

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 6 November 2018

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

#### Decision (including any steps ordered)

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1. The complainant submitted two requests to the Ministry of Defence (MOD) seeking information about a particular procurement process. In response to the first request the MOD provided some information, confirmed that some information was not held and sought to withhold further information on the basis of sections 40(2) and 43(2) of FOIA. It also refused to confirm or deny whether it held any information falling within one part of the request on the basis of section 40(5) of FOIA. The Commissioner has concluded that the MOD is entitled to rely on all of the exemptions it has cited. However, in handling the first request it breached section 10(1) and 17(1) of FOIA. With regard to the second request the MOD breached section 10(1) by failing to respond to it within 20 working days.

#### Request and response

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2. The complainant submitted the following request to the MOD on 6 December 2017:

*'Further to my email of 16 November, this is a formal request for information from the MoD under the Freedom of Information Act of 2000 and relates to the above process for the public procurement of Online Dental Training Services advertised in the OJEU under reference no 2017/S 115-231867.*

*Please provide the following information as a matter of urgency:*

1. *The identity of the Members of the evaluation panel;*

- 2. Was [name redacted] a member of the evaluation panel?*
- 3. All iterations of the Evaluation Report of the tenders submitted and evaluated in the above procurement process;*
- 4. The Paper produced by the procurement team managing the above procurement process attaching the evaluation report and seeking internal approvals of the evaluation results;*
- 5. The minutes of any meeting of the Authority's Governing Body/ies in which that body/ies discussing and approving the design, and conduct of the procurement process and discussing and approving the outcome/evaluation report of the tenders received in the course of the above procurement process;*
- 6. Please provide copies of the following parts from the successful tenderer's tender:*

  - a. The section on CPD and how it complies with GDC mandatory requirements for verifiable CPD ("1 Provision of online dental training portal");*
  - b. The section which sets out the specific learning aims, objectives and outcomes for each course and the documentary evidence in the tender to show that the successful tenderer has submitted the required information ("1 Provision of online dental training portal").*
- 7. A copy of the transcript of the Regional Study Day at DMS Whittington held on 5 October; were participants at this event informed that [company name redacted] had been awarded a contract to supply the MOD with free CPD*
- 8. Please confirm whether the Authority has already signed the contract with the announced successful tenderer.'*
3. The MOD contacted the complainant on 8 January 2018 and explained that it held information falling within the scope of his request (its reference F2017/12985) but it considered some or all of this to attract the exemption contained at section 43(2) (commercial interests) of FOIA and it needed additional time to consider the balance of the public interest test.
4. The complainant contacted the MOD on 15 January 2018 and explained that some of the requested information, namely items 1, 2, 7 and 8 would not fall within the scope of the exemption provided by section 43(2) of FOIA and therefore such information should have been provided to him within the statutory time limit of 20 working days.

5. The MOD responded on the same date and explained that it would not undertake an internal review of its handling of this request until a substantive response had been issued.
6. The MOD provided such a response on 23 January 2018. In this response the MOD explained the following:
  - In terms of point 1, it considered this information to exempt from disclosure on the basis of section 40(2) (personal data) of FOIA.
  - In terms of point 2, it refused to confirm or deny whether the person named in point 2 of the request was a member of the evaluation panel relying on section 40(5) of FOIA to do so.
  - In terms of point 3, the MOD explained that no formal evaluation report was held; rather a spreadsheet was generated showing the outcome of both technical and financial aspects of the exercise. The MOD did not disclose the spreadsheet.
  - In terms of point 4, the MOD explained that no paper was produced nor were there any internal approvals of the evaluation results. A contract file minute had been produced summarising the results. The MOD did not disclose the contract file minute.
  - In terms of point 5, the MOD explained that no meeting minutes were held; rather the contract file minute summarised the result.
  - In terms of point 6, the MOD concluded that disclosure of this information would prejudice the commercial interests of the winning tenderer and that the public interest favoured withholding this information on the basis of section 43(2) of FOIA.
  - In terms of point 8, the MOD explained that no transcript of this event was produced.
  - In terms of point 9, the MOD explained that it signed the contract with the winning tenderer on 24 November 2017.
7. The complainant submitted the following further request to the MOD on 1 February 2018:

*'Would you please forward the Regulations 84 and 112 reports'*
8. The complainant then contacted the MOD on 9 February 2018 and asked it to undertake an internal review of its decision to withhold information on the basis of the exemptions cited in the refusal notice issued in relation to request F2017/12985.
9. The MOD informed him of the outcome of the internal review on 25 May 2018. Its response was as follows:
  - In terms of points 1 and 2 of the request it concluded that the exemptions contained at sections 40(2) and 40(5) of FOIA had been correctly applied.

