

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 April 2014

Public Authority: Department of Energy and Climate Change
Address: 3 Whitehall Place
London
SW1A 2AW

Decision (including any steps ordered)

1. The complainant has requested the release of a file relating to Atomic Energy. The Department for Energy and Climate Change (DECC) confirmed to the complainant that it held the information within the scope of the request. However DECC also informed the complainant that it was unable to provide a full response as further time was required to consider the public interest test in relation to section 24 of the FOIA. The complainant has received several letters advising on each occasion that additional time is required to consider the public interest test on this case.
2. The Commissioner's decision is that DECC has breached section 10(1) of the FOIA. Although it has complied with section 17(1) in stating which exemption is to be relied upon, it has failed to comply with section 17(3) by not communicating the outcome of the public interest consideration within a reasonable time.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - DECC must respond to the complainant's request, either by disclosing the requested information or by issuing a refusal notice which includes the outcome of the public interest considerations.
4. DECC 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

5. On 15 August 2013, the complainant wrote to DECC and requested information in the following terms:

"The release of file EG1/655, entitled "Atomic Energy in Israel". I also note the declassification, several years ago, for two JIC papers (JIC 1103/61 and JIC 519/61)".

6. DECC responded on 13 September 2013. It confirmed that it held the information requested and explained that where a qualified exemption is cited and the public interest test is engaged, section 10(3) of the Act allows additional time for the response to be issued. DECC confirmed its reliance on the exemption at section 24 of the FOIA – National Security and advised that it hoped to provide a response by 11 October 2013.
7. On 11 October 2013 DECC wrote again to the complainant and advised that the public interest test was still under consideration but it now hoped to respond by 8 November 2013.
8. On 8 November 2013 DECC wrote again to the complainant and advised that the public interest test was still under consideration but it now hoped to respond by 6 December 2013.
9. On 6 December 2013 DECC wrote again to the complainant and advised that the public interest test was still under consideration but it now hoped to respond by 8 January 2014.
10. On 8 January 2014 DECC wrote again to the complainant and advised that the public interest test was still under consideration but that it hoped to reply by 5 February 2014.
11. On 5 February 2014 DECC wrote again to the complainant and advised that the public interest test was still under consideration but that it hoped to reply by 5 March 2014.
12. On 5 March 2014 DECC wrote again to the complainant advising that there were several more steps to be undertaken before a final decision could be reached but that a progress update would be sent on 2 April 2014.
13. On 2 April 2014 DECC wrote again to the complainant advising that there were several more steps to be taken before a final decision could be reached and that some of the steps were taking longer than anticipated. A further update on progress would be sent on 2 May 2014.

14. The complainant had requested an internal review on 8 January 2014 and a response was issued on 3 February 2014. DECC apologised for the delay in providing a response to the request. It stated that the file requested contained a large volume of information including both historical and sensitive information. It outlined its duty to assess the information properly in order to reach a decision about its release.

Scope of the case

15. The complainant contacted the Commissioner on 2 April 2014 to complain about the way his request for information had been handled.
16. The Commissioner considers the scope of the investigation is to determine whether the delay in providing a response to the request for information constitutes a breach of the FOIA.

Reasons for decision

17. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds the information and if that is the case, to have that information communicated to him.
18. Section 10(1) states that a public authority must comply with section 1(1) promptly and in any event no later than 20 working days after the date the request is received.
19. Section 17(1) states that where a public authority refuses a request for information it must provide the applicant with a refusal notice explaining the exemption(s) relied upon. This notice must be provided within the timescale set out in section 10(1), i.e. 20 working days.
20. 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.
21. Although the FOIA does not define what a reasonable time is, it is the Commissioner's position that public authorities should aim to complete their consideration of the public interest within the normal 20 working days. In exceptional circumstances, the Commissioner accepts that up

to 40 working days may be required to complete this consideration, but in no case should it take longer than this.¹

22. Taking into account the amount of time elapsed since the request was made, the Commissioner does not consider the delay to consider the public interest test to be reasonable in the circumstances.
23. The Commissioner finds therefore that DECC has breached section 10(1) of the FOIA. Although DECC has complied with section 17(1) in stating which exemptions are being relied upon, it has not complied with section 17(3) as it failed to communicate the outcome of the public interest consideration within a reasonable time.
24. DECC 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.

Right of appeal

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/time-for-compliance-foia-guidance.pdf

25. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

26. 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.
27. 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
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