

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 October 2020

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Ministry of Defence (MOD) seeking information about whether the Aldermaston Women's Peace Camp was included on any watchlist or database of domestic extremism and what the criteria were for inclusion on such a list. The MOD refused to confirm or deny whether it held any information falling within the scope of the request on the basis of sections 23(5) (security bodies), 24(2) (national security) and 31(3) law enforcement.
2. The Commissioner's decision is that the MOD is entitled to refuse to comply with the request on the basis of section 23(5) of FOIA.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the MOD on 19 March 2020:

'What official or unofficial watch lists or databases relating to domestic extremism/similar label is A[ldermaston] W[omen's] P[eace] C[ampaign] listed on, both in their own right and/or as an affiliate of [E]X[tinction] R[ebellion] Peace?'

What are the criteria for such inclusion?

If, under your s16 FOIA duty, you can provide me with advice & assistance as to where I can find how MDP [Ministry of Defence Police] now use the term "domestic extremism" I would be grateful.'

5. The MOD responded on 30 March 2020 and refused to confirm or deny whether it held information falling within the scope of the request on the basis of sections 23(5) (security bodies), 24(2) (national security) and 31(3) (law enforcement) of FOIA.
6. The complainant requested an internal review of this refusal on 27 April 2020, noting that the MOD had not responded to the part of her correspondence which had sought advice and assistance in relation to how the MDP interpreted the term '*domestic extremism*'.
7. The MOD informed her of the outcome of the internal review on 25 May 2020. The review upheld the application of the exemptions cited in the refusal notice. However, the MOD provided the complainant with a brief explanation of how the MDP interprets the phrase '*domestic extremism*'.

Scope of the case

8. The complainant contacted the Commissioner on 3 June 2020 about the MOD's refusal to provide her with the information falling within scope of her request.
9. In relation to this complaint it is important to note that the right of access provided by FOIA is set out in section 1(1) and is separated into two parts. Section 1(1)(a) gives an applicant the right to know whether a public authority holds the information that has been requested. Section 1(1)(b) gives an applicant the right to be provided with the requested information, if it is held. Both rights are subject to the application of exemptions.
10. As explained above, the MOD is seeking to rely on sections 23(5), 24(2) and 31(3) to neither confirm nor deny (NCND) whether it holds information falling within the scope of the request. Therefore, this notice only considers whether the MOD is entitled, on the basis of these exemptions, to refuse to confirm or deny whether it holds the requested information. The Commissioner has not considered whether the requested information – if held – should be disclosed.

Reasons for decision

Section 23 – security bodies

11. 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 sub-section (3).'

12. Section 23(5) of FOIA states that:

'The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3).'

13. The full list of bodies specified in section 23(3) can be viewed online.¹

14. In the Commissioner's opinion the exemption contained at section 23(5) should be interpreted so that it is only necessary for a public authority to show that **either** a confirmation **or** denial of whether requested information is held would involve the disclosure of information relating to a security body. It is not necessary for a public authority to demonstrate that both responses would disclose such information. Furthermore, the Commissioner considers that the phrase 'relates to' should be interpreted broadly. Such an interpretation has been accepted by the First-Tier Tribunal (Information Rights) in a number of different decisions.²

15. Consequently, whether or not a security body is interested or involved in a particular issue is in itself information relating to a security body. Therefore, in the Commissioner's opinion section 23(5) could be used by a public authority to avoid issuing a response to a request which revealed either that a security body was involved in an issue or that it was not involved in an issue.

¹ <http://www.legislation.gov.uk/ukpga/2000/36/section/23>

² See for example *Dowling v Information Commissioner and The Police Service for Northern Ireland*, EA/2011/0118, paras 17 to 22.

16. The test of whether a disclosure would relate to a security body is decided on the normal civil standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the exemption would be engaged.
17. From the above it can be seen that section 23(5) has a very wide application. If the information requested is within what could be described as the ambit of security bodies' operations, section 23(5) is likely to apply. Factors indicating whether a request is of this nature will include the functions of the public authority receiving the request, the subject area to which the request relates and the actual wording of the request.
18. In support of its reliance on section 23(5), the MOD explained that it worked closely with security bodies in the development of its policing tactics. However, it argued that to confirm or deny whether it holds information in the scope of this specific request would risk compromising the nature of these arrangements.
19. The complainant argued that the MOD's justification for relying on the exemption was illogical. She noted that it had already confirmed that it worked with the security bodies on policing matters and having done so, she did not accept that confirming or denying whether the requested information was held could compromise the nature of these arrangements.
20. The Commissioner accepts the complainant's point that the MOD has already acknowledged that it works with the security bodies on policing matters. However, confirming or denying whether the requested information is held could reveal something *further* about the security bodies.
21. If the MOD confirmed whether or not it held information about the criteria for including a body on a 'watchlist' or 'database' of the nature described by the complainant, this could reveal whether or not the security bodies and MOD had discussed such criteria. Either response would therefore reveal something about the security bodies.
22. Similarly, if the MOD confirmed whether or not it held information about AWPC being on such a list (if indeed they were), this again this could reveal whether or not the MOD and security bodies had discussed the possible inclusion of AWPC on such a list. Again, either response would therefore reveal something about the security bodies.
23. The Commissioner appreciates the complainant's point that simply complying with section 1(1)(a) would not compromise the nature of the

MOD's arrangements with the security bodies. However, section 23(5) can be engaged simply if confirming or denying whether the requested information is held would reveal something about the security bodies; it is not necessary to demonstrate any harm or prejudice. For the reasons set out above, the Commissioner is satisfied that confirming or denying whether the MOD holds information about the criteria for inclusion on a domestic extremist list, and whether or not AWPC are on such a list, would, on the balance of probabilities, reveal something about the security bodies.

24. The Commissioner is therefore satisfied that the MOD can rely on section 23(5) in the manner in which it has. This exemption is absolute and is not subject to the public interest test set out in section 2 of FOIA.
25. In light of her conclusion in relation to section 23(5), the Commissioner has not gone on to consider the MOD's reliance on sections 24(2) and 31(3) of FOIA.

Right of appeal

26. 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

27. 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.
28. 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

Jonathan Slee
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