home Office being transparent in its approach to accommodating asylum seekers. However, if it were to confirm or deny that the information is held, it would weaken the Home Office's stance on protecting the health and safety of vulnerable people.
14. As such, the Commissioner is satisfied that, in this case, the public interest test favours maintaining the exemption.
15. The Commissioner acknowledges the complainant's concern that they believe the public interest balancing test was applied to whether or not the information should be disclosed, instead of whether it was right or wrong to confirm or deny the information was held, was in the public interest. Given that the name and address of the hotel are in the request, if the Home Office were to confirm or deny that the information was held, that in itself would disclose information on matters relating to asylum seekers.
16. The Commissioner's decision is that the Home Office was entitled to rely on section 38(2) of FOIA to neither confirm nor deny it held the requested information.

Section 10 – time for response

17. Section 10(1) of FOIA states that a public authority must respond to a request promptly and in any event not later than the twentieth working day following the date of receipt.
18. The request for information was made on 22 November 2021 and the Home Office provided a response on 13 January 2022.
19. As this was more than 20 working days after the request was made, the Commissioner finds that the Home Office breached section 10(1) of FOIA.

Other matters

20. The Commissioner notes the complainant's concern that in their request they used the term 'migrant' and the Home Office used 'asylum seeker' in its responses.
21. The Commissioner wrote to the Home Office for clarification, and he accepts the definition and explanation provided.

22. Therefore, the Home Office's use of the term 'asylum seekers' does not disturb the argument that section 38(2) applies.

Right of appeal

23. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

24. 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.
25. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF