

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

### **Decision notice**

**Date:** 29 January 2018

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

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

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1. The complainant has requested information relating to 'lessons learned' within specific areas of the Ministry of Defence ("the MOD").
2. The Commissioner's decision is that the MOD is entitled to aggregate the requests under section 12(4) and has correctly applied section 12(1) of the FOIA to refuse to comply with the requests. The MOD has also provided the complainant with advice and assistance in accordance with section 16 of the FOIA.
3. The Commissioner does not requires the public authority to take any steps.

#### **Request and response**

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4. This decision notice will consider the MOD's handling of the following requests:

- (1) On 26 April 2017, the complainant contacted the MOD via the website What Do They Know and requested information in the following terms:

*"This FOI request is seeking to gain access to all of your lessons identified or lessons learned data within your organisation, relating to all change projects within your portfolio (ranging from*

*equipment projects through to change or transformation programmes).*"

- (2) Also on 26 April 2017, the complainant contacted the organisation known as Dstl (the Defence Science and Technology Laboratory) via What Do They Know, requesting information in the following terms:

*"This FOI request is seeking to gain access to all of your lessons identified or lessons learned data within your organisation, relating to all your change portfolio, including projects, change programmes and transformation, captured in accordance with APM best practice."*

- (3) Also on 26 April 2017, the complainant wrote to the organisation known as AWE (the Atomic Weapons Establishment), requesting information in the following terms:

*"This FOI request is seeking to gain access to all of AWE's lessons identified or lessons learned data, relating to all their change portfolio, including projects, change programmes and transformation, in accordance with the Association for Project Management good practice... the scope of this request relates to project, programme, portfolio management practices rather than any project specifics... I would be grateful if you could forward the data in excel format via email please."*

- (4) Also on 26 April 2017, the complainant wrote to the organisation known as ISS (Information Systems Services) requesting information in the following terms:

*"This FOI request is seeking to gain access to all of your lessons identified or lessons learned data within your organisation, relating to all your change portfolio, including projects, change programmes and transformation."*

5. Subsequently, the complainant became aware that his request of 26 April 2017 to ISS had been sent to an incorrect email address. He forwarded it to a correct address at ISS on 12 May 2017 and added the following sentence:

*"If you are unable to provide a portfolio summary of lessons identified then would you be able to provide the lessons on your top 20 projects by value please, which I understand should fall within the FOI cost limits."*

6. On 19 May 2017, the MOD acknowledged requests (1) and (2), and explained that it would respond to them together since *"Dstl is part of the MOD so the response will be incorporated in one central response."*
7. On 25 May 2017, the organisation known as DE&S (Defence Equipment & Support), an arms-length body of the MOD, responded to all of the above requests since, by this date, the MOD had become aware of all four requests and the subsequent clarification.
8. In the response it was explained that *"the public authority on which falls the legal responsibility for responding to all of these requests is the Ministry of Defence."* The requests were aggregated.
9. In the response, it was explained that the estimated cost of complying with the requests would exceed the appropriate limit under section 12 of the FOIA. The requests were therefore refused.
10. Following an internal review, the MOD upheld its position.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 24 July 2017 to complain about the way his request for information had been handled. At this stage, he had not received the outcome of his request for an internal review, although this was sent to him on the following day.
12. The Commissioner considers that the scope of the case has been to determine whether or not the MOD was correct to refuse the request under section 12 of the FOIA, including whether or not it was correct to aggregate the requests. The Commissioner will also consider whether the MOD offered the complainant sufficient advice and assistance in narrowing down the scope of his request(s).

### **Reasons for decision**

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#### **Section 12(4) – Aggregation of related requests**

13. Under section 12(4) of the FOIA, when a public authority is estimating whether the cost of compliance with the legislation would exceed the appropriate limit, it may aggregate two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied.
14. Regulation 5 of the Fees Regulations provides that:

*"where two or more requests for information... are made to a public authority—*

*(a) by one person, or*

*(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,*

*the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.*

*This regulation applies in circumstances in which—*

*(a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and*

*(b) those requests are received by the public authority within any period of sixty consecutive working days."*

15. In this case, the requests under consideration were submitted by the same person, and the complainant has not disputed that his requests were submitted within a period of less than sixty consecutive working days. However, he does not agree that the four organisations operate as part of the same public authority, nor that his requests are for *"the same or similar information."*
16. The Commissioner will consider whether the MOD is correct to consider itself to be the relevant public authority for the purposes of handling the requests under consideration in this notice. If so, she will go on to consider whether the requests *"relate, to any extent, to the same or similar information."*

