

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 May 2008

Public Authority: Ministry of Defence
Address: Main Building
Whitehall
London
SW1A 2HB

Summary

The complainant asked for information held within a Ministry of Defence (MOD) computerised database at a specified date. The Commissioner found that MOD had acted correctly in refusing the request under section 12 of the Act as the appropriate limit would have been exceeded. He also found that MOD was in breach of its duty under section 16 of the Act to advise and assist the applicant. The Commissioner requires MOD to provide further advice and assistance to the applicant.

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. On 30 October 2005 the complainant asked the Ministry of Defence (MOD) for information "contained within AIT [Access to Information Toolkit – a computerised MOD database] data-stores for all FOI [freedom of information] requests recorded in the MOD AIT on the date of processing this request, the following fields of data: Date Request Received; Expiry Date; Organisation; Applicant Type; Postcode; Country; Status; Date Response Sent; Closed Date." He said he wanted to receive this data only in electronic form, either as a tab-delimited text file, or as an Excel spreadsheet. He asked MOD to contact him if they wished to clarify the request, in particular to discuss the deletion of fields containing data that might be subject to exemption under the Act.

3. On 22 November 2005 MOD sent the complainant an Excel spreadsheet with the requested details of all FOI requests recorded on the date of receipt of his request and added that, on that one day, 45 requests had been recorded. MOD added that it was unable to provide the fields of data for either organisation or postcode as that constituted personal information which was exempt under section 40 of the Act. There were subsequent email exchanges from which it emerged that the complainant wished to receive data for freedom of information requests not just for the one day which MOD had provided, but for all requests received by MOD under the Act up until that date.
4. In a refusal notice of 20 December 2005 MOD said that the information was not available in the format requested and that to produce it would exceed the appropriate limit specified in the regulations made under section 12 of the Act (The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (Statutory Instrument 2004 No. 3244)). MOD said that the appropriate limit was £600, which represented 3 ½ working days. To produce the reports requested would take at least 10 minutes for each day and, as the request was for 244 days, the appropriate limit would be exceeded. A considerable amount of additional time would also be needed to validate the data for missing and erroneous entries. MOD invited the complainant to contact it in order to clarify his request.
5. On the same date the complainant asked MOD to review its decision to refuse his request. Such requests were, he said, routinely fulfilled at low cost in other jurisdictions. The complainant added that MOD had not fulfilled its duty to advise and assist. He noted that, when making his initial request for information, he had offered to speak to an officer of MOD by telephone to clarify the matter.
6. On 17 February 2006 MOD gave the complainant the outcome of its internal review of his complaint. MOD said that its handling of the request had been completed within the requisite time limits. As regards the appropriate limit, MOD maintained that this would be exceeded. MOD said that the reasons for the complainant's request had quite properly not been declared but said that, if it was for research purposes there might be alternative ways to proceed: it outlined these and invited him to enter an exploratory discussion.

The Investigation

7. On 20 February 2006 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 MOD's assertion that AIT could not be interrogated to provide statistics and management reports. He said that the failure of MOD to make provision for handling FOI requests relating to information held in databases developed by contractors raised a troubling policy question given the increasing tendency for information to be held in this form. The failure to discuss the matter by

- telephone, which had been conceded by MOD, applied equally to its handling of the internal review.
8. The Commissioner began his investigation on 20 June 2006. On 11 July 2006 MOD provided him with observations on the issues raised by the complainant. However, the investigation was then subject to some delay within the Information Commission and was not reactivated until 8 August 2007.
 9. On 21 August 2007 the Commissioner's staff met with MOD officials who demonstrated version 2 of AIT which MOD had implemented from 8 February 2007 to replace the original AIT. The updated AIT would have enabled MOD to produce more of the information that the complainant had sought. However MOD had no business need for collecting much of that information. MOD showed how data was captured into AIT, stored within it, and then extracted from it. MOD said that AIT had been procured by a specialist information services contractor who also maintained it. MOD confirmed that officials had not telephoned the complainant to discuss his request either before, during or after the internal review. MOD added that there had been no further contacts on this matter with the complainant since the internal review.
 10. The Commissioner requested further information from MOD and on 24 October 2007 MOD told the Commissioner that its contractor had estimated that it would take some 100 hours to extract the data from the AIT database manually. The next day MOD provided him, in confidence, with information about the high level design for the AIT. On 31 October 2007 MOD told the Commissioner that it would take a total of 15 working days for its contractor to develop the appropriate programme to extract the information requested from the database. This included 10 days of development and integration and a further five days for project release certification and installation. MOD confirmed that, whether information was extracted manually or by writing a separate programme, the resource requirement would be far in excess of the appropriate limit. MOD stressed again to the Commissioner that it had no business need for the information either at the time of the request or at the time of writing.

