

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 September 2020

Public Authority: Ministry of Defence

Address: Main Building
Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Defence (the MoD) about expendable radiosondes. By the date of this notice the MoD had not issued a substantive response to this request.
2. The Commissioner's decision is that the MoD has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of the FOIA.
3. The Commissioner requires the MoD to take the following step to ensure compliance with the legislation.
 - Having confirmed that information is held within the scope of the request: either disclose the requested information or issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
4. The MoD must take this step 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 5 November 2019, the complainant wrote to the MoD and requested information relating to the Royal Navy's use of expendable radiosondes, both in terms of quantities and cost. The request also enquired about which principal suppliers were contracted by the MoD and whether any information existed which considered the environmental impact of expendable radiosondes. Details were also sought about the department and/or officer in charge with responsibility for radiosondes across the Fleet in general. Given the length of the request itself, it is summarised in this notice in the interests of brevity.
6. On 9 December 2019, the MoD wrote to the complainant to explain that it held information relevant to the complainant's request, but that it would need to extend the time taken to complete its public interest test considerations in respect of section 26 (defence) and section 43 (commercial interests) of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 19 May 2020 to complain about the delay in the MoD's consideration of the public interest test.
8. On 14 July 2020 the Commissioner wrote to the MoD, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 20 working days. The Commissioner also invited the MoD to inform her if it was unable to comply with the FOIA due to any difficulties posed by the Covid-19 crisis.
9. On 17 August 2020 the MoD contacted the Commissioner to request a time extension for a substantive response to be provided. The MoD explained that due to Covid-19 service pressures its staff had faced restricted access to resources relating to the request in recent months. The MoD outlined that a realistic target for a response to be provided to the complainant's request would be 28 August 2020 and did not anticipate any further delays beyond that point.
10. On 17 August 2020, in line with her modified casework procedures during the Covid-19 pandemic, the Commissioner wrote to the MoD to agree that it could have a time extension during which the Commissioner would not issue a decision notice and should provide the response to the request by 28 August 2020. The Commissioner also informed the MoD that a decision notice would be issued should the response to the request remain outstanding beyond that agreed date.

11. On 16 September 2020, the complainant contacted the Commissioner to inform her that a substantive response to their request for information had still not been provided by the MoD.
12. The Commissioner has considered whether the MoD has complied with its obligations in relation to section 17 of the FOIA.

Reasons for decision

13. 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."

14. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
15. Section 17(3) of the FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.
16. Although the FOIA does not define what constitutes a reasonable time, the Commissioner considers it reasonable to extend the time to provide a full response, including public interest considerations, by up to a further 20 working days. This means that the total time spent dealing with the request should not exceed 40 working days, unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.
17. In this case, the total time taken by the MoD has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, the MoD has not complied with section 17(3).
18. The MoD is now required to finalise its public interest considerations under section 17(3) of the FOIA and respond to the complainant.

Other matters

19. The Commissioner wishes to place on record her understanding of the immense pressures placed on public authorities during the coronavirus pandemic. She is sympathetic to the difficult decisions such authorities must make, between prioritising front-line services and continuing to meet their obligations under the FOIA.
20. The Commissioner notes, however, that a response to a request for information made on 5 November 2019 would have been due well before the coronavirus disruption began. This has been a necessary consideration in her decision to issue this notice.

Right of appeal

21. 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

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

22. 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.
23. 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
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Wycliffe House
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SK9 5AF