

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 July 2024

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

#### **Decision (including any steps ordered)**

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1. The complainant submitted a request to the Ministry of Defence (MOD) seeking interview notes relating to the interviews conducted by Jock Gardner of the Naval Historical Branch with former Royal Navy submarine commanders. The MOD confirmed that it held the requested information but considered it to be exempt from disclosure on the basis of sections 24(1) (national security), 26(1)(a) and (b) (defence), 27(1)(a) (international relations), 40(2) (personal data) and 41(1) (information provided in confidence) of FOIA.
2. The Commissioner's decision is that the withheld information is exempt from disclosure on the basis of the above exemptions. However, he has concluded that the MOD breached section 17(3) of FOIA by failing to complete its public interest test considerations in a reasonable time.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. The complainant submitted a request to the MOD on 4 April 2023 seeking the following information:

"The interview notes relating to the interviews conducted by Jock Gardner of the Naval Historical Branch with former RN submarine

commanders who served during the Cold War period. These interviews may have been conducted in c.2000.”

5. The MOD responded on 5 May 2023 and confirmed that it held information falling within the scope of the request but it considered this to be exempt from disclosure on the basis of sections 24 (national security) and 26 (defence) of FOIA and it needed additional time to consider the balance of the public interest. It issued a similar letter on 6 June 2023.
6. The MOD provided the complainant with a substantive response to the request on 4 July 2023. The response explained that “The information in question was collated as part of a project being undertaken by one of our Naval Historians as part of his official duties, however, while it is acknowledged the material has been accessed previously by other third parties following ministerial approval, there remains a very compelling public interest in protecting our Armed Forces.” As a result the MOD explained that the information it held falling within the scope of the request was considered to be exempt from disclosure on the basis of sections 24(1), 26(1)(b) and 27(1)(a) (international relations), and that the public interest for all of these exemptions favoured withholding the information. The MOD explained that it also concluded that the sections 40 (personal data) and 41 (information provided in confidence) applied to the information.
7. The complainant contacted the MOD on 5 July 2023 and asked it to conduct an internal review, noting that:

“you acknowledge that this information was disclosed to other third parties. Clearly in those cases the objections you raise were not a barrier to disclosure. It is therefore entirely unreasonable to deny me access to it.

I imagine that the third parties referred to are Hennessy and Jinks, and that the material was used in the preparation of their book *The Silent Deep*. I am [sic] writing another book...and would not expect to be treated less favourably than [sic] previous researchers.”

8. The MOD provided the complainant with the outcome of the internal review on 15 December 2023. The review upheld all of the exemptions cited in the refusal notice, confirming that sections 24(1), 26(1)(a) and (b), 27(1)(a) and 40(2) applied to all of the information in scope and that section 41(1) applied to some of this information. With regard to the individuals referred to in the request for an internal review, the MOD explained that:

"I can advise that a Member of the House of Lords, Professor Hennessy spoke to the Minister of Defence about the need for a history of the Cold War Submarine Service. Upon approval by the MOD, Lord Hennessy and his research assistant, Dr James Jinks, were given business access to records, as well as special clearances, which made them, in effect, Ministry of Defence contractors for the writing of the history. Jock Gardner of the Naval Historical Branch was tasked with assisting in the access to historical and classified records, however there is no evidence to suggest either way whether Lord Hennessy and Dr Jinks were granted access to the interview notes you are seeking.

In respect of the above, I would also recognise that a request under the Act is a release into the public domain and the world at large."

### Scope of the case

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9. The complainant contacted the Commissioner on 19 December 2023 in order to complain about the MOD's decision to withhold the information falling within the scope of his request. He was also dissatisfied with the MOD's delays in handling his request.
10. The Commissioner considers that the scope of his investigation is to determine whether the information sought by the request is exempt from disclosure on the basis of the exemptions cited.
11. However, before setting out such findings the Commissioner wishes to clarify the nature of the information falling within the scope of the request. The Commissioner understands that Jock Gardner was undertaking a naval project to write a classified history of Cold War submarine operations. To do so, he contacted and interviewed various naval personnel who were sent pro-formas to fill in, which included dates, postings and operational data. Recipients were advised that their contributions would be confidential.
12. The file of information reviewed by the Commissioner in situ at the Royal Navy's offices consists of these completed pro-formas. However, only a minority of these actually have handwritten notes on them – made the Commissioner understands during the course of Jock Gardner's interviews with the personnel in question. As the request sought "*The interview notes relating to the interviews conducted by Jock Gardner of the Naval Historical Branch with former RN submarine commanders...*" in the Commissioner's view much of the file content falls outside the scope of the request as it does not consist of interview notes, but only pro-formas previously completed by naval personnel. The information in the scope of the request only consists of the handwritten interview notes themselves.

## Reasons for decision

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### Section 24(1) – national security

13. Section 24(1) states that:

“Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security”.

14. FOIA does not define the term ‘national security’. However in *Norman Baker v the Information Commissioner and the Cabinet Office* (EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords’ observations as follows:

- ‘national security’ means the security of the United Kingdom and its people;
- the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
- the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
- action against a foreign state may be capable indirectly of affecting the security of the UK; and,
- reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom’s national security.

15. Furthermore, in this context the Commissioner interprets ‘required for the purpose of’ to mean ‘reasonably necessary’. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.

16. The MOD explained that the withheld information provided detailed, and personal, insights into operational service on board a Royal Naval submarine during a time period of tense international relations. It argued that although the submarine incidents that are referred to in the interview notes took place many years ago, the details contained within them remain relevant to submarine activity today. The MOD argued that

divulging such detailed accounts of various incidents that have taken place over the years would provide an indication of current patrol routes and locations. In its view such information would prove invaluable to potential attackers in selecting capability targets, integral in protecting the UK's Nuclear Deterrent, thereby increasing the vulnerability of the submarines while on patrol. The MOD argued that if such an attack were to happen, this would severely impact on the Royal Navy's ability to fulfil objectives in safeguarding national security.

17. Furthermore, the MOD argued that if information in the scope of the request is released this could hamper current and future operations by aiding potential attackers in selecting specific targets, thereby increasing the vulnerability of potential capability risks which would impact on the Royal Navy's ability to fulfil their objectives associated with critical national defence, both in the UK and abroad.
18. The complainant argued that the MOD's decision to withhold this information in response to his request was not logical, reasonable or justifiable because it had previously granted access to such information to two other historians. The Commissioner appreciates that this is indeed the clear implication of the MOD's comments in the refusal notice. However, the Commissioner notes that the internal review found that there was no evidence to confirm whether or not the historians in question had been granted access to the specific information which is in the scope of this request.
19. In any event, in the Commissioner's view whether or not such individuals had indeed been granted access to such information is not directly relevant to the application of the exemptions in relation to this request. As noted in the internal review response, to the extent that the historians in question were granted access to Royal Navy records, this was on the basis that they were, in effect, MOD contractors for the purposes of their research and writing a history of Cold War submarine service, and were granted special clearances to access the records that they did.
20. In relation to this request whilst the Commissioner appreciates that the complainant is also a historian and wishes to access the requested material for his own research purposes, the vehicle through which he has requested such information is FOIA. Any disclosure of information under this legislation is taken to be a disclosure to the world at large; ie if information is disclosed to one requester it will be disclosed to any other requester should they also access it. As result the consideration of any exemptions has to take into account the consequences of information being released into the public domain without any limits on its access. Such a position is clearly in contrast to the type of access, and distribution of material, that the historians cited by the complainant

may have had access to during their research. Put simply they did not access the material under FOIA.

21. Therefore, whilst the Commissioner can understand the complainant's point that as previous historians may have had access to this material, then he should be able to also be granted access to it, this does not actually mean that he (or indeed any other individual) should be afforded a right of access to it under FOIA.
22. Turning to the MOD's basis of relying on section 24(1) of FOIA, the Commissioner appreciates, as the MOD acknowledges, that the notes relate to submarine operations from many years ago. However, the Commissioner accepts the rationale of the MOD's argument that despite such information being 'historic' in nature its disclosure still risks revealing information about current submarine operations and could provide an insight into patrol routes. In turn, the Commissioner accepts that such information could be used by adversaries to undermine the effectiveness of the Royal Navy operations, including the UK's nuclear deterrent, and in turn national security. The Commissioner is therefore satisfied that withholding this information is necessary for the purposes of national security and section 24(1) is engaged.

### **Public interest test**

23. Section 24(1) is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing that information.
24. The MOD acknowledged that release of the information would demonstrate its commitment to openness and transparency and give a personal and detailed insight into operational service on board a Royal Naval submarine during a time period of tense international relations.
25. However, the MOD argued that it was clearly not in the public interest to assist adversaries by releasing information that would undermine the UK's nuclear deterrent and the integrity of national security. As a result, in its view the public interest firmly favoured withholding the information.
26. The Commissioner appreciates that there is a clear and valid public interest in the disclosure of information concerning defence matters, in this context the nature of submarine operations during the Cold War. In this case the Commissioner accepts that the complainant (and indeed no doubt others) have a genuine interest in such operations and furthermore that there is a legitimate public interest in disclosure of information in order to inform the public about such historic events.

However, the Commissioner believes that there is a very strong and powerful public interest in protecting the UK's national security. Whilst disclosure of the information could prove informative about the nature of submarine operations during the Cold War, disclosure risks undermining the UK's current and future national security. In view of this the Commissioner agrees with the MOD that the public interest favours maintaining the exemption contained at section 24(1).

## **Section 26 – defence**

27. Sections 26(1)(a) and (b) of FOIA state that:

“Information is exempt information if its disclosure under this Act would or would be likely to prejudice-

(a) the defence of the British Islands or any colony, or

(b) the capability, effectiveness or security of any relevant forces.”

28. In order for a prejudice based exemption, such as section 26, to be engaged the Commissioner believes that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

29. The MOD explained that its rationale for relying on this exemption was closely related to its rationale for relying on section 24(1) of FOIA. As above it argued that irrespective of the fact that the incidents discussed in the interview notes took place many years ago, the information contained within the documents would provide an indication of the ways of working of the current submarine fleet. The MOD argued that disclosure of such information could provide sufficient details to potential adversaries to enable them to detect patterns/trends and derive tactical level information from this material which has the potential to disrupt the operational capabilities and activities of UK forces and directly affect the credibility of the Royal Navy submarine fleet.

30. The MOD explained that it was satisfied that the level of prejudice reached the higher level of "would" rather than the lower "would be likely" prejudice UK defence interests.
31. With regard to the first criterion, the Commissioner accepts that the type of harm that the MOD believes would occur if the information was disclosed is applicable to the interests protected by sections 26(1)(a) and (b) of FOIA.
32. With regard to the second criterion and third criteria, for the reasons set out above in his consideration of section 24(1), the Commissioner is satisfied that disclosure of this information clearly has the potential to harm the capability and effectiveness of the UK submarine fleet. This is on the basis that although the information concerns details about previous operations, disclosure would still provide adversaries with information about current submarine operations. Furthermore, the Commissioner is satisfied that the level of likelihood of prejudice occurring is one that meets the threshold of 'would'.
33. Sections 26(1)(a) and (b) are therefore engaged.

### **Public interest test**

34. Section 26(1) is also a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing that information.
35. Again, the MOD explained that its public interest considerations in relation to this exemption were similar to those in respect of section 24(1). Whilst it acknowledged that there was a public interest in disclosure of such information this was significantly outweighed by protecting UK defence abilities and interests, more specifically UK submarine operations, including the effectiveness of the nuclear deterrent.
36. The Commissioner is also, as with his findings in relation to section 24(1), and for similar reasons, satisfied that the public interest favours maintaining the exemptions contained at sections 26(1)(a) and (b).

### **Section 27 – international relations**

37. Section 27(1)(a) of FOIA provides that information is exempt information if its disclosure would, or would be likely to, prejudice relations between the UK and any other State.
38. The MOD explained that disclosure of the information in scope of this request would provide details of operations involving the UK and its

allies. It argued that release of information providing in-depth details of such collaborative operations, albeit historic, of which elements may still apply today, could impact on current and future working arrangements with the UK's international partners. As a result the MOD argued that release of such information could result in the UK being perceived as untrustworthy and limit other nations' willingness to partake in joint operations and exercises in the future. Furthermore, the MOD considered that the level of likelihood of prejudice occurring is one that meets the threshold of 'would'.

39. With regard to the first criterion of the three limb test above at paragraph 28, the Commissioner accepts that the type of harm that the MOD believes would occur if the information was disclosed is applicable to the interests protected by section 27(1)(a) of FOIA.
40. With regard to the second and third criteria, the Commissioner is satisfied that it is logical to argue that disclosure of this information has the potential to harm the UK's relations with other states in the manner described by the MOD. He has reached this finding because he accepts it is reasonable to argue that such other states would not expect information to be disclosed by the UK about collaborative submarine operations. Whilst such information is historic, given its potential to impact on current operations, such material clearly remains sensitive and disclosure of it would clearly reflect on the UK's trustworthiness as a partner.
41. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested that in the context of section 27(1), prejudice can be real and of substance 'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'.<sup>1</sup> In the context of this case, the Commissioner is satisfied that this threshold is clearly met and that disclosure of the information 'would' harm the UK's relations with other states.
42. Section 27(1)(a) is therefore engaged.

