

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 8 November 2005

Name of Public Authority: Ministry of Defence

Address of Public Authority: Whitehall
Horse Guards Avenue
London
SW1A 2HB

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint which states that on 7 January 2005 the following information was requested from the Ministry of Defence (the "MoD") under section 1 of the Freedom of Information Act 2000 (the "Act"):

- The logbooks of Wing Commander R.B.E. Colmore (Dec'd)

It is alleged that the MoD refused to supply the information requested by the complainant.

The Commissioner's Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner's decision is as follows:

In their letter to the complainant dated 18 January 2005 the MoD stated that it "did not believe" that the information specified in the request was held. Whilst the language of this denial could have been clearer, the Information Commissioner is satisfied that the request was dealt with in accordance with section 1 of the Act. Section 1(1) of the Act states:

"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."

The Information Commissioner has approached the MoD for verification and is satisfied that the information specified in the request is not held and, therefore, can not be provided to the complainant. The information referred to in the request is over 30 years old. The MoD explained to the complainant that there is no defence interest in and, therefore, no reason for the MoD to retain the specified information. Additionally, the MoD explained that it does not hold a record of the disposal of the information in question nor is the information covered by any post 30 year record holding agreement with the Lord Chancellor. The MoD also stated to the complainant that it had conducted an information audit to check that the notebooks were not held "unnoticed in storerooms." The Commissioner is, therefore, satisfied with the steps taken by the MoD to ascertain whether or no it held the information requested. The Ministry of Defence is consequently not in breach of section 1(1) of the Act.

Action Required

In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by the Ministry of Defence.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester LE1 6ZX	

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

Dated the 8th day of November 2005

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF