

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 August 2021

Public Authority: Department for Digital, Media, Culture and Sport

Address: Freedom of Information Team
Ministerial Support Team
4th Floor
100 Parliament Street
London
SW10 2QB

Decision (including any steps ordered)

1. The complainant requested information from Department for Digital, Media, Culture and Sport (DCMS) about exemptions given by the Secretary of State, concerning the transfer of specific files to the National Archives. By the date of this notice DCMS had failed to provide a substantive response to this request.
2. The Commissioner's decision is that DCMS has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires DCMS to take the following steps to ensure compliance with the legislation.
 - Respond to the complainant's request in accordance with the FOIA.
4. DCMS 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 17 May 2021, the complainant wrote to DCMS and requested information in the following terms:

"Dear Sir or Madam

FREEDOM OF INFORMATION REQUEST

I write to request the following information relating to exemptions given by the secretary of state, DCMS, to the Cabinet Office concerning the transfer of a specific set of files to the National Archives. The files in question are:

CAB 164/1870-1901: "Peter Wright case ('Spycatcher') case".

The Cabinet Office advises that in 2016, the Secretary of State granted a three year extension to the deadline for the release of these files to TNA. Could you now please provide:

- 1. The certificate, letter or other communication by which this extension to the deadline was granted.*
- 2. The record of any subsequent certificate, letter or other communication, granted to the Cabinet Office and providing for a further extension to the deadline.*

I look forward to hearing from you.

Yours faithfully"

6. To date, a substantive response has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 12 July 2021 to complain about the failure by DCMS to respond to his request.
8. The Commissioner has considered whether DCMS has complied with its obligations in relation to the time for compliance at section 10 (1) of the FOIA.

Reasons for decision

9. Section 1(1) of the FOIA states that:

Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

10. 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.”
11. On 28 July 2021 the Commissioner wrote to DCMS, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.
12. Despite this intervention DCMS has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that DCMS did not deal with the request for information in accordance with the FOIA. The Commissioner finds that DCMS has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

14. 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

15. 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.
16. 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

Susan Duffy
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF