

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 July 2024

Public Authority: The Department for Culture, Media and Sport

Address: 100 Parliament Street
London
SW1A 2BQ

Decision (including any steps ordered)

1. The complainant requested information from the Department for Culture, Media and Sport (DCMS). By the date of this notice DCMS had not issued a substantive response to the request.
2. The Commissioner's decision is that DCMS has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of FOIA.
3. The Commissioner requires DCMS to take the following step to ensure compliance with the legislation.
 - Having confirmed whether or not information is held within the scope of the request: either disclose the requested information or, to the extent that information is to be withheld, issue a refusal notice in accordance with the requirements of section 17 of FOIA.
4. DCMS must take this step within 30 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 29 October 2023, the complainant made the following request for information:

"1) Please send me all of the minutes/accompanying briefing notes of Heritage Advisory Board meetings that took place with the aim of formulating guidance for custodians on how to deal with commemorative heritage assets that have become contested (i.e. what became the 'retain and explain' guidance published on 5 October 2023).

Please tell me all the dates on which the Heritage Advisory Board met for this purpose, how long each meeting lasted, the exact timing and location of each of the meetings and the names of the members of the board who were present at each of the meetings (along with the reasons for any absences).

Please also send me any presentations, brochures, reports and leaflets shown at the meetings and any research briefings handed out during the meetings, as well as what food/drink/ other hospitality items were expensed (and by whom) during the meetings.

2) Please tell me how the seven members of the Heritage Advisory Board were selected by the secretary of state for culture (i.e. please tell me if the seven members were chosen or were recommended by cultural institutions such as Historic England, please tell me how long the selection process took, please tell me if any of the members had initially turned down the offer of being on the board)."

6. On 27 November 2023, DCMS wrote to the complainant to explain that it held information relevant to the request, but that it would need to extend the time taken to complete its public interest test considerations in respect of an exemption under section 36 of FOIA.

Reasons for decision

7. Section 1(1) of 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.”

8. Section 10(1) of 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”.
9. Section 17(3) of FOIA states that where a public authority is relying on a qualified exemption, it can have a “reasonable” extension of time to consider the public interest in maintaining the exemption or disclosing the information.
10. FOIA does not define how long a reasonable time is. The section 45 Code of Practice on request handling states that “it is best practice for an extension to be for no more than a further 20 working days”.¹ This means that the total time spent responding to a request should not exceed 40 working days unless there are exceptional circumstances.
11. On 11 June 2024, 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. To date, a substantive response has still not been provided.
12. In this case, the total time taken by DCMS has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, DCMS has not complied with section 17(3).
13. DCMS is now required to finalise its public interest considerations under section 17(3) of FOIA and respond to the complainant.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

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.

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
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