

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2023

Public Authority: Ministry of Defence
Address: Whitehall
City of Westminster
SW14 2HB

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Defence ("MOD") relating to official correspondence and meetings concerning defence procurement issues. The MOD at first applied section 36 of FOIA to the requested information, then it disclosed some information in response to the request, stating that it did not hold any further information within the scope of the request.
2. The Commissioner is not satisfied that, on the balance of probabilities, the MOD does not hold further information within the scope of the request.
3. The Commissioner requires the MOD to take the following steps to ensure compliance with the legislation.
 - The MOD must carry out further searches and issue the complainant with a fresh response to their request with a detailed explanation of all searches including private platforms aimed at identifying all the information held within the scope of the request.
 - If the MOD locates further information within the scope of the request, that information should either be disclosed to the complainant or an adequate refusal notice should be provided.
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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 5 October 2022 the complainant requested information in the following terms:-
- 1) "Please provide a copy of all correspondence (sent and received) between:-
 - the Secretary of State
 - Ministers of State
 - the Permanent Secretary

and Jack Lopresti MP concerning defence procurement issues.

Please limit this request to electronic searches of department email accounts, except for the Secretary of State and Permanent Secretary, including any letters sent in electronic form.

For the current Secretary of State and Permanent Secretary, please also search any instant messaging accounts (departmental or private) and any private emails used for government business. Please confirm in your response in writing that you have completed these searches as required under ICO guidelines.

Please also list the titles of attachments to emails and messages within the scope of this request.

- 2) Please provide a record of all meetings and calls between ministers or the Permanent Secretary and Jack Lopresti concerning defence procurement issues.
- 3) Please provide
 - a list of these meetings, including topics.
 - A copy of the minutes recorded of these meetings.
 - A copy of briefings prepared ahead of these meetings for the Minister concerned.

-A list of the titles of any documents considered at these meetings.

I am happy to limit my request to electronically held records. Please provide information held from 1 January 2020 to date.”

6. The MOD responded to the complainant on 13 March 2023, stating that it was applying sections 36(2)(b)(i) and (ii) of FOIA as a basis for refusing to disclose the requested information.
7. The complainant requested an internal review on 15 March 2023. The MOD did not provide an internal review response until after the Commissioner had begun his investigation, however this was provided on 27 July 2023.
8. Following the Commissioner’s intervention, the MOD on 18 July 2023 decided that the public interest lay in disclosing two letters held by it which fell within the scope of the complainant’s request. It stated that it did not hold any further information within the scope of the request and disclosed the two letters together with a completed internal review response as stated above.

Reasons for decision

9. This reasoning covers whether the MOD has provided all the information it holds within the scope of the request.
10. The MOD’s position is that it has provided the complainant with all the information it holds within the scope of the request. The complainant considers that the MOD has not fully searched for information it holds within the scope of their request, as it has not provided an explanation as to whether it has searched private platforms.
11. During the course of his investigation the Commissioner provided the MOD with the opportunity to address whether private platforms had been searched and to provide details of the searches it had carried out to ensure that all information within scope of the request had been identified. However, the MOD stated that it did not have any recorded information on whether private platforms had been searched in detail.
12. In the absence of this information from the MOD, the Commissioner is not satisfied that, on the balance of probabilities, the MOD does not hold further information within the scope of the request.
13. The Commissioner’s guidance states that information may be held on behalf of a public authority in non-corporate communications channels. That information may be subject to FOIA if it relates to the public

authority's official business. Examples of non-corporate communications channels include private e-mail accounts and direct messaging apps.

14. The Commissioner requires the MOD to take the steps specified in paragraph 3 of this decision notice.

Other matters

15. The Commissioner also finds it necessary to record within this decision notice the time taken by the MOD to provide its internal review response. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice¹ established under section 45 of FOIA sets out, in general terms, the procedure that should be followed.
16. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances. In no case should the internal review exceed 40 working days.
17. The complainant asked for an internal review on 15 March 2023 and the internal review response was provided on 27 July 2023. This was outside of 40 working days.
18. The Commissioner considers that in failing to conduct an internal review within the timescales set out above, the MOD has not acted in accordance with the section 45 code. This is a matter that may be revisited should similar outcomes be noted by the Commissioner in any future cases relating to the MOD.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

Right of appeal

19. 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

20. 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.
21. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF