

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 January 2021

**Public Authority:** The 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) seeking information about the visits to the Royal Air Force Air Cadets Squadron in Gibraltar by personnel from its parent Norfolk and Suffolk Wing. The MOD refused to comply with the request on the basis of section 12(1) of FOIA because the estimated cost of doing so exceeded the appropriate cost limit. The complainant disputed the MOD's reliance on section 12(1) of FOIA.
2. The Commissioner is satisfied that the MOD can rely on section 12(1) of FOIA to refuse the request.
3. No steps are required.

### Request and response

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4. The complainant submitted the following request to the MOD on 4 February 2019:

*'Please provide the following information for all financially years after 1/4/2010*

*The information requested should relate specifically to the Wings and*

*Squadrons of the RAFAC [Royal Air Force Air Cadets] listed:*

- 1. Norfolk & Suffolk Wing - No2 (Overseas) Squadron Gibraltar*
  - 2. London Wing - No4 (Overseas) Squadron Gutersloh*
  - 3. Devon & Wiltshire Wing - No 7 (Overseas) Squadron Jersey 201 (Overseas) Sqn Guernsey*
  - 4. Merseyside Wing - 440 (Manx) Sqn*
  - 5. West Mercia Wing - No1 (Overseas) Squadron Akrotiri*
- No 1 (Overseas) Squadron DF Ayios Nikolaos*

*The information should be detailed on a year by year basis, It is requested to:*

- a) identify the number of personnel from within each Wing making the visits, and the frequency and duration of the visits.*
  - b) identify the means of transport to the Unit (ie service, commercial or private; land , sea or air)*
  - c) identify the arrangements for transport and messing during the course of the visit*
  - d) identify the value of any exchequer funding, or the alternative source of such funding*
  - e) provide statistics on the number of Cadets and staff recorded at each Unit.'*
5. At the request of the MOD, the complainant clarified the request on 5 March 2019 as follows:
- 'I can add the following clarification to the requirements of my request:*
- a) The number of Personnel from the parent Wing for the Overseas Squadron and Squadrons with that same Wing, - the information should also identify the number if visits relating to attendance at an annual camp.*
  - b) the information should include travel to and from the Overseas Unit, and also the Overseas element.*
  - c) a breakdown for each visit*
  - d) the funding information should identify the costs arising from the visits made by those Personnel, but if this funding falls to be met by the Overseas Units, where that Unit is based within Crown jurisdiction, then that should also be identified.*
  - e) this relates specifically to staff and cadet numbers at the respective Overseas Unit.'*
6. The MOD responded to the request on 2 April 2019, under its reference FOI2019/02846, and explained that the estimated cost of complying

with the request exceeded the appropriate cost limit. The request was therefore refused on the basis of section 12(1) of FOIA. The MOD, in line with its duty to provide advice and assistance under section 16 of FOIA, suggested a number of ways to the complainant in which his request could be refined.

7. The complainant submitted the following refined request on 9 April 2019:

*'With reference to your reply of 2 April 2019, I can refine the request parameters.*

*I should then like to request information relating only to Wing and Region Personnel visits to:*

*1) 440 (Manx) Sqn*

*2a) No1 (Overseas) Squadron Akrotiri*

*2b) No 1 (Overseas) Squadron DF Ayios Nikolaos*

*The information should be detailed on a year by year basis from year 2012/3, and should cover:*

*a) the number of personnel from within each host Wing/Region making the visits, and the frequency and duration of the visits.*

*b) the means of transport to the Unit (ie service, commercial or private; land , sea or air)*

*c) the arrangements for transport and messing during the course of the visit*

*d) the value of any exchequer funding, or the alternative source of funding*

*e) provide statistics on the number of Cadets and staff recorded at each visited Unit.*

*The information is NOT expected to include anything attributable to the attendance of Wing or Region assigned personnel, relating to planned annual camp activities and where the visits are a requirement of ensuring appropriate CFAV supervision for UK based Cadets.*

*Squadron based Personnel can therefore be excluded unless they have been assigned Wing or Region Duty.'*

8. The MOD responded, under its reference number FOI2019/05618, on 5 July 2019. It explained to the complainant that some of the information he requested was held and it provided this to him. However, it explained that the information falling within part (d) of his request was not held. By way of explanation it noted that public funding is allocated to RAFAC HQ for core business and most Squadron funding is raised through charity fundraising.