- In terms of points 3, 4 and 5 of the request the MOD explained it had initially interpreted these aspects of his request too narrowly and that the evaluation spreadsheet and the final contract file minute fell within the scope of the request. However, the MOD explained that it considered the spreadsheet to be exempt in its entirety under section 43(2) of FOIA, and although it provided the complainant with a copy of the file minute, this was redacted on the basis of the same exemption.
  - In terms of point 6, the MOD explained why it was satisfied that the information falling within this aspect of the request was exempt from disclosure on the basis of section 43(2) of FOIA.
10. The MOD responded to the complainant's request of 1 February 2018, its reference FOI2018/08450, on 3 July 2018.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 9 April 2018 in order to complain about the MOD's handling of his requests.
12. In relation to his request of 6 December 2017, he asked the Commissioner to consider the following points:
- (a) The MOD's reliance on section 40(2) of FOIA to withhold the names of the evaluation panel (point 1 of the request);
  - (b) The MOD's refusal to confirm whether the person named in point 2 of the request was on this panel on the basis of section 40(5) of FOIA (point 2 of the request);
  - (c) The MOD's decision to withhold the evaluation spreadsheet and the redacted parts of the final contract file minute on the basis of section 43(2) (points 3, 4, and 5 of the request);
  - (d) The MOD's decision to withhold the requested parts of ProHealthcare CPD's tender on the basis of section 43(2) of FOIA (point 6 of the request);
  - (e) The MOD's failure to respond to the points of his request not covered by the exemption contained at section 43(2) of FOIA within 20 working days of the request; and
  - (f) The MOD's failure to complete the internal review within 40 working days.<sup>1</sup>

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<sup>1</sup> FOIA does not contain a statutory timeframe within which internal reviews must be completed. However, the Commissioner has commented on this particular point of complaint in the Other Matters section of the notice.

13. In relation to his request of 1 February 2018 he asked the Commissioner to ensure that the MOD responded to this request. (As noted above, following the Commissioner's intervention the MOD responded to this request on 3 July 2018).

## Reasons for decision

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### Complaint (a)

14. With regard to complaint (a), the MOD argued that the names of the individuals who were sat on the evaluation panel in question were exempt from disclosure on the basis of section 40(2) of FOIA.

15. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act 1998 (DPA).<sup>2</sup>

16. Personal data is defined in section (1)(a) of the DPA as:

*'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual.'*

17. The Commissioner is satisfied that the names of the individuals who sat on the evaluation panel clearly constitute personal data and thus can potentially be exempt from disclosure on the basis of section 40(2) of FOIA.

18. The MOD argued that disclosure of the names in question would breach the first data protection principle which states that:

*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met, and*

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<sup>2</sup> On 25 May 2018 the General Data Protection Regulation and Data Protection Act 2018 came into force. However, in line with the provisions contained within the Data Protection Act 2018 under FOIA for any request where a public authority has responded before 25 May 2018 the DPA 1998 applies.

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

19. The relevant condition in this case is the sixth condition in schedule 2 which states that:

*'The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject'.*

20. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
  - what the public authority may have told them about what would happen to their personal data;
  - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights (ECHR);
  - the nature or content of the information itself;
  - the circumstances in which the personal data was obtained;
  - any particular circumstances of the case, eg established custom or practice within the public authority; and
  - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
  - whether information of the nature requested is already in the public domain;
  - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

21. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure to the public.
22. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake, as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.
23. The complainant alleged that at a MOD training day on 5 October 2017 it was stated, by the person named at point 2 of the request, that his company had been awarded the contract in question, albeit that in due course the contract was awarded to another company. The complainant provided the Commissioner with written confirmation from an attendee to support this allegation. The complainant argued that this suggested that the decision to award his company with the contract was reversed. He therefore argued that there was a legitimate and compelling interest in understanding who was on the evaluation panel; if the person named at point 2 of the request was on the panel the complainant argued that the MOD had to explain why the announcement was made and why the decision was altered. If not, the person must have been told by someone who was, raising the same question.
24. The MOD argued that it had an established policy of withholding the names of officials in response to FOI requests. It explained that the exception to this principle is that members of the Senior Civil Service and their military equivalents (Commodore, Brigadier, Air Commodore and above) will normally be available in the public domain and so would not usually be withheld. The MOD confirmed that the individuals on the evaluation panel were below this rank and level in the civil service and none were in public-facing roles.
25. The Commissioner asked the MOD to specifically comment on the complainant's allegations as set out above. The MOD explained that at the date of the Regional Study Day on 5 October 2017 the winning tender had not yet been determined; rather the timeline was as follows:
  - 2 October 2017 – The moderation panel met to complete the quality elements of the tendering exercise.
  - 12 October 2017 – The JFC Commercial Officer (CO) received the consolidated scoring for the quality evaluation from the Chairman of the Panel.

