

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 July 2024

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

Decision (including any steps ordered)

1. The complainant has requested information relating to the Ministry of Defence's (MOD) interactions with an oil company, Motor Oil Hellas. MOD refused to provide the requested information as to do so would exceed the appropriate limit at section 12(1) (cost of compliance exceeds appropriate limit) of FOIA.
2. The Commissioner's decision is that MOD was entitled to rely on section 12(1) to refuse to comply with the request.
3. The Commissioner also finds that MOD did not comply with its section 16(1) obligation to offer advice and assistance in relation to part two of the request but as it has now provided advice on how to narrow the request, no further steps are therefore required.

Request and response

4. On 3 January 2024, the complainant wrote to MOD and requested information in the following terms:

"1. Please provide a copy of the certificates setting out the country of origin of fuels provided by Motor Oil Hellas to the Ministry of Defence in relation to the purchase of fuel from its Corinth refinery for purchases between 1st January 2023 to the date of this request.

2. Please provide a copy of all email correspondence between Ministry of Defence officials and staff of Motor Oil Hellas relating to the site visit by Defence Fuels Acquisition Programme staff to Motor Oil Hellas's Agioi Theodoroi refinery arranged for September 2022.
3. Please provide a copy of all email correspondence between Ministry of Defence officials and staff of Motor Oil Hellas concerning oil or oil products of Russian origin from 1st January 2023 to the date of this request.
4. Please provide a copy of all email correspondence between Ministry of Defence officials and staff of Motor Oil Hellas concerning fuels produced from precursors shipped from Dortyol from 1st January 2023 to the date of this request.
5. Please provide a copy of the site report regarding the September 2022 visit to Motor Oil Hellas."
5. MOD responded on 15 February 2024. It stated that it held the information but that it was exempt under section 26 (Defence) and section 27 (International Relations or Interests Abroad) of FOIA – and, the public interest in maintaining the exemptions outweighed the public interest in disclosure.
6. On 19 February 2024, the complainant requested an internal review disputing the application of sections 26 and 27 to the request.
7. On 27 March 2024, following an internal review, MOD wrote to the complainant and revised its position. It no longer relied on sections 26 and 27 FOIA but, instead, refused to provide the requested information as to do so would exceed the appropriate limit at section 12(1) FOIA. MOD explained its revised position as follows saying:

"a request which seeks 'all email correspondence' on a subject is likely to invoke section 12 of the Act where the information may be held by several individuals and within a number of business units."
8. As regards the provision of advice and assistance in section 16 of FOIA, MOD said that, based on preliminary findings, it did not hold any information falling within the scope of parts one and four of the request. MOD suggested a narrowing of parts three and five of the request and that this could be handled as a new refined request. Regarding part two, MOD said "you should exclude this element [for] any refined request you may wish to submit to the MOD." Overall, therefore, MOD advised the complainant to limit any refined request to parts three and five only which could be handled as a new refined request, subject to any exemptions that may apply.

Scope of the case

9. The complainant contacted the Commissioner on 4 April 2024 to complain about the way their request for information had been handled.
10. The Commissioner considers that the scope of his investigation is to determine whether MOD was entitled to refuse to comply with the request by way of section 12(1) of FOIA. The Commissioner will also consider if there has been a breach under section 16 (advice and assistance) of FOIA.

Reasons for decision

Section 12 – cost of compliance exceeds appropriate limit

11. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying with the request would exceed the appropriate limit.
12. When considering whether section 12(1) applies, the public authority can only take into account certain costs, as set out in The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'). These are set out at Regulation 4(3) and are:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it."
13. The appropriate limit is set in the Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the MOD is £600.
14. The Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours for the MOD.
15. If the public authority estimates that compliance with one part of the request would exceed the appropriate limit, it is not obliged to comply with the entire request. There is no public interest to consider.

16. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency* (EA/20017/0004), the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence".
17. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.
18. The complainant provided the Commissioner with their view of MOD's revised response. He said:

"They cite section 12 in relation to part two of my request, for emails about a site visit conducted by the MoD to Motor Oil Hellas, and use the fact that this part of the request is exempt under section 12 to refuse the request as a whole.

I appeal this request on the basis that the department has not completed a reasonable search for the records in a logical form. This has vastly inflated the costs of compliance. They have also not provided reasonable advice and assistance that could allow me to offer any meaningful refining part 2 of my request.

...

The department has searched emails by the keyword "visits" and found 7,000 emails .. and on that basis argue that the cost of compliance would breach the cost limit.

This is very clearly not a reasonable search. Visits could include anything from visits to the local shop to buy tea bags for civil service colleagues to the site visit information was requested about.

A far more reasonable search would be using the term "Motor Oil Hellas". The department says it in fact did this, finding 134 emails. Reviewing 134 emails is vanishingly unlikely to hit the cost limit under FOIA.

The department then claims that the costs involved in needing to "extract the information requested" from the emails would be excessive.

Given the request is for the emails themselves, not information contained within them, the process involved is clearly a redaction

process. Reactions costs cannot be included in a section 12 costs calculation.

The department further says that "attachments would also have to be reviewed and extracted".

The request was for email correspondence, not for copies of the attachments to the emails, so this cost has again been wrongly included in the department's calculation.

I am very open to a clarification of this part of my request to agree a reasonable search method to be conducted and to allow it to be brought within cost.

However, the department has provided no advice and assistance as to how part two of my request could be amended. Instead, the department simply argues I drop it.

If the department can provide further information about how the information is held, as I said, I am very happy to discuss the limitation of searches to avoid any possibility of cost limit breach."

19. At the outset, the Commissioner notes that he is not persuaded by the complainant's argument that email attachments should not be included. ICO guidance¹ states:

"If the requester asks for a copy of an email, and that email contains an electronic attachment, then the attachment also falls within the scope of the request. This means you need to consider releasing all the recorded information in the email and all the recorded information in the attached document."

20. However, the Commissioner notes that MOD has said in its submissions to him that "if the requester was to confirm that there was no interest in attachments, then MOD could consider this as a refinement to the request." This is discussed further below.
21. As is the Commissioner's practice, during the course of his investigation, he asked MOD to provide a more detailed explanation of its position and

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/the-right-to-recorded-information-and-requests-for-documents/#:~:text=If%20the%20requester%20asks%20for,information%20in%20the%20attached%20document>

to provide more detailed information about its costs and any sampling exercises undertaken.

22. MOD explained in its submissions to the Commissioner that the majority of the information in scope of the request is likely to be held in three business units in the Defence Operational Energy Authority (OEA) – namely, the Commercial, Ops and Technical teams. MOD did note, however, that other MOD wide business units would also be likely to hold relevant information.
23. To respond to the request, MOD explained that initial searches were conducted in Outlook by four individuals in those teams. This resulted in 9,000 emails being located that mentioned the search term of “Motor Oil Hellas” (‘MOH’), in one form or another, for the time period of the request (3 January 2023 to 3 January 2024). Therefore, MOD estimated it would take 450 hrs (at 3 mins per email) to review, extract and collate any email correspondence that fell in scope of the request.
24. Given the large number of emails that potentially fell in scope of the request, MOD determined that one individual, namely the commercial lead within OEA who was directly responsible for arranging and co-ordinating the September 2022 visit, (called the primary point of contact (‘POC’) by MOD), would conduct a sampling exercise of one email account using various key word searches and filtered by the timeframe of the request.
25. MOD explained that the best and quickest method would be to search email accounts. It further said that the search results gathered by the POC were used as a basis to provide a cost estimate for the handling of all of the request.
26. However, MOD said it was aware that the POC’s search will not capture all email correspondence that the complainant is seeking. MOD stressed to the Commissioner that to comply with the request for all email correspondence would mean that a minimum of three other staff members would also be required to conduct a similar exercise and that other MOD wide business units would also be likely to hold relevant information.
27. The POC’s searches identified that preliminary arrangements for the visit began around June 2022, and that it was likely that a large amount of email correspondence was generated within the relevant teams before (and after) the visit.
28. MOD explained that on initial handling and at internal review, the POC used various search terms to search their Outlook account – namely, ‘visit’, ‘MOH’, ‘Motor Oil Hellas’ and ‘Russia’.

29. MOD explained that initial searches conducted by the POC in Outlook located approximately 700 emails that included the word "visit" which potentially could fall in scope. These 700 emails were further filtered with the search term of MOH which located 134 emails. MOD further explained that these 134 emails would then need to be manually reviewed to check if they fell in scope of email correspondence between MOD officials and staff of MOH relating to the site visit (rather than the company name being mentioned in email trails). In addition, a manual review would also determine if the correspondence fell out of scope of the request i.e. internal correspondence.
30. MOD explained that in order to manually check the 134 emails, the following time estimate is reasonable: $134 \times \text{average of 3 minutes per email} = 6.7 \text{ hours of work for one individual.}$
31. However, as set out above, MOD explained that to comply with the request for 'all' email correspondence in part two of the request, this meant that a minimum of three other staff members would also be required to conduct a similar exercise on their own email accounts. MOD said its time estimate for this task was therefore 27 hours ie $134 \text{ emails} \times 3 \text{ minutes} \times 4 \text{ individuals} = 27 \text{ hours work.}$
32. The Commissioner notes for completeness that the MOD have not said whether any of these emails in Outlook also have attachments.
33. The MOD further explained to the Commissioner that, in addition to the Outlook searches set out above, further investigation had since revealed that the contract MOH supplies under is the Global Bulk Fuels Services Framework (GBFS). Therefore, MOD explained that within the POC's email folder structure is a folder named "GBFS" that would also need to be searched for information falling in scope of the request. MOD said that starting from mid-June 2022 to date of the request, the relevant search results of that particular folder were as follows:
 - a. MOH (Motor Oil Hellas): 1898 emails, 653 attachments;
 - b. MOH – Visit: 49 emails, 13 attachments.
34. MOD did not provide any further information to the Commissioner about its estimate of the cost involved in reviewing the information in this folder. However, the Commissioner notes that filtering the search terms down (as the MOD did above to reach 134 emails) to the information in (b) above equates to a further 49 emails and 13 attachments. Using the MOD's estimate of 3 minutes per document, this equates to 62 emails & attachments or an additional 3.1 hours work. It is not known if just the POC has this additional folder or if the three other staff members would also be required to conduct a similar exercise on this type of folder.

