

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 11 August 2014

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

#### **Decision (including any steps ordered)**

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1. The complainant submitted a request to the Ministry of Defence (MOD) which sought information about its handling of a previous freedom of information request. The MOD confirmed to the complainant that it held information falling within the scope of the request but it needed further time to consider the balance of the public interest test. To date, the MOD has failed to inform the complainant of its conclusions regarding the public interest test. By failing to do so the Commissioner has concluded that the MOD 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 his information request. If the MOD decides to withhold any information 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

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4. The complainant submitted the following request to the MOD on 29 April 2014:

*'A copy of the request made under freedom of information to the MOD with the reference: 18-09-2013-151538-006*

*All responses provided to freedom of information request: 18-09-2013 151538-006*

*All internal MOD communication generated from the freedom of information request 18-09-2013-151538-006.*

*Screen prints showing all data held on the Access to Information Toolkit (AIT) regarding the freedom of information request 18-09-2013-151538-006.'*

5. The MOD responded to this request on 20 June 2014 and confirmed that it held information falling within the scope of this request but it considered this information to be exempt from disclosure on the basis of the exemptions contained at the following sections of FOIA: 30, 31, 35, 36 and 42. The MOD explained that it needed further time to consider whether the public interest favoured maintaining each of the exemptions. It estimated that it would take until 18 July 2014 to reach a decision as to where the balance of the public interest lay. The MOD suggested that if it needed more time to reach a conclusion, it would let the complainant know.
6. To date, the complainant has not received a substantive response from the MOD setting out the findings of its public interest considerations.

## Scope of the case

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7. The complainant initially contacted the Commissioner on 31 May 2014 following the MOD's failure to provide any response to his request. The complainant contacted the Commissioner again on 20 July 2014 in light of the MOD's failure to complete its public interest considerations by the date it had previously indicated.

## Reasons for decision

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8. 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.'*

9. 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.
10. 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.<sup>1</sup>
11. In the circumstances of this request case, although the MOD has informed the complainant of the delay while the public interest is considered, the total time taken by the MOD has well exceeded 40 working days. As the Commissioner does not consider this to be a reasonable timescale he 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](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

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12. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

13. 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.
14. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**