- 16 October 2017 – The CO undertook the consolidation of the quality evaluation and pricing evaluation. It was only at this point in the process that the CO knew the winner of the tendering exercise and informed the Chair of the outcome.
  - 20 October 2017 - Tenderers were informed in writing of the outcome.
26. The MOD therefore argued that the complainant's allegation could not therefore be based on fact. In any event, the MOD emphasised that the winning tender won on the basis of an open and fair competition and it was not clear why it was relevant to know whether a particular individual was on the panel.
27. The Commissioner accepts that it is the established custom and practice for the MOD to redact the names of staff at the levels and grades of those who sat on the assessment panel. In light of this, she accepts that disclosure of such information would be against the reasonable expectations of these individuals, albeit that the Commissioner considers that the infringement into their privacy if their names were disclosed is arguably relatively limited.
28. The Commissioner has seen the evidence from the complainant that a delegate was told at the training day that the complainant's company had been awarded the contract. The Commissioner has no reason to question the validity of the delegate's account. However, such a statement does not, as the MOD suggests, align with the timeline of the tender process, ie at the date of the training event the winning bidder had not yet been selected. The Commissioner cannot explain this discrepancy; however, she is not persuaded that disclosure of the names of the individuals who were on the assessment panel would bring any further clarity to this issue. Therefore, she has concluded that disclosure of the names of the individuals who sat on the assessment panel is not necessary in order to meet a legitimate interest. Disclosure of the names of the individuals who sat on the assessment panel would therefore breach the first data protection principle and such information is therefore exempt from disclosure on the basis of section 40(2) of FOIA.

### **Complaint (b)**

29. Section 40(5)(b)(i) of FOIA states that a public authority is not obliged to confirm nor deny under section 1(1)(a) of FOIA whether third party personal data is held if, or to the extent that:

*'the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart*

*from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded'.*

30. In the circumstances of this case, the MOD is relying on the first part of section 40(5)(b)(i), ie that complying with section 1(1)(a) would breach the data protection principles, specifically the first principle.
31. Therefore, for the MOD to be correct in relying on section 40(5)(b)(i) to neither confirm or deny whether it holds information falling within the scope of point 2 of the request the following two criteria must be met:
- Confirming or denying whether information is held would reveal the personal data of a third party; and
  - That to confirm or deny whether information is held would contravene one of the data protection principles.

*Would the confirmation or denial that information was held reveal the personal data of a third party?*

32. The Commissioner is satisfied that this criterion is met. This is because if the MOD confirmed whether the named individual was on the assessment panel it would reveal something of biographical significance about them.

*Would confirmation or denial as to whether information is held contravene one of the data protection principles?*

33. The Commissioner must therefore consider whether confirmation or denial as to whether information is held would contravene one of the data protection principles. For the reasons set out above, the Commissioner is satisfied that revealing whether a particular individual was on the assessment panel would breach the first data protection principle. The MOD is therefore entitled to rely on section 40(5)(b)(i) of FOIA to refuse to confirm or deny whether it holds any information falling within the scope of point 2 of the request.

### **Complaints (c) and (d)**

34. The MOD sought to withhold a range of information on the basis of section 43(2) of FOIA namely:
- The evaluation spreadsheet;
  - The redacted parts of the final contract file minute; and
  - The parts of the winning company's tender sought by point 6 of the request.

35. The Commissioner has been provided with copies of all of the above information. In relation to the last piece of information, ie the winning bidder's tender, the Commissioner notes that the MOD provided her with a copy of the bidder's entire tender which addresses questions 1 to 6 of the invitation to tender. However, in the Commissioner's opinion the only part of the tender which falls within the scope of point 6 of the request consists of the bidder's response to question 1 'Provision of online dental training portal'. The Commissioner has therefore only considered whether this part of the tender is exempt on the basis of section 43(2); the remaining aspects of the tender are out of scope of the request.