### **The relevant public authority**

17. The complainant has argued that he had submitted the requests to *"different organisations in their own right"* using email addresses which were publicly available. Specifically, he commented that: *"Dstl is an executive agency of the MOD and operates separately. AWE is a GOCO [government-owned, contractor-operated] and also operates separately. ISS is also a separate entity from DE&S."*
18. The MOD has explained that *"the specific business areas are not listed in Schedule 1 [of the FOIA] as public authorities in their own right. Where email addresses are publicised, it is for good practice reasons, ease of communication and for business purposes which are not limited for the purpose of submitting FOI requests."*

19. Specifically, the MOD has explained the following with regard to the different organisations involved in handling the requests:

- The DE&S is a bespoke trading entity and an arms-length body of the MOD: it is part of the MOD;
- AWE works under contract to the MOD through a GOCO arrangement managed by DE&S; any information held by AWE which relates to the nuclear programme is held by them on behalf of the MOD;
- ISS is part of the MOD within Joint Forces Command;
- Dstl is an executive agency sponsored by the MOD, with a Chief Executive; however, its information holdings are managed in accordance with the MOD's Information Management policy and statutory obligations; information requests made to Dstl are logged centrally, and any complaints are processed by the Information Rights team at the MOD;
- None of these organisations is listed as a public authority in its own right.

20. The Commissioner is satisfied that the organisations operate as part of a single public authority, the MOD, for the purposes of handling the requests under consideration in this notice.

### **The information requested**

21. The Commissioner has considered whether the requests *"relate, to any extent, to the same or similar information."*
22. The complainant considers that: *"[The organisations] all manage different types of project and the lessons will be very specific to the sector, organisation, technical maturity and the regulatory complexity."* By way of example, he stated that: *"lessons from delivering nuclear infrastructure in AWE"* would be very different from *"lessons from delivering cutting edge defence research at Dstl."*
23. The MOD has explained that it considers that the requests are *"sufficiently similar"* that it is entitled to aggregate the requests.

24. The ICO has issued guidance<sup>1</sup> on the application of section 12 of the FOIA, which considers the aggregation of requests from page 12 onwards.
25. The wording of Regulation 5 of the Fees Regulations – that the requests need only to relate “*to any extent*” to “*the same or similar information*” – allows for a broad interpretation by public authorities when considering aggregation.
26. As explained in the guidance, “*requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.*”
27. In this case, the public authority would be required to locate and retrieve information relating to ‘lessons learned’ from different areas within the organisation, with the data relating to a broad range of projects.
28. Taking into account the nature of the information requested, the Commissioner has determined that there is an overarching theme and common thread between the requests since the complainant has requested ‘lessons learned’ data in each case.
29. The Commissioner considers that, even though the requested ‘lessons learned’ would have been produced in relation to multiple specific projects, the nature of the information requested about all of the projects is “*the same or similar*” across each request.
30. Therefore, in the circumstances of the case and in line with recent ICO decision notices, the Commissioner is satisfied that the MOD has aggregated the requests correctly.
31. She will therefore consider whether the cost of complying with the aggregated requests would exceed the appropriate limit; that is, whether the MOD has correctly applied the exemption at section 12(1) of the FOIA.

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

## **Section 12(1) – cost of compliance exceeds appropriate limit**

32. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations.")
33. This limit is set in the Fees Regulations at £600 for central government departments and £450 for all other public authorities. The Fees 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.
34. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
  - determining whether it holds the information;
  - locating a document containing the information;
  - retrieving a document containing the information; and
  - extracting the information from a document containing it.
35. The four activities are sequential, covering the retrieval process of the information by the public authority.
36. In this case, the MOD has presented arguments which focus on the breadth of the request and the associated difficulty in locating, retrieving and extracting relevant information. It has explained that DE&S alone, in locating, retrieving and extracting information which may be captured by the scope of the request, would need to consult "*around 100 MOD teams*" asking them to conduct electronic searches. Allowing an hour per team, this in itself would exceed the appropriate limit.
37. In addition, the MOD consulted colleagues in the DE&S area of the organisation who stated that much lessons learned data is "*managed at team levels.*" While a project evaluation team exists, it is not mandatory for teams to submit data to them and there is no central repository of information for 'all lessons learned'.
38. The MOD was therefore advised by subject matter experts that the only way to identify information falling within the scope of the request would be to approach teams directly.

