

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2021

Public Authority: Ministry of Defence
Address: 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 clearance process of two books written by a former MOD employee, Nick Pope, as well as information about Mr Pope's role at the MOD. The MOD responded by stating that it did not hold any information falling within the scope of his request. The MOD explained that it also considered this to be a repeated request and section 14(2) of FOIA applied.
2. The Commissioner is satisfied that on the balance of probabilities the MOD does not hold any information falling within the scope of the complainant's request. He is also satisfied that the request is a repeated one to which the MOD was entitled to apply section 14(2) of FOIA.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the MOD on 14 July 2020:

'With regards to the files concerning the clearing of Nick Pope's two books I would like to question why you are saying the papers have been destroyed when they exist in files released at The National Archives. As you still 'own' those files I wish to apply for the content to be re-reviewed for release, as they can't possibly breach Mr. Pope's

privacy so long after he left his MoD post. I have a full copy of this redacted file. The file has something like 30 pages completely blanked out with black ink. The unredacted pages must exist because you haven't destroyed the originals (they are held at Kew but in the closed files).

I would also like to ask once again why this former MoD employee, Nick Pope, is permitted to say that he ran the UK government's UFO project when he was employed there from 1991-1994 and that he is the MoD's 'UFO EXPERT'. Can you confirm or deny these two claims made by Mr. Pope please. A simple yes or no answer would be sufficient. I will ask them again:

*1: Did Nick Pope, at any time run the UK government's UFO Project?
2: Was Nick Pope, at any time, the MoD's UFO expert ?'*

5. The MOD responded on 7 August 2020 and explained that its records showed that he had submitted requests for the same, or similar, information on 27 January 2020 and 3 March 2020 which it had responded to. The MOD noted that these responses had explained that while Nick Pope's job description was no longer held, some information about his role was held by the department. However, such information was considered to be reasonably accessible to the complainant as this information had been published online and therefore was considered to be exempt from disclosure on the basis of section 21 (information reasonably accessible) of FOIA.¹ The MOD also noted its previous responses had explained that all UFO records prior to 2009 had been transferred to The National Archives (TNA) and were not held by it. The MOD therefore refused to answer the complainant's request of 7 July 2020 on the basis of section 14(2) of FOIA which allows public authorities to refuse to comply with repeated requests.
6. The complainant contacted the MOD on 6 September 2020 and asked it to conduct an internal review of this response.
7. The MOD informed him of the outcome of the review on 16 October 2020. With regard to the first part of the request, the MOD explained that it did not hold copies of files DEFE 24/1958 and DEFE 24/2091.²

¹ <https://publications.parliament.uk/pa/cm200506/cmhansrd/vo060418/text/60418154.htm>

² The MOD had contacted the complainant on 1 October 2020 and asked the complainant to confirm which particular files he was referring to in his request, of which he held redacted copies. He explained that the files were DEFE 24/19583 - UFO Policy (Originally D/Sec(AS) 12/1 PART A) and DEFE 24/20914 - UFO correspondence (Originally D/DAS 64/3/17 PART A).

Rather, these files had been transferred to TNA. The MOD also explained that it had conducted further searches to establish whether it held any additional information, not contained in these files, which related to the review of Mr Pope's books. The MOD explained that the administrative files that contained the reviews were destroyed in line with its records management policy. With regard to the second part of the complainant's request, the MOD noted that this was phrased in the form of a question and that under FOIA it was only obliged to provide any recorded information it held that may answer such a question or simply state that no information was held. The MOD concluded that section 21(1) had been incorrectly applied to this part of the request as the information available at the link provided did not in fact answer his questions. However, the MOD explained that it had not located any recorded information that would provide a response to the questions asked. Furthermore, the MOD concluded that it was entitled to refuse to comply with the request on 14 July 2020 on the basis of section 14(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 15 November 2020 in order to complain about the MOD's handling of his request. In his letter of complaint he explained that:

'I am very dissatisfied with the included review [ie the MOD's internal review] and I wish to make a complaint to the Information Commissioner.'

