

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 June 2023

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested information regarding the dates of two Joint Warrior training exercises from the Ministry of Defence ("the MoD"). The MoD disclosed one date and said the other had not yet been determined.
2. The Commissioner's decision is that, on the balance of probabilities, the MoD does not hold the second date.
3. The Commissioner does not require steps as a result of this decision.

#### **Request and response**

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4. On 15 November 2022, the complainant wrote to the MoD and requested information in the following terms:  
  
"As the training exercise Joint Warrior can create additional traffic on the River Clyde, please provide the dates for both Joint Warrior 23-1, and 23-2, should it be your intention to run them."
5. The MoD responded on 5 December 2022. It stated that it was relying on section 24(1) (National security), section 26(1)(b) (Defence) and section 27(1)(a) (International relations) of FOIA to refuse the request.
6. Following an internal review, the MoD wrote to the complainant on 3 March 2023. It stated that it was revising its position. It said that it was now relying on section 22(1) (Information intended for future publication) to withhold the date of Joint Warrior 23-1. It said that the

date of Joint Warrior 23-2 had not yet been decided and therefore that it did not hold that information.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 28 March 2023 to complain about the way their request for information had been handled.
8. During this investigation, the MoD advised the Commissioner it no longer wished to rely on section 22 and it disclosed the date of Joint Warrior 23-1 to the complainant.
9. The Commissioner considers the scope of his investigation is to consider whether, at the time of the request, the MoD held information regarding the date of the Joint Warrior 23-2 exercise.

## **Reasons for decision**

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### **Section 1 FOIA – determining whether information is held**

10. Section 1 of FOIA says that a public authority is required to confirm or deny that it holds the requested information, and disclose relevant information that it holds, unless an exemption or exclusion applies. If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.
11. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, ie the balance of probabilities. 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.
12. The MoD explained to the Commissioner in its response to this investigation, that the Joint Warrior exercise 23-2 is wholly owned by Royal Navy Training and Exercise Planning staff ('JTEPS'). It confirmed that there was no requirement for it to make extensive searches for the information as JTEPS is lead branch for the MoD regarding the Joint Warrior exercises.
13. The MoD confirmed that if the information was held by the MoD, it would be JTEPS who not only held the information but would have assisted in generating the information, in concert with NATO and Allies. The MoD explained that JTEPS knew that it did not hold the information as the discussions it was involved in had not yet led to dates being agreed.

14. The MoD confirmed that no information was held, nor had it been deleted or destroyed. Its records management policy states that the retention period for information "relating to the provision of all aspects of internal operational training exercises is 7 years." Therefore, if it had, at one time, been held, it would still be held.
15. Having considered the MoD's submissions, the Commissioner's decision is that, on the balance probabilities, the MoD does not hold the requested information. The Commissioner does not require the MoD to take any further steps.

### **Other matters**

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16. The Commissioner would like to take this time to remind the MoD that while an internal review is not a requirement under FOIA, it is still considered good practice. Internal reviews should be completed within 20 working days, and must not exceed 40 working days. In this case, the MoD took over 40 working days to complete the internal review.

## Right of appeal

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17. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

18. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

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