Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: **18 February 2020**

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Ministry of Defence (MOD) seeking information about the monitoring of the health and welfare of crew on nuclear submarines. After a significant delay, the MOD responded to the request and provided some information falling within the scope of the request but sought to withhold further information on the basis of regulations 12(5)(a) (defence and national security) and 12(3) (personal data) of the EIR. The complainant has argued that the information provided to her by the MOD does not fulfil her request.

2. The Commissioner has concluded that the information provided by the MOD to the complainant does fulfil her request and that on the balance of probabilities the MOD does not hold any further information falling within the scope of the request. The Commissioner has also concluded that the MOD is entitled to withhold some of the information in scope on the basis of regulations 12(5)(a) and 12(3) of the EIR. However, the Commissioner has also concluded that the MOD breached regulation 7(1) of the EIR by failing to provide her with a substantive response to her request within 40 working days.

3. The Commissioner does not require the MOD to take any steps.

Request and response

4. The Commissioner understands that the complainant had been in correspondence with the MOD for a number of months in early 2018 in order to try and gain access to information regarding the monitoring of the health and welfare of crew on nuclear submarines. The Commissioner understands that the complainant wanted this information to assist with an appeal regarding her war widow pension.

5. More specifically, on 5 January 2018 the complainant submitted the following request to the MOD:

> *'I am looking to have my appeal heard in the forthcoming months and would be grateful if you could supply some further information which would be included in the Statement of Case.*
>
> *On page 241 – Statement of Case - point 10 Navy Expert. I would like copies of the internal monitoring regime that crew members serving on submarines with identical reactor systems to the submarine my late husband was serving on and the recorded results as detailed in point 10, page 241 Statement of Case. There were no internal monitoring systems available to my late husband'.*[1]

6. By way of a reply, the MOD provided her with a letter from the Submarine Delivery Agency dated 27 March 2018. This letter explained that routine internal monitoring was only conducted on members of the crew on board a SSBN[2] and as her husband did not serve upon a SSBN no such records exist for him. The letter also noted that no positive results have ever been identified for crew serving on a SSBN.

7. The complainant contacted the MOD again on 3 April 2018 and stated that:

> *'I received the reply from The Submarine Delivery Agency regarding my query . However this was definitely not what I requested in my email dated 5/1/18 and subsequent emails.*
> *I have included copies of the relevant parts from The Statement of Case point 4 page 240 and point 10 page 241 .*

[1] Page 241 refers to a letter from Defence Equipment & Support within the MOD concerning the radiation dose received by the complainant's husband on MOD submarines. The letter is dated 7 January 2015.

[2] Ballistic missile submarine.

I require copies of " The routine monitoring of 10% of the crew on the Resolution Class SSBN 3 " as clearly stated by your expert in my Statement of Case.'

8. It is the Commissioner's understanding that the complainant did not receive a response to this correspondence.

9. The complainant then subsequently submitted the following request to the MOD on 29 June 2018:

'Please supply all information on any monitoring for internal radionuclies carried out on nuclear submarine personnel from 1979 to the present day. This must include data on which radionuclides were analysed in urine, faeces, or by whole body monitoring, and must include the radionuclides assessed, particularly Tritum, the dates of monitoring, type of examination and the results with the type of measurement, the standard errors of the method, and the limits of detection.'

10. The MOD contacted her on 30 July 2018 and confirmed that it held information falling within the scope of her request but it considered this to be exempt from disclosure on the basis of section 26 (defence) of FOIA and it needed additional time to consider the balance of the public interest test.

11. After a significant delay, the MOD provided her with a substantive response to her request on 21 May 2019. The MOD explained that it had concluded that the public interest favoured disclosing the information it had located and disclosed this to her, albeit with a number of redactions made on the basis of section 40(2) of FOIA. The information disclosed to her consisted of two letters from the Defence Science and Technology Laboratory (Dstl), an executive agency of the MOD, to another part of the MOD. This first letter was dated 10 May 2018 and had the heading 'Submarine Crew – Tritium in Urine Monitoring'. The letter explained that a search for tritium-in-urine monitoring results for submarine crew had been undertaken and provided an annual breakdown for the period 1993 to 2017 of the number of individuals who had been monitored. The letter explained that all of the results were zero, which meant that they were below the reporting threshold. The second letter was dated 9 May 2019 and headed 'Submarine Crew – Whole Body Monitoring'. The letter explained that it had conducted a full search of its records and found 13 whole body monitoring results for nuclear submarine personnel. These results were provided and covered the period 1983 to 1992.

