

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 January 2017

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

#### Decision (including any steps ordered)

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1. The complainant has requested information in the form of a file retained by the Ministry of Defence ('MoD'). This file is not declassified although other related documents in the series have been transferred to The National Archives and are open to public inspection.
2. The Commissioner's decision is that the MoD has appropriately applied the exemption at section 23(1) of the FOIA, information supplied by, or relating to, bodies dealing with security matters.
3. The MoD breached section 17(1) of the FOIA by failing to provide the complainant with a refusal notice within 20 working days following the date of his request.
4. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### Request and response

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5. On 18 April 2016, the complainant wrote to the MoD and requested information in the following terms:  
  
"I request access to a file being held at the MoD away from public inspection at the National Archives Kew, reference number WO 208/3472"
6. The MoD responded on 27 June 2016. It stated that the information was held but was subject to the exemption at section 23(1) of the FOIA.

7. Following an internal review the MoD wrote to the complainant on 29 July 2016. It apologised for the late provision of its refusal notice and upheld the application of section 23(1). In addition it relied on section 40(2) personal information to withhold some information.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 17 August 2016 to complain about the way his request for information had been handled. He explained his concern that the MoD had refused to declassify the document he had requested stating:

"...a National Archives Kew document WO 208/3472 be declassified so that it may be freely utilised for the scholarly historical research I am currently engaged upon which will eventually take its place in the wider history of the Second World War."

9. The Commissioner considers the scope of her investigation to be the application of the exemptions cited to the content of the requested document.

## **Reasons for decision**

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10. Section 23(1) of FOIA states that:

"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).

11. In order to successfully engage the exemption, a public authority must be able to demonstrate that the relevant information was directly or indirectly supplied by, or relates to, any of the bodies listed at section 23(3) FOIA.

## **The complainant's view**

12. The complainant provided a detailed submission to the Commissioner in respect of his view in refuting the MoD's reasoning provided in its responses. His argument focussed on detailing the releases of documents by GCHQ which had previously been classified as 'strictly secret' and of his own role in raising the fact that transcripts of German Police Decodes obtained from wartime British sources had been released from the United States National Archives whereas they remained classified in the UK. The complainant also referenced the published use of WO 208 documents in specific articles.

13. He went on to explain:

"It is a fact that the majority of documents freely used by historians in national archives in the UK and elsewhere today would at some time or the other have formerly been classified as 'secret' before their release to archives.....Worldwide there remains an insatiable public interest in the history of the Second World War."

### **The public authority's view**

14. The MoD explained that the withheld information relates to specific units within a security body listed under section 23(3) FOIA.
15. Due to the classification of the file containing the requested information the MoD requested that the Commissioner attend to view the file.

### **The Commissioner's view**

16. The section 23 exemption is a class based exemption. Therefore there is no requirement for a public authority to identify any particular prejudice in order for exemption to be engaged. If the information falls within the description contained at section 23(1) it is exempt from disclosure. The exemption is also absolute and thus not subject to the public interest test.
17. Having viewed the information the Commissioner is satisfied that all the withheld information is exempt from disclosure on the basis of section 23(1) because it was supplied by, or relates to, one of the bodies listed in section 23(3).
18. The Commissioner has not considered the MoD's application of section 40 as she has determined that the section 23(1) applies to all the withheld information.
19. 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.'*
20. 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.

21. The Commissioner notes that the MoD did not deal with the request for information in accordance with the FOIA. It contravened the requirements of section 17(1) when it failed to respond in full to the request within the time frame determined by section 10(1).

## Right of appeal

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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@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)

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.

Signed .....

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**