

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 January 2019

**Public Authority:** Ministry of Defence

**Address:** Main Building  
Whitehall  
London  
SW1A 2HB

### Decision (including any steps ordered)

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1. The complainant requested information relating to air strikes in Syria.
2. The Commissioner's decision is that the Ministry of Defence ("the MoD") failed to respond to the request within 20 working days and has therefore breached Section 10 of the FOIA.
3. The Commissioner requires the MoD to take the following steps to ensure compliance with the legislation.
  - Issue a substantive response, under the FOIA, to the request.
4. The MoD 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 FOIA and may be dealt with as a contempt of court.

### Request and response

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5. On 17 November 2017, the complainant wrote to the Ministry of Defence and requested information in the following terms:

*"could you provide me with information about the UK involve in a series of Coalition air strikes on Syrian army positions near the city of Dier Ez Zor on 17<sup>th</sup> September 2016.*

*"Could you provide the following information:*

1. *Who (giving name/rank/service) was the UK air component commander in the Combined Air Operations Centre (CAOC) at Al Udiyd Air Base on 17<sup>th</sup> September 2016?*
2. *Was he on duty at the time of the incident? If not, who (giving name/rank/service) was carrying out his duties as the UK's "Red Card" holder?*
3. *How many UK personnel were assigned to work in the CAOC on 17<sup>th</sup> September?*
4. *How many UK personnel were working in the CAOC Dynamic Targeting Cell at the time of the incident? Could you break this down by rank and service, as well indicating the rank/service and appointment of the senior UK officer working in the Dynamic Targeting Cell?*
5. *Could you provide a time line of when the UK "Red Card" Holder was made aware of the request from the Dynamic Targeting Cell to deploy UK assets to attack the targets, when the "Red Card" Holder approved the participation of UK assets, when UK assets engaged targets and when the "stop order" was issued to UK assets?*
6. *What was the tactical information and legal advice did the "Red Card" Holder have available when he was considering the request to release UK assets to strike the targets?*
7. *What UK assets were involved in the strikes, how munitions were released and what was the BDA of casualties inflicted?*
8. *Has any disciplinary or administrative action been taken against UK personnel involved in this incident? What is the nature of this action?*
9. *Is the MOD carrying out service inquiry into this incident and when is it expected to be made public? Is any other type of inquiry being conducted into the incident and will that be made public."*
10. The MoD did not acknowledge the request and had failed to provide a substantive response by the date of this notice.

## Scope of the case

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11. The complainant contacted the Commissioner on 9 October 2018 to complain about the failure, by the MoD, to respond to the request.
12. In line with her usual practice, the Commissioner contacted the MoD on 19 October 2018 to highlight the outstanding response. She requested that the MoD respond to the request within 10 working days and also provided a fresh copy of the request. The correspondence was neither acknowledged nor responded to.
13. Given that this request has been outstanding for more than a year, despite her intervention, the Commissioner considers that a decision notice is appropriate in this case.
14. The scope of this notice and the following analysis is to consider whether the MoD has complied with Section 10 of the FOIA.

## Reasons for decision

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15. Section 1(1) of the FOIA states 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.*

16. Section 8(1) of the FOIA states:

*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.*

17. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

18. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
19. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the MoD has breached Section 10 of the FOIA.

## Right of appeal

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20. 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)

21. 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.
22. 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 .....**

**Ben Tomes  
Team Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**