12. Following this response the complainant contacted the Commissioner about the MOD's handling of her requests. However, during the course of the Commissioner's subsequent investigation the MOD completed an internal review in relation to its handling of the request submitted on 29

June 2018. The MOD provided the complainant with the internal review on 21 August 2019.

13. Furthermore, on 22 October 2019 the MOD also provided the complainant with a substantive response to her request of 5 January 2018, which to date, it had failed to provide a formal response to. In this response the MOD explained that it had considered this request under the EIR given the subject matter and confirmed that it held information that could be released subject to the application of a number of exceptions with the EIR. The MOD explained that a search for relevant information had been conducted for the period August 1993 to April 2018 which it explained was the period for which it held records. The MOD explained that records regarding Trafalgar or Vanguard classes of submarines had been removed as being out of scope of the request because they did not have identical reactor systems to the submarine on which the complainant's husband had served. The remaining records related to the Resolution class of submarines or to those records where the establishment of submarines were not recorded (and thus potentially fell within the scope of the request). It was the results from these records which were provided to the complainant.

14. More specifically, the information provided to the complainant consisted of a table with 258 entries covering the period 1993 to 1996. The table had the following columns: 'PD_NO' (ie Personal Dosimetry Number), 'Monitoring from date', 'Monitoring to date', 'Committed effective dose (mSv)' and 'Establishment' (ie which class of submarine). The MOD explained that the PD_NO, where held, had been redacted on the basis of regulation 12(3) of the EIR, the personal data exception. It also explained that the monitoring dates and establishment had been part redacted on the basis of regulation 12(5)(a) of the EIR. Therefore, the year of the monitoring was given, but not the specific date, and the establishment was simply given as Resolution class (ie rather than the specific Resolution class submarine) or listed as not recorded if this information was not held in relation to a particular record.

Scope of the case

15. As noted above the complainant initially contacted the Commissioner on 22 May 2019 in order to complain about the MOD's handling of her requests. Subsequent to this, again as explained above, the MOD completed an internal review into its handling of the request of 29 June 2018 and also provided the complainant with a substantive response to her request of 5 January 2018. However, the complainant remains dissatisfied with the MOD's further responses to both of these requests.

16. This decision notice simply considers the MOD's handling of the request of 5 January 2018. The later request of 29 June 2018 is the subject of a different decision notice, FS50839314.

17. With regard to the MOD's handling of the request of 5 January 2018, the complainant raised the following concerns with the Commissioner:

    a. She was unhappy with the length of time it took the MOD to provide her with a substantive response to her request;
    b. She has argued that the response provided to her on 22 October 2019 did not provide her with the information she requested. This was on the basis that she had sought the information identified by the MOD in its letter of 7 January 2015, in particular the information contained at paragraphs 4 and 10 of that letter. She did not consider the information provided to be the information described in that letter. The complainant also expected the information provided to her in response to this request to cover the period of her husband's service, ie 1979 to 1989. She accepted that the names of individuals needed to be withheld but she suggested that the table of information provided to her by the MOD did not actually appear to include any information. Moreover, of the information that was provided to her this information was not relevant to her request; and
    c. Furthermore, in addition to this point, the complainant noted that in response to her request of 29 June 2018 the MOD explained that it held 'whole body monitoring' records from 1983. However, the information provided in response to her request of 5 January 2018 only dated from 1993. She therefore envisaged that the MOD *would* hold records concerning 'internal monitoring' dating from 1983 to 1992 which would fall within the scope of her request of 5 January 2018 but these had not been provided to her.

18. In light of the complainant's concerns, in this decision notice the Commissioner has therefore considered whether:

    - The MOD has provided the complainant with all of the information which it holds falling within the scope of her request of 5 January 2018;

    - Whether the exceptions it had cited provided a basis to withhold the information it had withheld; and

    - She also considered the MOD's delays in handling this request.

Reasons for decision

Regulation 5(1) – right of access to information

19. Regulation 5(1) of the EIR requires a public authority holding environmental information to make it available on request.

20. As noted above, although the MOD has provided the complainant with information in response to her request, in her view this information does not fulfil her request.

21. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, or indeed whether the information provided is the information which has been requested, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.

22. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request. Or, more accurately in the terms of this request, whether on the balance of probabilities the information provided to the complainant by the MOD fulfils the request, and whether it would be likely to hold any further information falling within the scope of the request.

23. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, or as in the circumstances of this complaint, other explanations offered to determine whether the information which has been disclosed is the information (and the only information) held by the MOD which falls within the scope of the request.

