

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 April 2014

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

Decision (including any steps ordered)

1. The complainant has requested information about a Powerpoint slide presentation and accompanying briefing notes used at a meeting of the Army Justice Board. By the date of this notice the Ministry of Defence (MOD) had yet to provide a substantive response to this request. The Information Commissioner's decision is that the MOD breached section 10 of the FOIA in that it has failed to provide a response to the request.
2. The Commissioner requires the MOD to take the following steps to ensure compliance with the legislation:
 - Issue a response to the request under the FOIA by either complying with section 1(1) or issuing a valid refusal notice.
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. On 18 September 2013, the complainant wrote to the MOD and requested information in the following terms:

"Please would you let me know in writing if you hold information of the following description:

- 1. The Army Justice Board (un-redacted) powerpoint slide presentation (with notes) from the AJB meeting which I believe was held Wednesday 11 September 2013.*
 - 2. All the Army Board briefing notes marked "restricted management" (un-redacted) which explain what is laid out in the powerpoint presentation, in relation to the AJB MEETING HELD Wednesday 11 September 2013".*
5. The complainant received an email from the MOD on 16 October 2013 confirming that it held information relevant to the request and explaining that it was considering the exemptions at sections 22, 31, 35 and 36 of the FOIA. Consequently it would be necessary to consider a public interest test. The email advised that the MOD planned to send a response by 13 November 2013.
 6. In the absence of a response, the complainant wrote to the MOD on 25 November 2013 and received a reply on the same date. The reply advised that the MOD was not yet in a position to issue a reply but would do so as soon as possible. The complainant wrote again on 12 December 2013 but heard nothing further from the MOD.

Scope of the case

7. The complainant contacted the Commissioner on 16 December 2013 to complain about the way his request for information had been handled. He specifically asked the Commissioner to consider the fact that no substantive response had been provided.
8. The Commissioner wrote to the MOD on 9 January 2014 asking for a response to be issued within 10 working days. In the absence of any response the Commissioner contacted the MOD again on 7 February 2014 advising that the complaint would be investigated.
9. No substantive response to the request had been provided by the date of this notice.

Reasons for decision

10. Section 1(1) of FOIA states that:

1(1) Any person making a request 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.*

11. *Section 8(1) of FOIA states:*

8(1) In this Act any reference to a "request for information" is a reference to such a request which –

- (a) *is in writing,*
 - (b) *states the name of the applicant and an address for correspondence, and*
 - (c) *describes the information requested.*
12. The Commissioner considers that the request in question fulfilled these criteria, and therefore constituted a valid request for recorded information under the FOIA.
13. Section 10(1) of the FOIA states 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.
14. Section 10(3) of the FOIA enables a public authority to extend the 20 working day timeframe up to a 'reasonable' time in any case where it requires more time to determine whether or not the balance of the public interest test lies in maintaining an exemption. The FOIA does not define what might constitute a 'reasonable' extension of time, but the Commissioner's view is that an authority should take no more than an additional 20 working days to consider the public interest test. The Commissioner also notes that the MOD itself proposed to extend the time for complying with this request by an additional 20 working days.
15. From the information provided to the Commissioner it is evident that the MOD did not respond to the complainant within the statutory timeframe in respect of this request.
16. The Commissioner's decision is that the MOD did not deal with the request for information in accordance with the FOIA. It breached section 10 of the FOIA by failing to provide a substantive response to the request in accordance with its provisions. As it has still not responded to the request, the MOD is now formally required by the Commissioner to respond to the request of 18 September 2013 by either disclosing the information or explaining why it has been withheld.

Right of appeal

17. 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

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

18. 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.
19. 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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