

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 June 2023

Public Authority: Atomic Weapons Establishment Plc
Address: Aldermaston
Reading
Berkshire
RG7 4PR

Decision (including any steps ordered)

1. The complainant submitted a request to the Atomic Weapons Establishment Plc ("AWE") for information relating to the blood and urine samples of servicemen or civilian employees who took part in UK nuclear testing between 1952 and 1967.
2. The Commissioner's decision is that AWE was entitled to refuse the request in accordance with section 12(1) of FOIA. However, the Commissioner finds that AWE did not comply with its obligations under section 16(1) of FOIA to offer advice and assistance, and in failing to provide its refusal notice within 20 working days, AWE breached section 17(5) of FOIA.
3. The Commissioner requires AWE to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with advice and assistance to help them submit a request falling within the appropriate limit, or explain why this is not possible.

4. 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

5. On 23 September 2022, the complainant wrote to AWE and requested information in the following terms:
 - “1. confirmation of whether AWE holds records of blood or urine samples of servicemen or civilian employees taken during atmospheric nuclear weapons testing and subsequent clean-ups between 1952 and 1967;
 2. if so, how many, from how many individuals, what years or operations
 3. if so, with whom these records have been shared - which government agencies or departments, or independent researchers, if any
 4. if AWE has conducted any overall analysis of these samples, and if so where copies may be held or obtained
 5. the security classification of any of the above documentation”.
6. A response was provided on 21 October 2022 in which AWE confirmed that, in relation to question one, the information was being withheld under section 40(2) of FOIA, and that in response to the other questions the information is not held.
7. Upon receiving this response, the complainant submitted a supplementary request on 21 October 2022 requesting:
 - “I'd like to make a supplementary request for further information related to this release about blood and urine records of servicemen and civilians serving at nuclear weapons trials.
 1. First, you have not answered pt [sic] 2 of my initial question, for a number of how many records you hold. You state there is a "small number" of blood and urine records. If you know there is a small number, you must know a rough figure. Please define this as well as you can - 6, 60, dozens, hundreds, a handful?

I imagine it is possible 'records' you hold may each contain details for a number of individuals - for clarity, in this instance, I am seeking the number of individuals you hold such records about. If this is too expensive or time-consuming to obtain (eg a document containing hundreds of individual records), please provide the number of such documents, and a rough estimate of how many individuals may have information contained therein.

2. You state records were retained "where these were of particular interest". Please define this interest - which characteristic did these records need to display to be worth retaining?

3. Please could you explain what happened to the records that were not "of particular interest".

4. If they were destroyed, can you tell me how many, when, by what means, and on whose instruction.

5. Please define "individuals". Are these servicemen, civilians, AWE staff, indigenous people at the sites of nuclear weapons tests?

6. Please answer questions 1-5 for a) blood records you hold and b) urine records you hold.

7. You state that AWE does not hold summary records of the numbers of individuals, years, or operations they were concerned in. What summary records DO you hold on these documents, if any?

8. You state "no records were found regarding the sharing of this information". I understand it was most likely for such records to be automatically shared with MoD and service archives. Can you tell me what rules were in place, at the time these records were taken, that could indicate with which other departments or agencies they may have been shared?

9. Can you tell me the rule or instruction or order which generated the recording of blood or urine analysis of servicemen involved in the nuclear weapons trials.

10. You state there are "no documents" found about the overall analysis of blood records, and no overall analysis of the urine samples. This implies there was an overall analysis done of the blood, but you have no documents about it. Do you believe an overall analysis of these blood samples was done, and if so, on what do you base this if there are no documents about it? Are such documents elsewhere, and if so, where?

11. The Parliamentary written questions on this topic to which you direct me all state that the MoD believes any such analyses would be detailed in individual servicemen's records. When servicemen who had blood taken obtain these records, blood analyses are not included. Is there any indication within your archives as to why these records are not in individual servicemen's records.

I hope this extensive list of questions does not push this request over the £600 FOI cost limit. If it does, to save time, please can you answer questions 1, 2, 4, 5, 6, and 11”.

8. A response was provided on 18 November 2022 in which AWE applied section 12(1) to question one, section 21 to question nine, and confirmed that the information was not held in relation to the other parts of the request.
9. Upon receiving this response, the complainant requested an internal review on 28 November 2022, referencing both responses received. On 13 January 2023, AWE provided its internal review response and maintained its original position, concerning both requests. It did however, disclose a redacted copy of a document, in relation to the original request.

Scope of the case

10. The complainant contacted the Commissioner on 17 January 2023 to complain about the way their request for information had been handled.
11. The Commissioner’s guidance¹ states that requests which relate to the same or similar information and received within 60 consecutive working days, can be aggregated. Furthermore, if any part of the request exceeds the cost limit, then section 12(1) can be applied to the whole request.
12. The Commissioner’s investigation has therefore focused on AWE’s application of section 12(1) of FOIA. He has also considered whether AWE breached section 17(5) of FOIA by failing to issue a refusal notice within 20 working days, and whether it complied with its obligations under section 16(1) of FOIA.

¹ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

Reasons for decision

Section 12 – cost of compliance

13. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
14. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can make a notional charge of a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to AWE.
15. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - 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.
16. 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 decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence.”
17. 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 there is a public interest in the disclosure of the information.
18. Where a public authority claims that section 12 of FOIA is engaged, it should, where reasonable, provide advice and assistance to help the complainant.

The Complainant's position

19. The complainant has offered to refine their request on several occasions, and believes that as the majority of their questions are about "the adequacy of AWE's handling of the request", they do not anticipate it will exceed the cost limit.
20. In raising concerns surrounding the accuracy of the information, the complainant believes that if a public authority is releasing "contradictory information to multiple people on the same points, it must be in contravention of both the spirit and the letter of FOIA".

AWE's position

21. In correspondence to the Commissioner, AWE explains that the cost limit, for this request, is exceeded in relation to the information concerning AWE civilian employees, employed during the tests.
22. AWE explains that in order to obtain the information, a distinction would have to be made in relation to those workers "tested as a result of their participation in the nuclear testing programme and those tested in their course of their employment with AWE".
23. AWE explains that the only way to make this distinction is to physically examine each individual file and that as there were 816 relevant civilian employees, employed at the time of the tests, this would exceed the cost limit.
24. In providing a sampling exercise, AWE estimated that it would take 10 minutes to review each file. Therefore, the estimated time for providing the information is 8160 minutes or 136 hours.
25. In reaching the estimate of 10 minutes, AWE explains the actions that would be needed, these are; identifying the individual, locating the physical file, locating and extracting the information on the file.
26. Regarding the methodology used to search for information within scope, AWE explained that the request was delegated to the relevant internal department who, from understanding the records held, were able to confirm the amount of searching that would be required. It further explained that both electronic and paper listings of AWE participants at the trials were searched and that the key words used were "urine and blood".

The Commissioner's decision

27. The Commissioner acknowledges the complainant's concerns and reasons for wanting the information. However, he is satisfied that from the information provided, AWE reasonably estimated that it would take more than 18 hours to respond to the request.
28. The Commissioner understands that the complainant has concerns surrounding the accuracy of the information that AWE has released. However, FOIA is solely concerned with access to information, and questions of the accuracy of information released under FOIA do not fall under the Commissioner's regulatory remit. Any such discrepancies would need to be resolved between the requester and the public authority.
29. The Commissioner's decision is that AWE estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, AWE was correct to apply section 12(1) of FOIA to the request.

Section 16-Advice and assistance

30. Section 16(1) of FOIA provides that a public authority should give advice and assistance to a person making an information request.
31. The Commissioner notes that the request was an aggregated request and that even with a reduced scope, the public authority may still not be able to provide a response, within the appropriate limit. However, AWE did not advise the complainant on how they could refine their request to bring it within the cost limit.
32. The Commissioner is therefore satisfied that AWE did not meet its obligations under section 16(1) of FOIA. The public authority must now provide appropriate advice and assistance to the complainant.

Procedural matters

33. Section 17(5) of FOIA requires a public authority, relying on section 12(1), to issue a response refusing the request within 20 working days. The Commissioner notes that AWE did not rely on section 12(1) to refuse the request within 20 working days and therefore finds that AWE breached section 17(5) in responding to the request.

Right of appeal

34. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

35. 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.
36. 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

Susan Duffy
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