### **Section 43 – commercial interests**

36. Section 43(2) states that:

*'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'*

37. In order for a prejudice based exemption, such as section 43(2), to be engaged the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

38. In relation to the commercial interests of third parties, the Commissioner does not consider it appropriate to take into account speculative arguments which are advanced by public authorities about how prejudice may occur to third parties. Whilst it may not be necessary

to explicitly consult the relevant third party, the Commissioner expects that arguments which are advanced by a public authority should be based on its prior knowledge of the third party's concerns.

### The MOD's position

39. The MOD argued that all companies that submitted bids provided sensitive information in relation to both costings and the services they offer on the understanding that it would be kept confidential. It noted that this level of trust and cooperation was necessary for the tender process to work. The MOD explained that if it disclosed the withheld information companies would be discouraged from participating in the process if they felt that sensitive information relating to their business would be released into the public domain. The MOD argued that if companies are discouraged from bidding for future contracts, it may not gain the best value for money when only a limited number of bidders are competing.
40. The MOD explained that it had liaised with the successful bidder to seek their views on disclosure. The bidder confirmed that they considered that the information contained within its tender was exempt from disclosure under section 43(2). This was on the basis that it would provide competitors with an unfair competitive advantage and undermine their ability to compete on an equal footing in this market. Disclosure would also reveal unique aspects of the bid, intellectual property, the detailed business planning and pricing proposals. The MOD argued that to disclose information against the advice of the company in response to any FOI request would damage its relationship with that company and, potentially, with other commercial partners, as well as risk its reputation by undermining the level of trust placed in it by commercial companies in general which would be likely to harm its interests. The MOD explained that it did consider whether the scoring information, ie the spreadsheet and feedback information contained in the contract file minute, could be provided in response to the bids would be released. However, it argued that even if the company names were redacted from the scoring information, each bidder could, with the information already disclosed, cross refer and be able to calculate the pricing matrices used by their competitors, thus providing them with an unfair advantage in the market.

### The complainant's position

41. The complainant argued that disclosure of the information sought by point 6 of the request would not reveal confidential or sensitive information because by its very nature it would be in the public domain. He also emphasised that no financial information had been requested.

### The Commissioner's position

42. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the MOD clearly relates to the interests which the exemption contained at section 43(2) is designed to protect.
43. With regard to the second criterion, the Commissioner is satisfied that disclosure of the information withheld on the basis of section 43(2) has the potential to harm the commercial interests of the company which won the contract. In reaching this conclusion she notes that the information sought by point 6 of the request consists of part of the company's tender and, in theory, she accepts the rationale of the MOD's argument that disclosure of this could give its competitors an advantage in future tender processes. In relation to the information redacted from the contract file minute the Commissioner notes that this consists of the pricing proposals of the various bids and as well as an analysis of them by the MOD. The Commissioner is satisfied that disclosure of such information clearly risks undermining the competitive position of the various bidders. Moreover, having considered the information contained in the evaluation spreadsheet, she accepts that it is plausible to argue that the information contained within it, allied to the information already in the public domain, alongside the additional details each bidder would have about their own bid, could allow them to reverse engineer the prices of the other bids in the manner suggested by the MOD. Finally, the Commissioner accepts that the disclosure of the withheld information may cast doubt on the ability of the MOD to protect commercially sensitive information. In the Commissioner's view it is plausible to see this as having the potential to impact on the commercial interests of the MOD.
44. With regard to the third criterion, the Commissioner is satisfied that there is clearly a more than a hypothetical risk of prejudice occurring to the various companies who submitted bids if the contract file minute and evaluation spreadsheet were disclosed; rather the risk of such prejudice occurring can be correctly described as one that is real and significant. This is on the basis that the information in question would provide a direct insight into the pricing strategy of each bid and also some insight into the MOD's assessment of the relative merits of each bid. For similar reasons, the Commissioner is also satisfied that the third criterion is met in relation to evaluation spreadsheet.
45. In relation to the information sought by point 6 of the request the Commissioner considers the decision as to whether the exemption is engaged to be more finely balanced. As noted above, the complainant has argued that the information sought by this request is already in the public domain by virtue of being contained on the winning bidder's website. For some, albeit not all, of the withheld information falling within the scope of this part of the request the Commissioner accepts that this is the case. She has given careful consideration as to whether

this therefore means that such information cannot there be commercially sensitive; she accepts that there is an argument that this might well be the case. However, the publicly available information is contained within the company's tender documentation. The Commissioner accepts that how a company has structured its tender proposal, including what information in the public domain it has selected and how it has chosen to use such information within the tender proposal itself could still provide competitors with an advantage if it was disclosed. The Commissioner has therefore concluded that the third criterion is met with regard to the information falling within the scope of point 6 of the request. Furthermore, she also accepts that disclosure of such information means that there is more than a hypothetical risk of the MOD's own commercial interests being harmed if such information was disclosed. Section 43(2) is therefore engaged.