9. The complainant contacted the MOD on 10 July 2019 and requested an internal review in relation to its failure to provide the information sought by part (d) of his request.
10. The MOD informed him of the outcome of the internal review on 29 August 2019. The MOD explained that it *did* hold some information falling within the scope of part (d) of the request, but it would exceed the appropriate cost limit to provide this information. The MOD explained that normally the fact that processing a request in full would exceed the appropriate cost limit should be brought to the attention of the requester to allow them to make any refinements to be made. The MOD apologised to the complainant that this did not happen in this case and that he was initially provided with information in relation to the other four parts of the request. The MOD's internal review went on to provide the complainant with a number of suggestions as to how his request of 9 April 2019 could be refined so that it could potentially be answered within the cost limit.
11. The complainant submitted the following request to the MOD on 21 November 2019:

*'I should like to request information relating to Personnel ( Wing or Region based ) who have made visits to No 2 (Overseas) Squadron based in Gibraltar.*

*The information requested should relate on a year by year basis, starting from year 2012/3, and should cover:*

- a) the number of personnel from within each host Wing/Region making the visits, and the frequency and duration of the visits.*
- b) the means of transport to the Unit from the UK, and the source of transport within the UK to port of exit.*
- c) the arrangements for transport and messing during the course of the visit*
- d) the value of any exchequer funding, or the value and source of alternative funding*
- e) provide statistics on the number of Cadets and staff recorded at each visited Unit.*

*The information is NOT required to include information relating to visits linked directly to annual camps, or any activity where there is a necessary requirement for adult supervision of UK based Cadets. in relation to planned annual camp activities and where the visits are a requirement of ensuring appropriate CFAV supervision for UK based Cadets.*

*Squadron based Personnel should be excluded, if they are attending in a supervisory capacity.'*

12. The MOD responded on 19 December 2019, under its reference number FOI2019/13074, and explained the cost of complying with his request was estimated to be above the appropriate cost limit and therefore the request was refused on the basis of section 12(1) of FOIA. The MOD explained how the request could be refined to bring it within the cost limit.
13. The complainant contacted the MOD on 25 December 2019 and asked it conduct an internal review of this refusal.
14. The MOD informed him of the outcome of the internal review on 1 April 2020. The MOD explained that it had assumed that the complainant's request was limited to visits made by personnel from the Norfolk and Suffolk Wing of RAFAC to No2 (Overseas) Squadron Gibraltar in line with the format of his previous requests. The MOD upheld the application of section 12(1) of FOIA and referred the complainant to the points made in the internal review issued on 29 August 2019 in relation to request FOI2019/05618, which explained the difficulties in providing the part of the information sought by part (d) of his request. In terms of advice and assistance, in addition to the guidance provided in the initial response, the MOD also referred the complainant to the advice and assistance that had been given in the internal review in relation to the complainant's previous request.

### **Scope of the case**

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15. The complainant contacted the Commissioner on 5 April 2020 in order complain about the MOD's handling of his request of 21 November 2019. The complainant disputed the MOD's position that fulfilling this request would exceed the appropriate cost limit. The Commissioner has set out the complainant's grounds of complaint to support this view below.
16. During the course of the Commissioner's investigation of this complaint the issue of how the request should be interpreted arose.
17. This decision notice therefore considers how the complainant's request of 21 November 2019 should be interpreted before considering the MOD's reliance on section 12(1) of FOIA as a basis to refuse it.

## Reasons for decision

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### The interpretation of the request

18. As is clear from the chronology above, the complainant has been in correspondence with the MOD about this topic prior to him submitting the request of 21 November 2019.
19. Of particular note is the fact that the complainant's original request of 4 February 2019 explained that *'The information requested should relate specifically to the Wings and Squadrons of the RAFAC listed:*
  1. *Norfolk& Suffolk Wing - No2 (Overseas) Squadron Gibraltar...'*
20. Furthermore, it is also of note that on 5 March 2019 the complainant explained that he was interested simply in *'The number of Personnel from the parent Wing for the Overseas Squadron and Squadrons with that same Wing'*. (The parent wing for the Gibraltar squadron is the Norfolk and Suffolk wing).
21. The Commissioner understands that it was on this basis that the MOD explained in its internal review response that it had assumed that the complainant's request was limited to visits made by personnel from the Norfolk and Suffolk Wing of RAFAC to No2 (Overseas) Squadron Gibraltar.
22. During the course of her investigation the Commissioner asked the complainant to confirm whether he intended his request of 21 November 2019, whilst seeking *'information relating to Personnel (Wing or Region based) who have made visits to No 2 (Overseas) Squadron based in Gibraltar'*, to in fact only be intended to capture information about visits made from the Norfolk and Suffolk Wing of RAFAC to No2 (Overseas) Squadron Gibraltar. The complainant confirmed to the Commissioner that this was indeed the intended scope of his request.
23. The Commissioner also asked the MOD to confirm how it had interpreted the complainant's request of 21 November 2019. The MOD explained that at the internal review stage it had made an assumption about the scope of the complainant's request based upon the context of his previous requests in which he had specified that he was only interested in visits made by personnel from the Parent Wing and its squadrons. However, the MOD explained that on reflection it would have been more appropriate to confirm the intended scope of the request with the complainant as the interpretation at the internal review stage differed

from that taken in the original response. Furthermore, the MOD explained that when it provided the Commissioner with its initial submissions to support its application of section 12(1) it was of the view that the request, as drafted, was not limited simply to personnel from the Gibraltar parent wing, namely the Norfolk and Suffolk Wing. Nevertheless, the MOD explained to the Commissioner that even if the request was interpreted in the narrower way it would still breach the appropriate cost limit to process the request.

24. As the Commissioner's guidance explains, public authorities should read a request objectively and if they are unclear about the meaning of a request then they should clarify the meaning of the request with the requester.
25. In the circumstances of this case, the Commissioner agrees with the MOD that it would have been useful to seek clarification from the complainant at the internal review stage. However, the Commissioner is satisfied that given the background and context to the request of 21 November 2020 it can be objectively interpreted as only seeking information limited to visits made by personnel from the Norfolk and Suffolk Wing of RAFAC to No2 (Overseas) Squadron Gibraltar.
26. The Commissioner has therefore considered whether section 12(1) of FOIA provides a basis refuse this request based upon the complainant's narrower interpretation of it.

## **Section 12 – cost of compliance**

27. Section 12(1) of FOIA states 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.'*

28. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government departments such as the MOD. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively imposes a time limit of 24 hours.
29. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the Fees Regulations states that an authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
30. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be '*sensible, realistic and supported by cogent evidence*'.<sup>1</sup>
31. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether, despite this being the case, there is a public interest in the disclosure of the information.
32. Furthermore, in the context of this complaint, it is important to remember that if fulfilling *some* parts of a request would exceed the cost limit, then a public authority can rely on section 12 to refuse to comply with *all* parts of the request. In other words, a public authority is not obliged to answer the parts of the request that do not trigger the cost limit. Rather, even if only one part of the request triggers the cost limit then the entire request can be refused on the basis of section 12 of FOIA.

### The complainant's position

33. The complainant noted that the MOD was able to provide the information within the cost limit that he requested on 9 April 2019, MOD reference FOI2019/05618, and that this request had sought information about two ATC units administered by two separate Wings. In contrast the complainant explained that the information sought by the disputed request of 21 November 2019 only related to one ATC unit but this was now being refused on the basis of section 12(1) of FOIA. The complainant argued that the MOD's compliance with request FOI2019/05618 demonstrated that the information was relatively easily to collate and therefore it was illogical to refuse to comply with his narrower request of 21 November 2019.

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<sup>1</sup> Paragraph 12 of EA/2007/0004.



34. Furthermore, the complainant argued that the information sought by his request 21 November 2019 would be held in just one location, namely by the Wing Executive Officer at Wing Headquarters at RAF Wyton.
35. The complainant also argued that given that the MOD is strictly regulated because of the need to account for HM Treasury expenditure, a logical system would have the information readily collated because the cost of maintaining the facilities would figure in budget statistics.

#### The MOD's position

36. The MOD explained to the Commissioner that it did not envisage that fulfilling questions a), b), c) and e) of the request would breach the cost limit if the request was only seeking information concerning visits to Gibraltar by personnel from the Norfolk and Suffolk Wing. The MOD explained to the Commissioner that in respect of the likely number of visits in scope of such a refined request, it could confirm that there are normally two inspections of the Gibraltar Squadron (staff and cadets) conducted each year, with one of these visits being the Annual Formal Inspection.
37. The MOD explained that these inspections are conducted by the Officer Commanding (OC) Norfolk and Suffolk Wing, who would normally be escorted by at least one other member of Wing personnel. The MOD explained that regular health and safety inspections are also conducted by suitably qualified staff in relation to specific adventure training activities and facilities such as the shooting range. However, it explained that until each unit is contacted, and the scope of information sought it is not possible to be definitive on what visits have occurred during the time period of the request.
38. However, the MOD explained that it was the processing of part (d) of the request that, even if the request was limited to personnel from the Norfolk and Suffolk wing, would breach the costs limit. In support of this position the MOD explained that whilst contacting each squadron should enable it to identify when visits have been made, and who by, it would still be extremely difficult for the MOD to locate, extract and collate all the potential recorded information sought by part (d) of the request, namely costs to the exchequer for these visits.
39. The MOD explained that the difficulties in collating these costs were the same as those outlined in its internal review response in relation to the complainant's previous request, its reference (FOI2019/05618):

*'Travel cost data relating to individual official visits overseas is not routinely collated or held in a manner that allows for easy interrogation*