Findings of fact

11. In late 2005 AIT was not capable of generating the reports in electronic form as requested by the complainant. In order to do what the complainant had asked, the information would have had to have been extracted manually for each day before being validated, in some cases with other MOD offices, and then collated, again by hand.
12. AIT was supplied and maintained by a specialist contractor. MOD confirmed that the costs of the contractor writing a programme to do what the complainant had asked would have been well in excess of the appropriate amount of £600, as would the cost of extracting the information manually.

13. MOD provides the Ministry of Justice periodically with reports of numbers of cases and the time taken to deal with them; this information is collated with that provided by other departments and is then published.

Analysis

Procedural matters

Section 12 – exemption where cost of compliance exceeds appropriate limit

14. The complainant said that the information he sought could have been provided either by extraction from the AIT database or by providing a standard report, or a combination of standard reports, which provided some or all of the requested data elements. He said that MOD's cost estimate had been based on the compilation of daily reports through a pre-programmed report feature of AIT but that no consideration had been given to using a MOD database specialist to extract the data requested through additional programming. He believed that such capacity was routinely available within MOD and that AIT had been designed to allow the easy extraction of bulk data in that way. He added that such requests were fulfilled routinely at low cost in other jurisdictions.
15. The complainant also told the Commissioner that if AIT could not be interrogated to provide statistics and management reports then it was not compliant with the Ministry of Justice's generic user requirements specification for such information technology systems. He said that the underlying question was whether MOD was capable of providing the data specified in his request, and which elements were and were not available. He wanted MOD to be more forthcoming about that.
16. MOD said that it had initially understood that the complainant wanted data for just a single day, much of which it had been able to provide, but it had then emerged that he wanted information covering a much longer period. The information was held but not in the format requested. There was currently no means of extracting the information the complainant wanted electronically and MOD itself had no business need for such a facility. While it would be technically feasible for MOD to add the capability needed to fulfil the request, a specialist contractor would have to carry out the work, the cost of which would be well in excess of the appropriate limit of £600. To provide data from successive daily reports would require considerable manual intervention and collation of data, the cost of which would exceed the appropriate limit. MOD added that AIT could not be interrogated to provide bespoke statistics or management reports.
17. MOD accepted that its AIT system did not fully comply with the Ministry of Justice requirements but said that this was for historical reasons. AIT had been specified before the generic user specification had been available in its final form. Moreover the specification was not intended to be prescriptive but

to set out guidelines; the only mandatory requirements related to the information that public authorities had to provide to the Ministry of Justice as part of the monitoring regime. In March 2006 the Ministry of Justice had confirmed that it was satisfied that MOD could provide the information it needed.

18. The Commissioner is satisfied that the information requested is held. His staff had discussions with MOD, viewed MOD's current AIT system and obtained further information about it and the previous version. The Commissioner is also satisfied that MOD was unable to respond to the request within the appropriate limit of cost and that MOD had acted correctly in refusing it. The Commissioner accepts that MOD is not obliged to contract for additional software to enable it to meet the complainant's request. He has seen that MOD's periodical reports to the Ministry of Justice are published, and has confirmed that the complainant is aware of these.