### **Public interest test**

46. Section 43 is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
47. The complainant argued that Public Contract Regulations 2015 (PCR) are supposed to be 'open and transparent' yet the only information the MOD has confirmed is the contract date. He argued that the MOD should disclose documentation that would address his concerns regarding the tender process in order to show that the correct procedures were followed. He also argued that in his view the information sought by point 6 of his request would show that the information provider by this tenderer did not meet the legal requirements and therefore the winning company's tender should have been rejected.
48. The MOD argued that there was a very strong public interest in safeguarding the commercial interests of the UK government as well as its suppliers. It also noted that in line with the requirements of the PCR it was obligated to inform unsuccessful tenderers, such as the complainant, of the reasons for the rejection of their tender and the characteristics and relative advantages of the tender selected, together with the name of the winning tender and all this had been done. The MOD confirmed that it had therefore complied with the requirements of the PCR.
49. The Commissioner recognises that there is weighty public interest in the MOD being transparent about decisions upon which contracts are awarded. Such transparency will obviously be more directly helpful to parties who have a particular interest in the tender process in question, but the Commissioner accepts that more broadly such transparency could improve the wider public's confidence in the MOD's tendering

processes and potentially provide re-assurance that these processes are being conducted fairly. In the particular circumstances of this complaint, the Commissioner acknowledges that the complainant has raised concerns about the manner in which the MOD has conducted this procurement exercise. It is not for the Commissioner to adjudicate on the validity or otherwise of the complainant's criticisms of the MOD's handling of this tender process. However, the Commissioner acknowledges that disclosure of the information which the MOD has withheld on the basis of section 43(2) would provide a direct insight into the procurement process and the MOD's decision making beyond that already disclosed to the complainant in line with the requirements of the PCR.

50. However, in the Commissioner's opinion there is very strong and inherent public interest in ensuring fairness of competition and in her view it would be firmly against the public interest if a company's commercial interests are harmed simply because they have submitted tenders for public sector contracts. Furthermore, the Commissioner believes that there is an inherent, and very strong, public interest in ensuring that the government's own commercial interests are not undermined. Given the cumulative weight that should be attributed to protecting the commercial interests of both the MOD, the winning tender and the other tenderers who submitted bids, the Commissioner is satisfied that public interest favours withholding the information and maintaining section 43(2) of FOIA.

### **Complaint (e)**

51. Section 1(1) of FOIA 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.'*

52. Section 10(1) of FOIA 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.
53. Under section 17(3) a public authority can, where it is citing a qualified exemption, have a 'reasonable' extension of time to consider the balance of the public interest. 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, which would allow a public authority 40 working days in total. The Commissioner considers that any extension beyond 40 working days should be exceptional and requires the public authority to fully justify the time taken.

54. In the circumstances of this case the complainant submitted his request on 6 December 2017. The MOD contacted him on 8 January 2018 and explained that it considered some or all of this information falling within the scope of the request to be exempt from disclosure on the basis of section 43(2) of FOIA and it needed additional time to consider the balance of the public interest. It provided the complainant with a substantive response to his request as set out at paragraph 6 above.
55. Taking the above provisions of FOIA into account, the Commissioner accepts that the MOD was entitled to take additional further time to consider the parts of the requested information to which it applied section 43(2). However, she agrees with the complainant that in relation to the parts of the request to which this exemption was not applied then technically a response to those elements should have provided to the complainant within 20 working days of the request. The failure to do so represents a breach of section 17(1) in respect of the refusal notice citing sections 40(2) and 40(5), and section 10(1) in respect of the parts of the request the MOD provided a response to.
56. The MOD also breached section 10(1) by failing to respond to the complainant's request of 1 February 2018 within 20 working days.

## **Other matters**

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57. The complainant expressed his concern to the Commissioner about the length of time it took the MOD to complete its internal review. FOIA does not impose a statutory time within which internal reviews must be completed albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe. In the Commissioner's view it is reasonable to expect most reviews to be completed within 20 working days and reviews in exceptional cases to be completed within 40 working days.
58. In this case the complainant submitted his request for an internal review on 9 February 2018. The MOD informed him of the outcome of the internal review on 25 May 2018, 73 working days later. The Commissioner wishes to use this as an opportunity to remind the MOD of the need to complete internal reviews within the timeframes set out in her guidance.

## Right of appeal

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59. 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)

60. 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.

61. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**