

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 September 2014

Public Authority: Ministry of Defence

Address: Main Building
Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. In November 2013 the complainant submitted a request to the Ministry of Defence (MOD) for copies of eight documents it held concerning peaceful nuclear explosions. The MOD disclosed two of these documents in February 2014. However, it is continuing to examine the remaining six documents and considering the balance of the public interest under FOIA in relation to these documents. By failing to complete its public interest test considerations within a reasonable time period the Commissioner has concluded that the MOD has breached section 17(3) of FOIA.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a substantive response to the following parts of her request: a), d), e), f), g) and h).
 - If the MOD is decides to withhold any information contained in any of these six documents then the complainant should be provided with a refusal notice giving a full explanation as to why the information will not be disclosed, including details of any public interest test considerations.

3. The public authority 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

4. The complainant submitted the following request to the MOD on 20 November 2013:

'Please provide a copy of all the documents under the following titles, according to The National Archives these are all retained by the Ministry of Defence:

- a) "*Expected radioactivities from plowshare devices*" under the reference **ES 10/1272** in The National Archives - <http://discovery.nationalarchives.gov.uk/SearchUI/s/res?q=ES+10%2F1272+>
- b) "*Notes on Plowshare programme: peaceful use of nuclear explosives*" under the reference **ES 10/1259** in The National Archives - <http://discovery.nationalarchives.gov.uk/SearchUI/Details?uri=C10892307>
- c) "*Third Plowshare symposium, April 1964: peaceful use of nuclear explosives*" under the reference **ES 10/1148** in The National Archives - <http://discovery.nationalarchives.gov.uk/SearchUI/Details?uri=C10892196>
- d) "*Hypothetical peaceful nuclear explosion (PNE) device*" under the reference **ES 10/1945** in The National Archives - <http://discovery.nationalarchives.gov.uk/SearchUI/Details?uri=C11028360>.
- e) "*Peaceful uses of nuclear energy (PNE): correspondence*" under the reference **ES 13/65** in The National Archives - <http://discovery.nationalarchives.gov.uk/SearchUI/Details?uri=C11514067>
- f) "*Notes on a peaceful nuclear explosion (PNE) excavation device*" under the reference **ES 10/1946** in The National Archives - <http://discovery.nationalarchives.gov.uk/SearchUI/Details?uri=C11028361>.
- g) "*The French Peaceful Nuclear Explosion (PNE) device and what it tells us about the ATC*" under the reference **ES 12/445** in The National Archives -

<http://discovery.nationalarchives.gov.uk/SearchUI/Details?uri=C11118390>

- h) "AWRE Working Party on the Peaceful Uses of Nuclear Explosives" under the reference **ES 15/334** in The National Archives - <http://discovery.nationalarchives.gov.uk/SearchUI/Details?uri=C11548899>'
5. The MOD responded on 18 December 2013 and confirmed that it held the requested information but considered it to be exempt from disclosure on the basis of sections 24 (national security) and 27 (international relations) of FOIA and that it needed a further 20 working days to consider the balance of the public interest test.
 6. The MOD contacted the complainant again on 21 January 2014 and explained that it needed further time to consider the request. It indicated that a response (or further update) would be send within a further 20 working days.
 7. On 14 February 2014 the MOD contacted the complainant and provided the complainant with the information falling within the scope of parts b) and c) of her request. However, it explained that a review was still ongoing in relation to the other six documents falling within the scope of her request, and in particular where the balance of public interest lay in relation to the exemptions contained at sections 24 (national security) and 27 (international relations) of FOIA.
 8. On 25 March 2014 the MOD contacted the complainant and confirmed that it was still examining the remaining six documents, which it noted were highly classified, with a view to their disclosure. This included considering the balance of the public interest in relation to the exemptions contained at sections 24, 27 and 26 (defence) of FOIA to determine the level of redaction that would be required. The MOD indicated that it was aiming to release documents a), d), f) and g) by 25 April 2014 and documents e) and h) by 25 June 2014.
 9. The MOD contacted the complainant on 25 April 2014 and explained that it had not been possible to meet these deadlines and it now estimated that it would be in a position to release documents a), d), f) and g) by 27 May 2014 and documents e) and h) by 25 June 2014.
 10. The MOD contacted the complainant again on 27 May 2014 and explained that these deadlines had now been further revised. It now expected to be in a position to release documents a), d), f) and g) by 24 June 2014 and documents e) and h) by 22 July 2014.
 11. The MOD contacted the complainant again on 24 June 2014 and explained that these deadlines had now been further revised. It now

expected to be in a position to release documents a), d), f) and g) by 22 July 2014 and documents e) and h) by 19 August 2014.

12. The MOD contacted the complainant again on 22 July 2014 and explained that these deadlines had now been further revised. It now expected to be in a position to release documents a), d), f) and g) by 19 August 2014 and documents e) and h) by 16 September 2014.
13. The MOD contacted the complainant again on 19 August 2014 and explained that these deadlines had now been further revised. It now expected to be in a position to release documents a), d), f) and g) by the end of September 2014 and documents e) and h) by the end of October 2014.

Scope of the case

14. The complainant initially contacted the Commissioner on 3 February 2014 in order to complain about the time it was taking the MOD to reach a decision in relation to the balance of the public interest test.
15. Consequently the Commissioner contacted the MOD on 12 February 2014 and asked it to ensure that a substantive response was provided to her request within a further 10 working days.
16. The complainant next contacted the Commissioner on 22 July 2014 and explained that although the MOD had provided her with copies of documents b) and c), it had still not provided her with copies of documents a), d), e), f), g) and h).

Reasons for decision

17. Section 1(1) of the FOIA provides 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.'

18. Section 10(1) of the FOIA provides that 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.

19. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. The Commissioner considers it reasonable to extend the time to provide a full response including public interest considerations by a maximum of a further 20 working days, which would allow a public authority 40 working days in total.¹
20. In the circumstances of this request, although the MOD has informed the complainant of the delays while the public interest is considered, as is clear from the above chronology, the total time taken by the MOD has significantly exceeded 40 working days.
21. The MOD has explained to the Commissioner that such delays have arisen because the remaining documents contain highly classified information which requires careful and thorough examination before they can be considered for release and have appropriate redactions applied.
22. The Commissioner does not doubt that this is indeed the case. However, regardless of the circumstances, he cannot accept that it is reasonable for the MOD to have taken this long to complete its public interest considerations given that the complainant originally submitted her request some 10 months ago. Therefore the Commissioner finds that the MOD has not complied with section 17(3).

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http://ico.org.uk/for_organisations/freedom_of_information/guide/refusing_a_request#when-can-we-refuse-a-request-for-information-15

Right of appeal

23. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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

Alexander Ganotis
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Wilmslow
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SK9 5AF