35. Overall, MOD's view is that to search for the information in part two of the request would far exceed the threshold of 24 hours, and be disproportionate. It took the approach that part two of the request could not be achieved within the cost limit. This is because of the volume of emails and attachments identified and because, in addition to the POC, there are at least three other individuals (and other business units) who could potentially hold information falling in scope of the request.
36. The Commissioner agrees with MOD that the cost of identifying, extracting and collating the information requested in part two of the request would exceed the appropriate limit. MOD has also confirmed to the Commissioner that redaction time has not been included in the costs estimate. The Commissioner's guidance states that if a public authority estimate that complying with one part of a request would exceed the cost limit then it does not need to comply with the remaining parts of the request. Furthermore, it is not obliged to search for and provide information up to the cost limit.
37. MOD has provided an estimate as to how long compliance with part two of the request would take within the OEA: 27 hours + 3.1 hours = 30.1 hours (and the Commissioner notes that potentially another 9.3 hours may be required for the folder if the three other individuals have the same folder.) The Commissioner also notes MOD's point above that other MOD wide business units would also be likely to hold relevant information, not just the OEA.
38. The Commissioner therefore accepts that the situation is more complex, and the work required by MOD more involved, than was initially apparent from the internal review response provided to the complainant.
39. MOD are expected to search those areas where it is reasonable to expect that the information (if it existed) would be found. The broader the request, the more areas they are likely to be required to search. Case law² in this area confirms that MOD are required to search for all the information it holds – not just the information which can most easily be found in the OEA or the information it thinks is most relevant to the request. Therefore the Commissioner accepts that MOD are required to search for records anywhere within its organisation where it considers the information may be held.
40. Given the wide nature of the request, the way the information is held in emails and folders, and the number of individuals involved, the Commissioner is not convinced that responding to this request could realistically be brought down to a reasonable size to bring it within the

² Reuben Kirkham v Information Commissioner [2018] UKUT 126 (AAC)

cost limit. On its face, the 30.1 hour estimate is well above the 24 hour limit.

41. With this in mind the Commissioner is persuaded that complying with part two of this request would exceed the appropriate cost limit.
42. Complying with the request would therefore exceed the cost limit and so the public authority was entitled to rely on section 12(1) of FOIA to refuse the request.
43. As section 12 applies to the entirety of the request, there is no requirement for the Commissioner to consider the remainder of the request.

Section 16 – advice and assistance

44. When refusing a request under section 12, a public authority needs to offer reasonable advice and assistance to the requester. The aim of this advice and assistance is to help the requester refine their request to one that can be dealt with within the appropriate limit.
45. Within its refusal notice and internal review, MOD did not provide the complainant with advice and assistance by suggesting ways in which part two of the request might be narrowed so as to fall within the appropriate limit. Instead, MOD simply told the complainant to 'drop' part two of the request. This was not an appropriate response by MOD.
46. However, in its submissions to the Commissioner the MOD has addressed this issue further but did not respond directly to the complainant about this which is disappointing.
47. MOD explained to the Commissioner that, using a combination of searches i.e. 'MOH and visit' or 'Motor Oil Hellas' and visit', it may be able to process part two of the request within the section 12 cost limit - if it was limited to the POC's email account only - and with no email attachments - for the time period 1 June 2022 to 3 January 2024. However, MOD noted for completeness that other exemptions may apply to this information.
48. The Commissioner notes that the complainant has already indicated that he would be happy to exclude email attachments from his request. The complainant is therefore encouraged to refine his request in the way suggested by MOD.
49. The Commissioner does not consider that MOD complied with its obligations under section 16 to provide adequate advice and assistance during its handling of the complaint, as evidenced by the more specific

advice it has suggested to the Commissioner. However, as the MOD has now suggested ways the complainant could narrow their request, the Commissioner does not consider that any further steps need to be taken by the MOD.

Right of appeal

50. 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

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

51. 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.
52. 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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