The Commissioner's position

24. In the Commissioner's view in order to consider the complainant's concerns in this case it is first necessary to consider how this request should be interpreted and thus what information falls within the scope of the request.

25. To re-cap, the request of 5 January 2018 was as follows:

'*On page 241 – Statement of Case - point 10 Navy Expert. I would like copies of the internal monitoring regime that crew members serving on submarines with identical reactor systems to the submarine my late husband was serving on and the recorded results as detailed in point 10, page 241 Statement of Case. There were no internal monitoring systems*

available to my late husband'

26. Point 10 of the MOD's letter of 7 January 2015 read:

'*10. Whilst [name of complainant's husband] was not subject to monitoring for internal contamination, crew members serving on submarines with identical reactor systems were part of a routine monitoring regime. Not one of these produced positive results.'*

27. In terms of the interpretation of the request, in the Commissioner's view point 4 of the letter is also relevant. This read:

'4…[name of complainant's husband] served on SSN submarines which did not routinely conduct internal monitoring and thus he would not have been subjected to routine internal monitoring and there will not be any internal records to be made available and therefore no records are missing. However, routine monitoring of 10% of the crew was conducted on the Resolution Class SSBN and there has been no recorded cases of internal contamination from these measurements' (emphasis added)

28. In the Commissioner's view, the information falling within the scope of the request of 5 January 2018 therefore consists of the test results of routine monitoring of crew on submarines with identical reactor systems to the SSN submarines which the complainant's husband served on. The Commissioner understands that such identical systems were found on Resolution class submarines.

29. In light of this interpretation of the request the Commissioner has considered the information provided by the MOD to the complainant on 22 October 2019 and her concerns with regard to this information (ie points b and c at paragraph 17 above).

30. With regard to the points raised at point b, for the reasons discussed above, in the Commissioner's view, the information sought by the request of 5 January 2018 *only* included the internal monitoring results described in the MOD's letter of 7 January 2015. In the Commissioner's opinion that letter did *not* describe monitoring as taking place during the period of 1979-89 as the complainant suggested. Rather, the letter only referred to the monitoring of crew on Resolution class submarines; no date was provided in the MOD's letter of 7 January 2015 for the dates of this monitoring. Therefore, whilst the Commissioner can understand why the complainant is most interested in data covering her husband's period of service, the request did not specify data for that period. Furthermore, the Commissioner understands that the earliest monitoring records which the MOD holds only date back to 1983.

31. In terms of the actual data provided, the complainant noted that the table provided to her did not actually include any information. However, the Commissioner understands that the table does include the results of the 258 tests undertaken during the period 1993 to 1996 albeit that the results of each test (ie the Committed effective dose) was 0.00 and for the majority of the entries the PD_NO and Establishment is not held and therefore on the table the information simply notes that such information is 'NOT RECORDED'. Moreover, the Commissioner is satisfied that this information does fall within the scope of her request submitted on 5 January 2018. This is on the basis that it contains details of the testing undertaken on individuals who served on Resolution class submarines, or potentially served on such submarines for individuals where the establishment is not recorded. Furthermore, the Commissioner understands that the data provided was a result of a search of the MOD's testing records of submariners and that no further records or information is held beyond this that could fulfil this request. (The only exception to this is the records of 1983 to 1992 which are discussed below).

32. However, in respect of c, having examined the MOD's response the Commissioner shared the complainant's concerns that the information provided only dated back to 1993. In contrast, in response to the complainant's request of 29 June 2018 the MOD provided records of whole body testing dating back to 1983. The Commissioner therefore raised this matter with the MOD.

33. In doing so the Commissioner noted that 13 records of whole body monitoring data were provided to the complainant on 21 May 2019 in response to her request of 29 June 2018. However, the data provided on 21 May 2019 was not limited to crew who served on Resolution class establishments. Rather, the information was described as the 'results for nuclear submarine personnel'. Therefore, with regard to the period 1983 to 1992, the Commissioner explained to the MOD that in her view it had potentially not provided the complainant with all of the information falling within the scope of her request of 5 January 2018. Or more accurately, of the 13 *potentially* relevant records previously provided to her in response to a different request, the MOD had not explained which relate to crew serving on Resolution class establishments – and thus fall within the scope of her request - and which fall outside the scope of her request because they consist of records of crew serving on other nuclear submarines eg Trafalgar class. The Commissioner acknowledged that it may be the case that of these 13 records it is not possible to identify on which establishment each of the crew served. However, the Commissioner asked the MOD to clarify which of these 13 records relates to crew who served on a) Resolution class establishments b) which of the 13 records concerns crew whose establishment is not recorded.

