

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 July 2018

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

Decision (including any steps ordered)

1. The complainant requested details about the Ministry of Defence's criteria for designating force deployments as "combat" or "non-combat."
2. The Commissioner's decision is that Ministry of Defence ("the MoD") failed to respond to the request within 20 working days and has therefore breached Section 10 of the Freedom of Information Act ("the FOIA").
3. The Commissioner requires the MoD to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. The MoD must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 19 April 2018, the complainant wrote to the MoD and requested information in the following terms:

"What are the current criteria for an international deployment, or parts of such a deployment, of UK forces (excluding Special Forces) to be designated combat or non-combat?"

6. The MoD acknowledged the request on 20 April 2018 but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 12 June 2018 to complain about the failure, by the MoD, to respond to the request.
8. In line with her usual practice, the Commissioner contacted the MoD on 15 June 2018 to highlight the outstanding response. She requested that the MoD respond to the request within 10 working days. The correspondence was neither acknowledged nor responded to.
9. In view of the fact that the response to this request remains outstanding, despite her intervention, the Commissioner is of the view that a decision notice is appropriate in this case. She has therefore considered the MoD's compliance with Section 10 of the FOIA.

Reasons for decision

10. Section 1(1) of the FOIA states 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.*

11. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

12. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

13. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
14. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the MoD has breached Section 10 of the FOIA.

Right of appeal

15. 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

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

16. 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.
17. 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

Ben Tomes
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