

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 August 2024

Public Authority: Ministry of Defence (MOD)
Address: Whitehall
London
SW1A 2HB

Decision

1. The complainant submitted a request for communications between the Commandant RAFAC (Air Commodore) Keeling and his senior staff team RAF Canwell and Camp Commandant/OC RAF cadet camp at RAF Fairford for RIAT 2023. The Commissioner's decision is that the MOD is entitled to rely on section 12(1) (cost of compliance) of FOIA to refuse to provide the requested information.

Request and response

2. The complainant made the following information request to the MOD on 6 October 2023:

“Please provide all communications written and electronic between the Commandant RAFAC (Air Commodore) Keeling and his senior staff team RAF Cranwell to and from the camp commandant/OC RAF cadet camp at RAF Fairford for RIAT 2023. I am further requesting any and all communications, written or verbal, including incident reports regarding all injuries sustained on RIAT 2023 (Heat/Cold Climatic Injuries).”
3. The MOD responded on 3 November 2023 citing section 12(1) of FOIA to refuse the request and advised a refined request focusing on a specific timeframe could be considered but stated depending on the scope it may still exceed the appropriate limit.
4. The complainant requested an internal review on 4 November 2023 setting out their arguments around a similar previous request.
5. Despite a number of chasers for the internal review response by the complainant, the MOD failed to provide its internal review until after the Commissioner’s intervention on 4 and 23 April 2024.
6. The MOD requested further clarification of the request and scope on 25 April 2024, eventually providing its internal review on 12 June 2024 where it cited section 14(1) (vexatious) of FOIA to refuse the request.
7. It advised that as the complainant had revised, and extended, the scope at part two of the request it would be willing to process a further request if a particular subject were focused on for RIAT 2023.

Reasons for decision

8. During the Commissioner’s investigation, the MOD reverted back to its reliance on section 12(1) of FOIA to refuse to provide information in scope of the request.
9. This reasoning covers whether the MOD is entitled to rely on section 12(1) of FOIA to refuse to provide the requested information.
10. The position of the MOD is that it considered this request against the cost limits in the Act, and determined that for all correspondence sent to, or received by the RIAT Contingent Commander Volunteer at RAF

Fairford, regarding of RIAT 2023 - in addition to all correspondence Air Commodore Keeling and his senior staff, has sent to, or received from the RIAT Contingent Commander, which is all emails sent to or received from the RCC on RIAT 2023 would greatly exceed the section 12 cost limit.

11. The MOD states that the complainant's request was wide ranging and when further clarification of the scope was sought, the complainant confirmed an even wider scope. Therefore, the MOD concluded the request would greatly exceed the cost limit.
12. The Commissioner is aware that the MOD had initially cited section 12 of FOIA to refuse the request and had sought clarification of the scope of the request to see if it may be able to be refined and dealt with under FOIA. However, once the complainant's clarification was received, it took the view the scope was now wider-ranging.
13. The MOD confirmed that a search of relevant mailboxes had resulted in 1385 emails being located using a keyword search and each email would need to be reviewed separately. In addition, the Department would need to be cognisant of capturing any emails which are no longer be held in this specific mailbox (may have been deleted) but may be held by others in the Department who sent or received messages or were copy addressees.
14. Given a reserved timescale of two minutes for each email to be scanned for relevance and any potential follow-on threads, this amounts to over 46 hours, which is a minimum estimate to do a preliminary search to establish information in scope.
15. The MOD had previously advised the complainant, that were they to limit the scope of the request and specify a particular element of RIAT 2023 they were interested in; it may be able to process a further request.
16. The Commissioner's decision is that the request exceeds the threshold for section 12 and therefore, the MOD is entitled to rely on section 12(1) of FOIA to refuse to comply with the request. The Commissioner is also satisfied that, having provided the complainant with suitable advice and assistance previously, it had complied with its section 16 obligations.
17. The Commissioner requires no further action to be taken by the MOD in relation to the request.

Other matters

18. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
19. Part VI of the section 45 Code of Practice states that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; and that this will only be required in complex and voluminous cases.
20. The Commissioner is concerned that on this occasion it took over seven months for an internal review to be completed.
21. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance activity to improve standards of accountability, openness, and transparency.

Right of appeal

22. 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@justice.gov.uk

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

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanna Marshall
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