34. In response, the MOD explained that of the 13 records, it held information which identified the establishments of 12 of the individuals. The MOD explained that the establishment is not recorded for one of the individuals listed and of those where the establishment is known, only one has been confirmed as having served on a Resolution class submarine. However, the MOD explained that it had concerns about identifying these two records because it would result in a further erosion of anonymity and there could potentially be a risk of re-identification when considered against information already in the public domain. The MOD emphasised that the actual date of the whole body monitoring for each individual was released to the complainant which could potentially identify specific individuals. The MOD explained that as the submariner community is relatively small, there will be people who may be able to link the monitoring results to a specific individual. This was particularly the case for the record relating to the individual who served on the Resolution class submarine.[3]

35. In summary then, the Commissioner is satisfied that the information disclosed to the complainant falls in scope of the request as it sets out the results of the monitoring of the personnel who served on submarines with identical reactors to the submarines on which the complainant's husband served. The Commissioner is also satisfied that the MOD does not hold any further records beyond those already provided to the complainant or withheld from disclosure.

Regulation 12(3) – personal data

36. Regulation 12(3) of the EIR states that the personal data shall not be disclosed otherwise than in accordance with regulation 13.

37. Regulation 13(1) of the EIR provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in Regulation 13(2A), 13(2B) or 13(3A) is satisfied.

38. In this case the relevant condition is contained in regulation 13(2A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').

[3] The Commissioner has considered below whether this information is covered by regulation 12(3) of the EIR.

39. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then Regulation 13 of the EIR cannot apply.

40. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

41. Section 3(2) of the DPA defines personal data as:

> '*any information relating to an identified or identifiable living individual*'.

42. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

43. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

44. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

45. The MOD has withheld the Personal Dosimetry Number of the individuals (where known) and also refused to disclose which of the 13 records concerning the whole body testing for the period 1983 to 1993 related to an individual who served on a Resolution class submarine and which related to an individual who served on a submarine whose class is not recorded. With regard to the first type of information, the Commissioner is satisfied that this constitutes personal data given that it clearly relates to individuals and from which they can be identified. In terms of the whole body testing records concerning the two individuals in question, taking into account the points made by the MOD above, she accepts that confirmation as to which records these are presents a real risk of the individuals in question being identified and thus details of their testing results being released in the public domain. The Commissioner is therefore satisfied that confirmation as to which records relate to the two individuals in question would result in the disclosure of personal data.

46. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under

FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.

47. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

48. Article 5(1)(a) of the GDPR states that:

> *'Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject'.*

49. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

50. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

51. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

> '*processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child*'[4].

52. In considering the application of Article 6(1)(f) of the EIR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-

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[4] Article 6(1) goes on to state that:-

> '*Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks*'.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

> '*In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted*'.

i) **Legitimate interest test**: Whether a legitimate interest is being pursued in the request for information;

ii) **Necessity test**: Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) **Balancing test**: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

53. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

54. In considering any legitimate interest(s) in the disclosure of the requested information under the EIR, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests.

55. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

56. In the circumstances of this case, the Commissioner accepts that there is a legitimate interest in the disclosure of information about the steps the MOD takes to ensure the health, safety and welfare of personnel on submarines. However, she is not persuaded that in order to do so there is a particularly strong or compelling interest in revealing the Personal Dosimetry Number. She accepts that it could potentially be argued that there is more legitimate interest in clarifying which of the 13 records previously disclosed to the complainant concerned an individual who served on a Resolution class submarine.

Is disclosure necessary?

57. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves the consideration of alternative measures, and so a measure would not be necessary if the legitimate aim could be achieved by something less. Disclosure under the EIR must therefore be the least intrusive means of achieving the legitimate aim in question.

58. In the Commissioner's view it is not sustainable to argue that disclosure of the names of the Personal Dosimetry Number is necessary; disclosure

of such information would not add to the public's understanding of this subject matter.

59. Given this finding the Commissioner has concluded that disclosure of the Personal Dosimetry Numbers would not be lawful for such information and therefore article 6(1)(f) of the GDPR is not met. Disclosure of the Personal Dosimetry Number would therefore breach the first data protection principle and thus such information is exempt from disclosure on the basis of regulation 12(3) of the EIR.