### **Public interest test**

43. Section 27(1) is also a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all

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<sup>1</sup> Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008)

the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing that information.

44. The MOD argued that despite the previously acknowledged public interest in maintaining the exemption, it was satisfied that there was a greater public interest in maintaining this exemption.
45. For the reasons set out above, the Commissioner accepts that there is a public interest in the disclosure of this information. However, the Commissioner considers there to be a significant public interest in ensuring that the UK maintains effective relations with other states. In his view it would be clearly against the public interest to disrupt such relations to the extent that the UK's role in joint operations and exercises in the future were to be jeopardised.
46. The Commissioner has therefore concluded that the public interest favours maintaining this exemption.

#### **Section 40 – personal data**

47. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
48. In this case the relevant condition is contained in section 40(3A)(a)<sup>2</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
49. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
50. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

#### **Is the information personal data?**

51. Section 3(2) of the DPA defines personal data as:

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<sup>2</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

“any information relating to an identified or identifiable living individual”.

52. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
53. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
54. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
55. The MOD argued that the requested information encompassed personal data as the information in question consisted of the personal opinions of Royal Naval submariners. The Commissioner agrees with this assessment and is therefore satisfied that the withheld information in this case included information within the definition of ‘personal data’ in section 3(2) of the DPA.
56. As noted above, the fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
57. The most relevant DP principle in this case is principle (a).

**Would disclosure contravene principle (a)?**

58. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

59. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
60. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
61. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such

interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”<sup>3</sup>.

62. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
  - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
63. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

#### Legitimate interests

64. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester’s own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader

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<sup>3</sup> Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

65. The MOD acknowledged, for the reasons set out above, that there is a legitimate interest in the disclosure of the information. The Commissioner agrees with this assessment and this limb of the test is therefore met.

#### Is disclosure necessary?

66. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
67. The Commissioner accepts that disclosure of the requested information is the only way in which the public could fully understand the contributions of the Royal Naval personnel interviewed as part of this project.

#### Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

68. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
69. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
70. The MOD argued that regardless of the grades of the personnel interviewed, they would have an expectation that the MOD would protect their candid personal experiences and observations of their time in the service. Furthermore, the MOD argued that to disclose such

information would constitute a breach of privacy for the individuals concerned.

71. As previously discussed, the Commissioner accepts that there is a legitimate interest in the disclosure of information which could improve the public's understanding of submarine operations during the Cold War. In particular, in the context of this exemption disclosure of individuals' personal opinions and reflections, beyond simply operational information, could prove to be revealing and informative.
72. However, the Commissioner agrees with the MOD that given the context within which this information was gathered, the individuals would reasonably expect such information to be protected by the MOD. The Commissioner also accepts that despite the passage of time since the interviews took place, disclosure of the information could encroach on the privacy of the individuals in question. In view of the above the Commissioner has therefore concluded that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information falling within the scope of this exemption would not be lawful and is therefore exempt from disclosure on the basis of section 40(2) of FOIA.
73. As the Commissioner is satisfied that the withheld information is exempt from disclosure on the basis of the exemptions considered above, he has not gone on to consider the MOD's reliance on section 41(1) of FOIA.

## **Procedural matters**

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74. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled, subject to the application of any exemptions: '(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.'
75. Section 10(1) of 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. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest.
76. 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, which would allow a public authority 40

working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken.

77. In this case the MOD took 61 working days to complete its public interest test considerations which the Commissioner does not consider to be a reasonable amount of time in the circumstances of this case and this delay therefore represents a breach of section 17(3).

## Other matters

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### Further information beyond the scope of the request

78. As noted at paragraphs 11 and 12, the Commissioner considers that only the actual interview handwritten notes contained on the completed pro-formas fall within the scope of this request. The completed pro-formas themselves do not. However, given the level of detail contained in these completed pro-formas, the Commissioner is satisfied that if such information was the subject of an FOI request it would also clearly be exempt from disclosure on the basis of the above exemptions and for the same reasons as set above in this decision notice.

### Internal review delays

79. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe.<sup>4</sup> The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated requests, reviews should be completed within a total of 40 working days.<sup>5</sup>
80. In this case, as noted above, the MOD failed to meet these timescales as it took approximately five months to complete the internal review. The Commissioner acknowledges the understandable frustration such a delay has caused to the complainant.

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<sup>4</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

<sup>5</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

## Right of appeal

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81. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

82. 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.
83. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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