

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2024

Public Authority: Ministry of Defence
Address: 6th Floor Main Building
Whitehall Horse
Guards Avenue
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant has requested manuals for specific vehicles from the Ministry of Defence ("MOD"). The MOD advised that it does not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the MOD does not hold the requested information.
3. The Commissioner does not require any steps as a result of this decision notice.

Request and response

4. On 5 June 2023, the complainant wrote to the MOD and requested information in the following terms:

"I am advised that this gun mount is a DISA 400, and was fitted on a number of vehicles. [photograph attached]."

I have members of my Bedford M type 4x4 group who are struggling to maintain their machine gun mounts.

Under the Freedom Of Information Act, please provide manuals to help maintain the mounts, including:

1005-Q-101-101
1005-Q-101-201
1005-Q-101-522
1005-Q-101-532
1005-Q-101-711
1005-Q-101-811

I am presuming that due to the item being a small, basic piece of equipment - then all of these documents will have a low page count. But if the total exceeds 700 pages, then please initially provide 711, 201, and 522."

5. The MOD responded on 22 June 2023. It stated that it does not hold the requested information.
6. Following an internal review the MOD wrote to the complainant on 23 November 2023. It stated that it upheld its original position; the requested information is not held.

Scope of the case

7. The complainant contacted the Commissioner on 25 September 2023, to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether, on the balance of probabilities, the MOD holds the requested information.

Reasons for decision

Section 1 of FOIA – general right of access

9. Section 1 of FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to them if it is not exempt information.

10. In cases where a dispute arises over whether recorded information is held by a public authority at the time of the request, the Commissioner - following the lead of a number of First-tier Tribunal decisions - applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is more likely than not that the public authority holds information relevant to the complainant's request.

Complainant's position

11. The complainant has explained that they do not consider that the MOD has completed sufficient searches for the requested information.
12. They explained that they are aware that there is a physical file archive and, often, files are located after they have been officially informed that the information is not held.
13. The complainant has provided the Commissioner with some emails between them and a member of staff at the MOD, which states that original documents have been found but that they need to be booked into the system. They also state that there has been an issue with several of the publications, which needed advice from commercial law and intellectual property rights experts and, as such, the documents cannot be provided.

MOD's position

14. The MOD has explained that it has considered where information of this nature and age would be held in the department. It detailed the areas in which searches were carried out; Defence Equipment and Support (DE&S), Army HQ, Army Historical Branch and the MOD's main archives.
15. The MOD also advised that during the initial handling stage of the request, searches were carried out within the Technical Documentation Online ("TDOL") tool and its archive. It explained that TDOL is the electronic database that holds 'Army Equipment Support Publications' (AESPs). This is the category of information that the manuals in question fall under.
16. The MOD advised that during the internal review stage, further searches were carried out within other areas of the department which may have either used the manuals or retained a copy within their archive storage. It advised that these searches were carried out within the MOD main archive database of retained hardcopy information and no information in relation to the request was located.
17. The MOD explained that upon communication with the Commissioner, additional searches were carried out. During these searches, a sponsor of the document was identified as the Combat Support Equipment

Integrated Project Team (CSE IPT), which existed and was disbanded prior to when DE&S existed (before April 2007). It says that it was further identified that the reference for the AESP was not updated to show it sitting under the Soldier Training Special Projects team (STSP), which is the closest current day version of CSE IPT. The MOD added that it is highly likely that any hard copies of the document will have been destroyed when the team left Andover on disbandment, and the Andover Technical Document library was destroyed.

18. The MOD added that it believes that the TDOL archive set up in approximately 2004/2005, would have only had a copy of the specific AESP in it, if someone took responsibility for uploading it at that point. It added that with no records at all in the TDOL or the archives, not even a cancellation notice, it would appear that this did not happen. Additionally, it advised that if no one took responsibility for uploading the document when TDOL was launched, it assumes that when the Andover Tech library was destroyed, no one would have taken responsibility for saving the document then.
19. The MOD has explained that searches were conducted within databases held against the reference numbers provided in the request, and with the use of relevant search terms, including 'weapon mount', 'gun mount' and 'Bedford truck'.
20. The MOD also advised that if the information were held, the manuals would be held in a PDF format, but it cannot discount that at some point the document may have been printed out in hardcopy format.
21. The MOD explained that the information was previously held by the Department, however, when an AESP is cancelled, instructions are sent out for all copies to be destroyed and replaced with the cancellation notice. If the policy has been followed through to conclusion, there should be no AESP that is subject to the cancellation notice held. It says that a central copy will have been preserved, however, as explained above, this copy is likely to have been destroyed.
22. The MOD explained that it does not hold any information on when it ceased to hold the information, but it believes it to be prior to April 2007.
23. The MOD also added that whilst retention schedules for maintenance instruction for Land Equipment are not specified, it could be assumed that they should be retained for 15 years, in line with either a Policy, Health and Safety or Command, Control and Operational records.
24. During the Commissioner's investigation, he asked the MOD about the physical archive that the complainant had referred to.

25. The MOD responded, advising that the hard copy archive isn't specific to AESPs. However, it was searched as well during the initial investigations.
26. The MOD also explained that the hard copy archive that was being referred to, has been searched for files related to the FOI request. It added that it found no search results when specifically looking for the AESP number and when looking for the term "weapon mount", no files turned up that were relevant to the request, either live or recorded as having been deleted.

Commissioner's findings

27. The Commissioner has considered the complainant's concerns and understands why they would consider the MOD holds information in relation to their request. However, FOIA only looks at information that is held by a public authority. There is no requirement for further information to be created to respond to a request for information. A public authority cannot provide information that it does not hold
28. The Commissioner has also considered the MOD's position and the searches carried out. It is his view, from the above explanations, that, on the balance of probabilities, the MOD does not hold the information that the complainant has requested. The Commissioner is therefore satisfied that the MOD has complied with the requirements of section 1 of FOIA.

Other matters

29. The Commissioner reminds the MOD that whilst an internal review is not a requirement under FOIA, it is best practice to carry out a review within 20 working days of receiving the request.

Right of appeal

30. 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

31. 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.
32. 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

Michael Lea
Group Manager
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Wycliffe House
Water Lane
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