60. In contrast, she accepts that clarification of which records relate to the two individuals in question is arguably necessary to meet the legitimate interest identified above.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

61. It is necessary to balance the legitimate interests in disclosing the requested information against the data subject(s)' interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of the disclosure. For example, if the data subject would not reasonably expect the public authority to disclose the requested information in response to a FOIA/EIR request, or if such a disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

62. As noted above, the Commissioner accepts that there is a legitimate interest in providing further clarification as to the nature of testing of individuals who served on nuclear submarines. However, the Commissioner is conscious that individuals who served will have a reasonable expectation that their test results would not be placed into the public domain. Further in the Commissioner's opinion to do so would result in a unfair infringement of the individual's privacy.

63. The Commissioner has therefore determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information relating to the records in question would not be lawful.

64. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.

65. In conclusion, the Commissioner has therefore decided that the MOD can withhold the information Personal Dosimetry Numbers on the basis of regulation 12(3) of the EIR and also refuse to confirm which of the 13 records relates to an individual who served on a Resolution class

submarine on the same basis and which relates to an individual whose class of submarine is not recorded.

Regulation 12(5)(a)

66. Regulation of 12(5)(a) of the EIR provides that a public authority can refuse to disclose information to the extent that its disclosure would adversely affect international relations, defence, national security or public safety.

67. The MOD argued that it considered the release of the 'to and from' dates from the table provided to the complainant and the specific submarines on which the individuals served to be exempt from disclosure on the basis of regulation 12(5)(a). This was on the basis that disclosure of the information may reveal tactical data concerning submarine operations and so compromise current or future operations or the capability, effectiveness or security of British forces.

68. The Commissioner accepts the rationale of the MOD's argument that disclosure of the specific dates of the monitoring would provide potential adversaries with some understanding of the pattern of monitoring activity. She accepts that this in turn would provide an insight into the pattern and duration of patrols conducted by the UK's submarine fleet and is therefore satisfied that disclosure of the withheld information would be likely to adversely affect national security and therefore regulation 12(5)(a) is engaged.

Public interest test

69. Regulation 12(5)(a) is subject to the public interest as set out at regulation 12(1)(b) of the EIR. Therefore, the Commissioner has considered whether in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information.

70. The MOD acknowledged that release of the information would demonstrate its commitment to transparency and openness and would help to inform and maintain public confidence in defence matters. It also accepted that disclosure would broaden public understanding of the routine measures taken to ensure that the health, safety and welfare of MOD naval service personnel while undertaking their duties at work on submarines.

71. However, it argued that there is greater public interest in safeguarding national security and in withholding any information that might prejudice this security and defence matters.

72. The Commissioner agrees that there is public interest in broadening the public's understanding of the routine measures taken by the MOD to

monitor the health, safety and welfare of navy personnel on submarines. However, in her view disclosure of the withheld information would only provide a limited additional insight into such measures, beyond the information already disclosed by the MOD. That is to say, the MOD has already disclosed the number of tests which took place within each calendar year, the nature of those tests and the outcomes. Disclosure of the withheld information would only confirm that actual monitoring period within each calendar year of these tests. Conversely, the Commissioner considers there to be a very significant public interest in ensuring that the UK's defence and national security is not adversely affected. Therefore, in the circumstances of this case she has concluded that the public interest favours maintaining the exception contained at regulation 12(5)(a).

Regulation 5(2) – Time for compliance

73. Regulation 5(2) of the EIR states that, where a public authority holds environmental information, the 'information shall be made available… as soon as possible and no later than 20 working days after the date of receipt of the request.'

74. The MOD received the complainant's request on 5 January 2018 but failed to provide a response to this request until 22 October 2019, and only then after the Commissioner's intervention. By failing to provide the complainant with a response within 40 working days from the date of the request the Commissioner has concluded that the MOD breached regulation 7(1) of the EIR.

75. As part of her investigation the Commissioner asked the MOD to explain why there was such a delay in respect of this request. The MOD explained that the staff handling the complainant's request of 5 January 2018 responded to the request by providing the letter of 27 March 2018. The MOD noted that whilst this provides a summary of the information within the scope of the request, the actual information in the scope was not gathered or provided to the complainant. The MOD informed the Commissioner that the complainant and/or her representative, had been provided with any information DBS Vets UK had received on this subject. However, the MOD explained that the staff who received the complainant's correspondence were new in post and were not aware that the request should perhaps have been handled under FOIA/the EIR. The MOD explained to the Commissioner that it accepted that there was a significant and unacceptable delay in its response to this request.

Right of appeal

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

77. 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.

78. 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
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