

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 07 January 2010

Public Authority: UK Border Agency (an executive agency of the Home Office)
Address: 11th Floor
Lunar House
40 Wellesley Road
Croydon
CR9 2BY

Summary

On 12 February 2009 the complainant requested information from the UK Border Agency relating to the decision to ban the Dutch MP Geert Wilders from entering the United Kingdom. To date he has received no substantive response. The Commissioner has found that the UK Border Agency is in breach of section 10(1) of the Freedom of Information Act 2000 (the Act) in failing to provide a response within the past eleven months. The Commissioner now instructs the public authority to either provide the information in full or part to the complainant or issue a valid refusal notice that complies with section 17 of the Act within 35 calendar days of this Notice.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The Commissioner notes that under the Act the UK Border Agency is not a public authority itself, but is actually an executive agency of the Home Office which is responsible for the UK Border Agency and therefore, the public authority in this case is actually the Home Office not the UK Border Agency. However, for the sake of clarity, this decision notice refers to the UK Border Agency as if it were the public authority.

3. On 12 February 2009 the complainant contacted the UK Border Agency to request the following information:

“Reference the decision to ban Mr Geert Wilders from entering the UK:

http://news.bbc.co.uk/1/hi/uk_politics/7...

Please supply copies of all correspondence relating to the decision to ban Mr Wilders.”

4. The public authority acknowledged the complainant's request via email on 17 February 2009 stating:

“Thank you for your recent email concerning the above. Your request is being dealt with under the terms of the Freedom of Information Act 2000 and we will respond shortly.”

5. On 12 March 2009 the public authority wrote to the complainant to inform him that his request was still under consideration. The authority explained the use of exemptions to withhold information under the Act and the public interest test that has to be applied to qualified exemptions. It stated that to therefore consider the request fully the authority was entitled to an extension, aiming to respond to the complainant by 16 April 2009.
6. Further brief correspondence took place throughout May and June 2009 as the response was delayed and chased by the public authority and complainant respectively. The correspondence can be viewed via the whatdotheyknow.com website.
7. On 14 July 2009 the complainant requested an internal review of the public authority's handling of his request.
8. On 21 July 2009 the UK Border Agency offered a short response to the complainant stating that it was still gathering information to complete the review.
9. On 24 August 2009 the complainant again enquired as to the whereabouts of either a response or the information from the public authority.
10. On 25 August 2009 the UK Border Agency confirmed that the request was being considered and it would respond as soon as possible.
11. On 22 September 2009 the complainant contacted the public authority to again enquire as to where the information was and to request another internal review.

The Investigation

Scope of the case

12. On 30 September 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the fact that the public authority had failed to provide him with a substantive response since February 2009.

Chronology

13. On 30 October 2009 the Commissioner contacted the public authority to ascertain its current progress concerning the response to the complainant.
14. The public authority confirmed *"unfortunately a response to this case has not yet been issued by the UKBA"* and that *"it is clear that the Home Office has not complied with the terms of the FOI Act."*
15. On 09 November 2009 the Commissioner pressed for an immediate response from the UK Border Agency. Although he understood the complexity of considering the issues involved in the case, namely the possible engagement of section 27(1)(a) and the relevant public interest test, he had to reiterate that the request had been made to the public authority ten months ago.
16. On 27 November 2009 the public authority provided the Commissioner with an update regarding the overdue response. The UK Border Agency confirmed that the final reply was only ready in draft form and therefore had not yet been sent to the complainant. This was due to the possible inclusion of section 36 being considered by the agency's lawyers. The public authority stated that the final reply was imminent and that it recognised the delay regarding this response was unacceptable.
17. On 08 December 2009 the Commissioner asked the public authority to confirm the substantive response had successfully been provided to the complainant, as stated in its email of 27 November 2009, during either the week commencing 30 November or 07 December 2009. The Commissioner informed the UK Border Agency that in the unfortunate event that it had failed to do so he would have no option other than issue a Decision Notice.

Analysis

Procedural Requirements

18. Section 10(1) (full wording in Legal Annex) of the Freedom of Information Act states:

“...a public authority must comply with section 1(1) promptly and in any event no later than the twentieth working day following the date of receipt.”

At the date of this Notice it is evident from the request chronology in the paragraphs above that the public authority has not dealt correctly with the procedural requirements of section 10 of the Act.

The Decision

19. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. In having failed to provide the complainant with a substantive response or issue a refusal notice since the request was made in February 2009 the Commissioner finds the public authority to be in breach of section 10(1) of the Freedom of Information Act 2000.

Steps Required

20. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Provide a substantive response to the complainant either disclosing the requested information in part or full or issuing a refusal notice that complies with section 17 of the Act regarding any withheld information.

21. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

22. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

23. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 7th day of January 2010

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), 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.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or

(b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”