

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 November 2021

Public Authority: Ministry of Defence

Address: Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Defence (MOD) about a British Army regiment in Northern Ireland. By the date of this notice the MOD had not issued a substantive response to this request.
2. The Commissioner's decision is that MOD has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of the FOIA.
3. The Commissioner requires the MOD to take the following step to ensure compliance with the legislation.
 - Having confirmed that information is held within the scope of the request: either disclose the requested information or issue a refusal notice in accordance with the requirements of section 17 of the FOIA.
4. The MOD must take this step 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 Act and may be dealt with as a contempt of court.

Request and response

5. On 26 April 2021, the complainant wrote to the MOD and requested information in the following terms:

"May I request information from specific documents recording the West Belfast tour 1 Kings, please, for the dates 7th July 1972 to 21st July inclusively?

Watchkeeper (Company) logs of 1 Kings

Radio logs of 1 Kings

Battalion/Tactical Headquarter logs of 1 Kings

To facilitate your search, I have recently been given similar documents relating to earlier events involving 1 Kings so I am aware that the files are available (with redactions). I will be looking at events leading up to and including 1 Kings shooting of 5 people in Springhill/Westrock on 9th July 1972.

The preceding and following information with be useful context for these shootings, including the killing of [name redacted] nearby on 18th July 1972 by 1 Kings".

6. The MOD acknowledged the request on 6 May 2021.
7. On 25 May 2021, the MOD wrote to the complainant to explain that it held information relevant to the complainant's request, but that it would need to extend the time taken to complete its public interest test considerations in respect of the exemptions under sections 31 and 38 of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 13 October 2021 to complain about the delay in the MOD's consideration of the public interest test.
9. On 20 October 2021 the Commissioner wrote to the MOD, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. To date, a substantive response has still not been provided.
10. The Commissioner has considered whether the MOD has complied with its obligations in relation to section 17 of the FOIA.

Reasons for decision

11. 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."

12. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
13. Section 17(3) of the FOIA states that where a public authority is relying on a qualified exemption, it can have a "reasonable" extension of time to consider the public interest in maintaining the exemption or disclosing the information.
14. Although the FOIA does not define what constitutes a reasonable time, 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. This means that the total time spent dealing with the request should not exceed 40 working days unless there are exceptional circumstances. A public authority would need to fully justify any extension beyond 40 working days.
15. In this case, the total time taken by the MOD has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, the MOD has not complied with section 17(3).
16. The MOD is now required to finalise its public interest considerations under section 17(3) of the FOIA and respond to the complainant.

Right of appeal

17. 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

18. 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.
19. 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

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF