



Freedom of Information Act 2000 (Section 50)

Decision Notice

6 April 2006

Public Authority: Ministry of Defence

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

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with Part I of the Act in that it has failed to comply with its obligations under section 10(1), section 17(a)(b) and (c).

1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner.

1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 The Complainant has advised that on 21 April 2005 the following information was requested from the Public Authority by e-mail in accordance with section 1 of the Act.
- 2.2 How many FOI requests have the MoD received? Please provide a list of all questions asked, and the department that they were routed to, indicating:
- How long they took to answer
 - How many took longer than 20 days to answer
 - How many had been partially answered or refused
 - How long each review took
 - How many took longer than the recommended time of 2-3 weeks
 - How many deemed in the public interest took longer than 6 weeks to review
 - How many requests for a review upheld the initial partial answer or refusal
 - How many were subsequently brought to the attention of the ICO
 - How many enforcement notices were issued as a result
 - What was the average time for an initial answer
 - What was the average time for a subsequent review

3. Relevant Statutory Obligations under the Act

Section 1(1) provides 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.”

Section 10(1) 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”.

Section 17 provides that –

“A public authority which ... is to any extent relying:

- on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request, or
- on a claim that information is exempt information

must, within the time for complying with section 1(1), give the applicant a notice which –

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

4 Review of the case

- 4.1 Upon receipt of the complaint the Commissioner contacted the public authority who commenced a review into the handling of the request.
- 4.2 The public authority could not initially trace the request made on 21 April 2005. At the behest of the Commissioner, the MoD carried out further searches of its system and a request made on 21 April was traced, however, as it did not contain the complainant's name or any contact details, it was not considered as a valid request. The public authority became aware of a valid request on 3 June 2005 when the complainant contacted them by telephone. The complainant then e-mailed the information request to the public authority on the same day.
- 4.3 The public authority replied to the request made on the 3 of June on 5 July 2005, 22 working days later. The review acknowledged that this was outside the 20 day limit permitted by the Act and apologised to the complainant.
- 4.4 The response made by the public authority on 5 July 2005 advised the complainant of a web-site where some of the information requested would be available. The review by the public authority acknowledged that they had failed to inform the complainant that information reasonably accessible by another means is exempt information under section 21 of the Act.
- 4.5 In the initial response to the request the public authority informed the complainant that the cost of compiling a record of the destination of FOI requests received would exceed £600. The public authority's review acknowledged that it should have informed the complainant that if the cost of providing a response to a request exceeded £600 it would be exempt under section 12 of the Act. In addition the public authority provided the complainant with some of the information requested

4.6 The public authority also informed the complainant that some of the information requested was intended for future publication and could not therefore be provided. However the review acknowledged that the public authority should have informed the complaint that such information was exempt under section 22 of the Act. Following the review, the public authority provided some of this information to the complainant.

5. The Commissioner's Decision

5.1 The Commissioner's decision in this matter is that the Public Authority has not dealt with the Complainant's request in accordance with the following requirements of Part I of the Act:

Section 10(1) - in that it exceeded the statutory time limit for responding to a request made under section 1(1).

The request was acknowledged as being received on 3 of June 2005 however a response was not received by the complainant until 5 July 2005, 22 working days later.

Section 17 – in that it refused the Complainant's request for information but when communicating this to the Complainant failed to

- 17(1)(a) state that the information claimed was exempt information.
- 17(1)(b) specify, where the refusal was made in reliance upon the requested information being exempt information, the exemption being relied upon.
- 17(1)(c) state, where it was not otherwise apparent, why the exemption being relied upon to refuse the request for information applied.

In its initial response to the valid request, the MoD informed the complainant that:

- some of the information requested was refused as it was freely available on a web-site
- that to collate parts of the request would exceed £600
- and that some of the information requested was intended for future publication.

However, the MoD failed to inform the complainant that this meant that the information was exempt under the Act, specify which exemptions were being relied upon nor did they state where it was not otherwise apparent, why the exemption was being relied upon.

6. Action Required

In view of the fact that the review undertaken by the public authority identified all the breaches and provided more of information requested, the Commissioner does not require any remedial steps to be taken by the MoD.

7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 6th day of April 2006

Signed

**Phil Boyd
Assistant Commissioner
Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**