Section 16 – duty to provide advice and assistance

19. The complainant said that MOD had not fulfilled its duty to advise and assist. After finding that the appropriate limit would have been exceeded in meeting his request, efforts could and should have been made to provide information about other standard reports which might contain some of the requested information, or which could be combined in order to provide all of the requested information. The complainant said that he had offered to speak with an MOD officer by phone about this request. He told the Commissioner that MOD could and should have explained which standard reports containing relevant information, if any, could have been produced in digital form by the AIT. In subsequent correspondence with the Commissioner, the complainant stressed that his need for information of the kind specified in his initial request was a continuing requirement and that he remained keen to receive the information from MOD. He said that MOD had made no effort to communicate with him, either while it was considering his initial request or during the internal review, even though he had raised it as an issue in his review request. If the duty to assist had been honoured, he could have been given at least some of the requested data through the provision of those standard reports then available.
20. The complainant confirmed that he had not responded to the offer, made by MOD in its internal review letter of 17 February 2006, to discuss further his continuing information needs but said that it would be misleading to conclude that he had declined to follow through an offer of assistance. He said that at that stage the internal review decision had been finalised. MOD was not offering assistance so that it could determine whether it was able to meet a request for information under the Act – it had already affirmed its denial of his request for information. He said that MOD had made it clear that it was proposing a discussion unconstrained by his rights under the Act; in his view, therefore, its offer was completely irrelevant to the determination of his rights under the Act.

21. MOD said that it had substantially complied with the Code of Practice issued under section 45 of the Act (the "Access Code") but acknowledged that a telephone discussion of possible refinements to the request could have been helpful, and apologised for the fact that the complainant had not been contacted. MOD said that section 16(1) of the Act placed a limit of reasonableness on the advice and assistance to be provided and that section 16(2) stated that compliance with the Access Code fulfilled the section 16(1) duty. The Access Code says that, where the appropriate limit of cost would be exceeded, the public authority should consider providing an indication of what, if any, information could be provided within the cost ceiling; the public authority should also consider advising the applicant to reform or refocus the request. MOD said that its refusal notice had suggested that the complainant clarify his request but acknowledged that its wording had not been as clear as it might have been. MOD added that government departments were able to co-operate with serious research exercises by leading practitioners, and that it had offered to discuss such an outline research proposal with the complainant.
22. The Commissioner believes that public authorities should focus on the information which has been requested, if necessary seeking clarification from the applicant as to what information is wanted. He strongly recommends that early contact is made with the applicant and that any advice and assistance is delivered in a clear and intelligible manner. Where a request has been refused on grounds of excessive cost it may well be appropriate for the public authority to assist the applicant in making a subsequent request, for example by establishing a dialogue with the applicant so that the available options can be clearly spelt out and explored.
23. The Commissioner has seen that MOD did not seek to clarify the terms of the complainant's request, nor did it attempt to identify how much of the information requested it could provide within the appropriate cost limit. After the internal review by MOD in February 2006, the exploratory discussion offered by MOD represented the only feasible way for MOD to mitigate the consequences of its failure but the complainant did not take up that offer so no progress was made. Both MOD and the complainant offered to discuss the matter with the other but neither took the initiative. The Commissioner has therefore found that MOD should have done more to clarify the nature of the request and how it might have been adapted to enable MOD to comply with it. On that basis the Commissioner finds that MOD breached its duty under section 16 of the Act to provide the complainant with advice and assistance. The only feasible remedy is for MOD to provide appropriate advice and assistance. MOD said it would be happy to discuss further with the complainant how it might meet any continuing need for information.

The Decision

24. The Commissioner's decision is that the public authority dealt with the section 12 aspect of the request for information in accordance with the Act. However,

the Commissioner also decided that the section 16 element of the request was not dealt with in accordance with the Act.

Steps Required

25. In line with its duty under section 16 of the Act, the Commissioner requires MOD to contact the complainant to advise him of the types of information it holds relevant to his request. MOD should also advise the complainant of what information it can provide within the cost limit.

Failure to comply

26. 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

27. 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

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 22nd day of May 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Duty to provide Advice and Assistance

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.

Section 16(2) provides that -

“Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.”

Issue of code of practice by Secretary of State

Section 45(1) provides that -

“The [[Lord Chancellor](#)] shall issue, and may from time to time revise, a code of practice providing guidance to public authorities as to the practice which it would, in his opinion, be desirable for them to follow in connection with the discharge of the authorities' functions under Part I.

Section 45(2) provides that -

“The code of practice must, in particular, include provision relating to—
(a) the provision of advice and assistance by public authorities to persons who propose to make, or have made, requests for information to them, ... “

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (No. 3244)

Regulation 3 provides that -

“(1) This regulation has effect to prescribe the appropriate limit referred to in ... section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.”

Regulation 4 provides that –

“(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request– (a) for ...

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in–

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.”