39. The Commissioner asked the MOD for more detailed explanations and estimates, including asking the MOD to conduct a sampling exercise.
40. The MOD has conducted a sampling exercise with five specific teams to establish the amount of information that is held falling within the scope of the request, the results of which has been shared with the Commissioner. From this, it is evident that a wide range of information which could potentially be captured by the scope of these requests is held. One team (operational for approximately nine years) considered that it held potentially relevant information from 14 separate projects, and that it would take approximately four hours per project to locate, retrieve and extract information. Another team considered specific projects from the period from two to eight years ago; it considered that it received approximately 40 relevant evaluation reports per year during this time, which would all need to be searched through for lessons learned.
41. The MOD has also made reference to the way in which information is stored, which, the Commissioner understands, is in a variety of ways owing to the fact that the request did not refer to a specific time period. For example, the MOD has explained that to address the request to AWE, it would need to consider programmes dating back over the last 60 years; tracing what may be regarded as 'lessons learned data' would therefore involve locating hard copy records as well as electronic.
42. The Commissioner is satisfied that, in all the circumstances of the case, the request has been correctly refused under section 12(1) of the FOIA.
43. She notes that – since an explanation was provided to the complainant as to why even his clarified request to ISS for "*the top 20 projects by value*" could not be met within the costs limit - compliance with any of the four requests under consideration in this notice would, even in isolation and not aggregated, have exceeded the costs limit.
44. The Commissioner would therefore expect the Home Office to focus its efforts in responding to the request on providing advice and assistance to the requester in accordance with section 16 of the FOIA.

### **Section 16 – duty to provide advice and assistance**

45. Section 16 of the FOIA states that:
  - (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.



- (2) Any authority which, in relation to the provision of advice or assistance in any case, conforms to the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.
46. Section 16 refers to the 'code of practice'; that is, *The Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the Freedom of Information Act 2000*, issued under section 45 of the Act ("the Code").
47. As stated in the Code, one of its aims is to *"protect the interests of applicants by setting out standards for the provision of advice which it would be good practice to make available to them."*
48. Paragraph 14 of the Code states:
- "Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling."*
49. In this case, the Commissioner has been asked to consider whether the MOD has conformed with the requirements of the Code; that is, has complied with its duty under section 16(1) of the FOIA.
50. The Commissioner has therefore considered the MOD's responses to the complainant.

### **The MOD's responses**

51. In its response to the complainant on 25 May 2017, the MOD advised that:
- "The MOD may be able to provide some information in scope of your request if you reduce or refine your request to bring the cost of compliance under the limit... for instance by narrowing the number of projects you are interested in across the MOD, the documents you are interested in, and perhaps specifying a time range. Please contact me if you would like to refine your request or require further advice on doing so."*
52. The complainant responded as follows: *"You... advised me that you may be able to provide further information but give no indication of what is possible or available. It would be helpful to understand where centralised lessons repositories exist and how MOD is dealing with them."*

53. The MOD then advised the complainant, in its internal review response, that *"it would assist the Department if you were able to be more definitive and could specify which change programme(s) you are particularly interested in or whether you would limit your request to a specific business unit and topic within a reduced time period. To assist with this you could refer to the listings for the Department's Major Projects Portfolio (DMPP) projects and programmes which are published in the MOD's Annual Report and Accounts [link provided]. In addition some DE&S project teams [link provided] are listed in the public domain and you may use this organisation chart to make a new request that covers the work undertaken specifically by one of the teams."*
54. ICO guidance<sup>2</sup> in this area states as follows, on page 18-19:
- "A public authority should inform the requestor of what information can be provided within the appropriate limit. This is important for two reasons: firstly, because a failure to do so may result in a breach of section 16. Secondly, because doing so is more useful than just advising the requestor to 'narrow' the request or be more specific in focus. Advising requestors to narrow their requests without indicating what information a public authority is able to provide within the limit, will often just result in requestors making new requests that still exceed the appropriate limit"*.
55. It is evident in this case that the complainant was unsure, following the initial response, how to narrow down his request in order to be provided with information. It is also evident that the complainant had expected a broad range of lessons learned data from organisations across the MOD to be readily available.
56. Referring to the wording of the Code, however, the Commissioner considers that the MOD's responses demonstrate that it *"consider[ed] providing an indication"* of what could be provided within the costs ceiling. While not indicating exactly what could be provided within the appropriate limit, the complainant was encouraged to narrow down his request in a focused manner and suggestions were made as to how he could do so.
57. In view of the very broad initial requests which are under consideration in this notice, the Commissioner considers that the advice and assistance in this case was reasonable.

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<sup>2</sup> [https://ico.org.uk/media/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

58. The Commissioner is satisfied that the MOD provided the complainant with sufficient advice and assistance to have complied with section 16 of the FOIA in this case. She therefore does not require the MOD to take any steps.

## Right of appeal

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- (2) 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

- (3) 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.
- (4) 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 .....**

**Alun Johnson**  
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