*centrally. It is spread over several different systems. Service personnel and civil servants will claim refunds for travel via on-line personnel management systems while Cadet Force Adult Volunteer (CFAV) staff claim through the HQ RAFAC Accounts department. Unfortunately, whilst all payments are authorised prior to payment, there are no separate lists of volunteer staff who have travelled overseas and made such claims readily to hand. However, it should also be noted that very few journeys overseas for CFAVs are publicly funded, only those required for governance, assurance, duty of care etc.*

*Uniformed volunteer staff (officers and SNCOs) can claim 'Volunteer Allowance' for days attending RAFAC duty from public funds for a limited number of approved core activities as listed in ACP300. Again, such payments are authorised at the time but the details of these are not held centrally at HQ RAFAC but in the electronic Joint Personnel Administration System, which adds the record of claim to the personnel records of the claimant.'*

40. With regard to a costs estimate for processing this part of the request, the MOD explained that if it assumed that the only trips taken each year were those relating to inspections, and assumed that the OC Norfolk and Suffolk Wing undertook these alone and submitted two claims per trip - one for travel and subsistence costs and another for the volunteer allowance - it would have to locate the details of 28 claims (14 trips made during the period covered by the request). However, MOD explained that it is known that the OC is often accompanied by another member of the Wing during his inspection visits, and so any claims submitted by those who accompanied him would also have to be located, retrieved and extracted to provide a total cost. The MOD explained that it had estimated that the effort involved in processing part (d) of the request would equate to approximately 5 hours per trip. As at least 14 inspection trips should have been undertaken during the period covered by the request, the MOD estimated that the effort to process it in full is estimated to be a minimum of 70 hours.
41. The Commissioner also asked the MOD to comment on the complainant's argument that as such spending is strictly regulated due to the need to account to HM Treasury for public expenditure, a logical system would have the information readily collated. The MOD explained that the strict financial controls and processes that govern public spending do not require officials to collate costs by individual trip or specific destination; it was simply not required to report to HMT Treasury on such a granular level. The MOD explained that it does however, report on spending against specific resource accounting codes. For example, it would be able to identify and account for all spending on

pay and pensions, as well as costs associated with travel and subsistence at a more strategic level. The MOD noted that unit budgets are subject to local controls and approvals processes which can be supplemented by individual audits and spot checks in relation to individual claims. The MOD explained the complainant was therefore correct in his assumption that it has a comprehensive set of processes and procedures that are used to track and manage the departmental expenditure. The MOD also confirmed that RAFAC HQ retains associated HMRC documents however, there is no centralised system to identify and access individual claims in the way that would be required to meet part (d) of the complainant's request.

### The Commissioner's position

42. Before setting out her views in relation to the MOD's submissions to support its reliance on section 12(1) of FOIA, the Commissioner wishes to make it clear that she does not agree with the complainant that the MOD has already fulfilled a broader request than the request of 21 November 2019 which is the subject of this complaint.
43. As is clear from the above, the MOD's internal review of 29 August 2019 in relation to the request FOI2019/05618, explained that although it had initially provided the information sought by parts (a), (b), (c) and (e) of that request, the information sought by part (d) of that request could **not** be provided within the cost limit. Therefore, the internal review concluded that the request should have been refused, in its entirety, on the basis of section 12(1) of FOIA.
44. As noted above, if fulfilling some parts of a request would exceed the cost limit, then a public authority can rely on section 12 to refuse to comply with all parts of the request, regardless as to whether some other parts of the request could be provided without the cost limit being met.
45. In the circumstances of FOI2019/05618 the MOD therefore refused the entire request on the basis of section 12(1) of FOIA because it estimated that the cost of providing the information sought by point (d) exceeded the cost limit. Albeit, that as part of its initial response it did provide some of the information falling within the scope. In light of this, the Commissioner does not accept the complainant's position that the MOD already complied with a broader request, FOI2019/05618. Rather, the MOD's final position in relation to that request was actually to refuse the request on the basis of section 12(1) of FOIA because of the estimated cost of complying with part (d) of that request.

46. Turning to the MOD's submissions set out above in relation to the application section 12(1), the Commissioner notes that the MOD does not maintain any centralised records that would easily fulfil part (d) of the request. Therefore, she accepts that in order to fulfil this part of the request the MOD faces the difficulties set out in its internal review response in relation to the previous request and quoted above at paragraph 39. Furthermore, based on the MOD's submissions to her as part of this case the Commissioner has no reason to dispute its estimate that it would take approximately 5 hours per trip to collate the information needed to answer part (d) of the request. Given the number of trips undertaken in relation to this request is at least 14 the Commissioner accepts that the time taken to collate the information will therefore exceed the appropriate cost limit of 24 hours. As a result the Commissioner is satisfied that the MOD can rely on section 12(1) of FOIA to refuse to comply with the complainant's request of 21 November 2019.

## Right of appeal

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47. 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](mailto:grc@justice.gov.uk)

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

48. 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.
49. 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 .....

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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