'It would seem to me that I can't get a simple straight forward answer from anyone when it comes to asking for clarification about the former MOD employee Nick Pope.'

'If you could look again at my request and my complaint I would be very grateful.'

9. In a further email to the Commissioner the complainant explained that:

'I am simply trying to obtain unredacted copies of some details regarding former MoD employee Nick Pope. So far I have just been given the runaround by the MoD. The documents I am looking for concern the clearance of Mr. Pope's two books 'Open Skies - Closed Minds' and 'The Uninvited'. I will attach the letters I have received so far from the MoD and in a further two emails copies of the redacted files.'

10. During the course of his investigation the Commissioner informed the complainant that his provisional view was that the MOD had complied

with its obligations under FOIA in relation to his request and asked him whether, in light of this view, he wanted to continue with his complaint.

11. In response the complainant explained that he did wish to continue with his complaint. In doing so he explained that:

'I would like the MoD to make an official statement making it quite clear that Mr Pope was not who he claims he was and not [nor] was he employed in the ways i have mentioned and that he be contacted directly by the MoD and tell his to cease and desist these false claims immediately.

In the meantime he claims that he is a public figure from an 'establishment' background therefore I see no reason why the files we wish to examine cannot be released to us and as a result I would like this complaint to continue please.'

12. For the avoidance of doubt, section 1(1) of FOIA only places an obligation on public authorities to provide recorded information that it holds falling within the scope of a request (subject to the application of certain exemptions and provisions with the legislation). FOIA does not place any obligation on public authorities to create information in order to answer a request or offer opinions or views in response to a request. Nor does FOIA place any obligations on public authorities to take the actions suggested by the complainant in the above quote, eg issuing public statements.
13. Taking into account the scope of FOIA, and the grounds of complaint raised by the complainant, in the Commissioner's view there are two matters which need to be considered in this decision notice:
- Firstly, does the MOD hold any information falling within the scope of the request submitted on 14 July 2020?
 - Secondly, although the MOD's internal review provided a response to the request (ie by confirming that no information was held), was the MOD also entitled to refuse the request on the basis of section 14(2) of FOIA?

Reasons for decision

Does the MOD hold any recorded information falling within the scope of the request submitted on 14 July 2020?

14. In scenarios such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. 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.
15. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered as to why the information is not held.
16. With regard to the first part of the request, this sought information about the review of Mr Pope's books undertaken by the MOD. The request referred to files on this subject which had been transferred to TNA.
17. The Commissioner is satisfied that the two files in question, DEFE 24/1958 and DEFE 24/2091, are no longer held by the MOD. This is because they have been transferred to TNA. In its response to the complainant the MOD stated that there is no legal requirement for the public authority that created the record to retain a copy of records transferred to TNA. This is the correct legal position in respect of transferred files and as result the Commissioner would not expect the MOD to still hold copies of such files. Furthermore, the Commissioner notes that in his request the complainant implied that TNA held these on behalf of the MOD (ie by stating that the MOD still 'owns' them). For the avoidance of doubt, once files have been transferred to TNA they are no longer held by the originating authority.
18. However, the Commissioner notes that as part of its response to the request the MOD had nevertheless undertaken searches of the Air Secretariat and the MOD Sensitive Archive and Records Transfer team in order to establish whether copies of these specific records were made and retained. These searches confirmed that no such copies were retained. The Commissioner accepts the outcome of this search because as noted above, once a record has been transferred to TNA there is no legal requirement for the public authority that created the record to retain a copy of it.
19. Therefore, the Commissioner is satisfied that the only copies of these files that exist are held by TNA not by the MOD. The MOD has therefore

complied with its obligations under section 1(1) of FOIA by stating that it does not hold this information. Furthermore, the Commissioner notes that the MOD was correct to advise the complainant that if he wanted to access to the unredacted copies of these files then he should submit a FOI request directly to TNA.

20. The Commissioner understands that the MOD has also carried out a further search for any information it might hold about the review of the books beyond that contained in the two files in question now at TNA. In the Commissioner's view the MOD has logically focused its search on the Air Historical Branch as this was the unit that carried out a review of the books. The MOD established that the administrative files that contained the reviews were destroyed on 25 April 2015 in line with its records management policy. Given that the MOD has a record of the destruction of the relevant administrative files, in the Commissioner's view this supports the position that it does not hold any recorded information falling within the scope of this part of the request.
21. In light of the above, the Commissioner is satisfied that on the balance of probabilities the MOD does not hold any information falling within the scope of the first part of the request.
22. With regard to the second part of the request, as the MOD noted in its correspondence with the complainant this was framed in the format of two questions, namely:

'1: Did Nick Pope, at any time run the UK government's UFO Project?
2: Was Nick Pope, at any time, the MoD's UFO expert?'
23. The MOD informed the complainant that in responding to a question under FOIA its obligations are limited to simply providing any recorded information it holds that may answer such a question or simply stating that no information was held. The Commissioner concurs with this approach.
24. In the internal review response of 16 October 2020 the MOD explained that it did not hold any recorded information which would answer these questions. However, it explained to the complainant that some information about the post that Mr Pope held, which was known within the department as the 'UFO desk' or 'UFO hotline' at the time of its closure, is recorded in the 2013 'UFO Highlights Guide' which has been published by TNA.
25. The Commissioner also notes that in responding to the request of 3 March 2020, the MOD had stated that it did not hold Mr Pope's job description. Furthermore, in its response of 7 April 2020 the MOD also explained that all of its records concerning UFOs up to 30 November 2009 had been transferred to TNA.

26. In the Commissioner's opinion it is very unlikely that the MOD would have retained an individual's job description from such a long period ago as there would be no business purpose to do so. Rather, in the Commissioner's view, any information the MOD had created regarding Mr Pope's role in relation to UFOs during the period he was undertaking it has either been destroyed or would have been transferred to TNA.
27. In light of the above, the Commissioner is satisfied that on the balance of probabilities the MOD does not hold any recorded information falling within the second part of the request.

Is the MOD entitled to refuse the request of 14 July 2020 on the basis of section 14(2) of FOIA?

28. Although the MOD did provide the complainant with a response to his request, ie by confirming that it did not hold any information falling within the scope of the first or second part, it also argued that it was entitled to refuse his request on the basis of section 14(2) of FOIA.
29. Under section 14(2) of FOIA public authorities do not have to comply with a request which is identical, or substantially similar to a previous request submitted by the same individual, unless a reasonable period has elapsed between those requests.
30. Public authorities may only apply section 14(2) if they have:
 - previously provided the same requester with the information in response to an earlier FOIA request; or
 - previously confirmed that they do not hold the information, in response to an earlier FOIA request from the same requester.
31. In the Commissioner's view a request is identical if both its scope and its wording precisely matches that of a previous request. A request can be considered to be substantially similar if:
 - the wording is different but the scope of the request is the same; or
 - the scope does not differ significantly from that of the previous request.
32. As explained above, the MOD considered the complainant's request of 14 July 2020 to be a repeat of the requests he had submitted to the MOD on 27 January and 3 March 2020.
33. The complainant's request of 27 January 2020 was as follows:

'The person in question is Mr. Nick Pope who used to work at Secretariat (Air Staff). Mr Pope claims that he used to run the British Government's UFO project. Here are his exact words from his web site:

"Nick Pope used to run the British Government's UFO project. From 1991 to 1994 he researched and investigated UFOs, alien abductions, crop circles and other strange phenomena, leading the media to call him the real Fox Mulder."

What I would like to ask is if this statement made by Mr. Pope is true. Did he in fact run the British Government's UFO project ? His claim is on his web site that you can view it here:

<http://www.nickpope.net/biography.htm>

If Mr. Pope did indeed run the British Government's UFO project then were his duties as outlined by him on his website and outlined above. Did he indeed run the British Government's UFO project and research and investigate UFOs, alien abductions, crop circles etc. If this is true would it be possible for you to outline some of the alien abduction cases that he investigated as an example of his work while running this UFO project. He claims that he conducted this work between 1991 and 1994. Alternatively, if there was no British Government UFO project then may I ask what Mr. Pope's duties were during his employment at the MoD from 1991 — 1994 while working at Secretariat (Air Staff). I do not of course wish to know anything that is covered by the official secrets act but a simple outline of his duties and job description would be appreciated.'

34. The MOD's response of 25 February 2020 explained that it 'holds some information in scope of your request. However, section 21 of the Act allows the public authority to withhold information reasonably accessible to the applicant by other means. It is an absolute exemption and is not subject to a test of public interest. Information regarding Nick Pope's former duties and job description within the MOD can be found at the following address:
<https://publications.parliament.uk/pa/cm200506/cmhansrd/vo060418/txt/60418154.htm>'

35. The response also explained that the MOD did not hold any UFO files from 1991-1994 as these had been released to TNA.

36. The request of 3 March 2020 was as follows:

'With the greatest of respect I am not interested in seeing questions that have been answered in the House of Commons. In reference to Mr. Nick Pope I would like to hear direct from the Ministry of Defence. Once again, i would like to ask you direct, did Nick Pope between 1991 and 1994 run the British Government's UFO Project as he openly states on his personal website. If the answer to this question is no then may I ask why the MoD does not ask Mr Pope to refrain from making such a claim and to remove such a statement from his website.

If Mr Pope did indeed investigate UFOs etc as outlined in my previous letter could you possibly supply me with details of some of the incidents he allegedly worked on. He claims to have investigated UFOs, alien abductions and crop circles on behalf of the MoD. Is this in fact true ? If it is then I see no reason why you cannot show me some of the cases he worked on.

I also previously asked for his job description from 1991 - 1994 which you have not supplied. I assume you keep such records. I would therefore like to ask again for this please ...

P.S Are there any records within the MoD relating to the clearing of Mr Pope's first UFO book 'OPEN SKIES - CLOSED MINDS' and his second book 'THE UNINVITED'. On the cover of his second book, for example, he calls himself 'The Governments UFO Expert'. I understand that as an employee of the MoD such publications would have to have gone through an official clearing and I am interested to learn about how Mr. Pope's books could be cleared by the MoD when what he says in them is totally at odds with Mod Policy on the UFO subject.'

37. The Commissioner notes that the MOD's response to the latter request, issued on 7 April 2020, stated:

'The Department also no longer holds Nick Pope's job description between 1991-1994, or records of the clearance of Nick Pope's first two books.'

38. And also:

'With regard to your request for details of the incidents that Nick Pope worked on, investigations of unidentified aerial phenomena reported to the Department prior to 2009 are no longer held by the MOD. Further to my response to your previous FOI, all UFO files the Department held up to 30 November 2009 were transferred to The National Archives (TNA) at Kew, Richmond, Surrey, TW9 4UD. TNA have an online catalogue that can be used to search for the files they hold, including those between 1991-1994.'

39. In the Commissioner's view the request of 14 July 2020 seeks the same or substantially similar information to the information sought by these two previous requests, namely details of Mr Pope's job description and information about the process for clearing his books. Furthermore, with regard to the criteria at paragraph 30, the Commissioner notes that in responding to the request of 3 March 2020 the MOD stated that it did not hold any information about Mr Pope's job description or any records of information about the clearance process regarding his two books.
40. The Commissioner is therefore satisfied that the MOD would be entitled to refuse the complainant's request of 14 July 2020 on the basis of

section 14(2) of FOIA because it has previously informed the complainant that it does not hold information falling within the scope of his request when responding to the previous request of 3 March 2020.

Right of appeal

41. 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

42. 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.
43. 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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