

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2024

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 numbers and locations of jobs supported by the Skynet program. The MOD explained that it did not hold the requested information.
2. The Commissioner's decision is that the MOD does not hold the requested information and nor is such information held by the third party contractor on the MOD's behalf for the purposes of section 3(2)(b) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the MOD on 17 November 2023:

"In the following press release the Ministry of Defence announced 400 new jobs funded by the Skynet program. It also announced the potential location of those jobs. The jobs are said to be located in Bristol, Corsham and Plymouth.

<https://www.gov.uk/government/news/400-million-contract-to-operate-military-satellite-communications-system-supports-400-uk-jobs>

How many of the 400 posts have so far been recruited?

What is the breakdown by office location (including any not in the three locations listed)?"

5. The MOD responded on 30 November 2023 and explained that a search for information had been conducted within the MOD and no information in the scope of the request had been located. Under section 16 (advice and assistance) of FOIA the MOD suggested that:

"You may wish to direct your question to Babcock, the prime contractor for the SKYNET Service Delivery Wrap contract. They are responsible for recruiting their own personnel in order to assist with the fulfilment of their contractual obligations to MOD to manage and operate SKYNET for the next six years."

6. The complainant contacted the MOD on the same day and asked it to conduct an internal review of its handling of the request, challenging its position that the requested information was not held.
7. The MOD informed him of the outcome of the internal review on 25 April 2024. The review also concluded that the MOD did not hold any information falling within the scope of this request and by way of explanation stated that:

"In processing your request, I can confirm that the Skynet Delivery Team, the team who manage the contract placed on Babcock for the provision of the Skynet service, conducted thorough searches of their record holdings, and no information was located. They advised that the MOD is not involved in any way regarding the hiring of individuals to work for Babcock on the Skynet programme, or the number of jobs created to fulfil its contractual obligations. MOD's only involvement is to hold the company to these obligations. How Babcock chooses to meet the obligations of the contract is a matter entirely for them."

Scope of the case

8. The complainant contacted the Commissioner on 9 March 2024 to complain about the MOD's findings, later confirmed in its internal review, that it did not hold any information falling within the scope of his request.

Reasons for decision

Section 1 – right of access to information

Section 3 – information held on behalf of

9. In cases 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.
10. 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.
11. In applying this test the Commissioner will consider the results of the searches undertaken by the public authority and/or other explanations offered as to why the information is not held.
12. The Commissioner has also considered the provisions in section 3(2)(b) of FOIA which state that in circumstances where information is held by another person on behalf of the public authority, the information is considered to be held by the authority for the purposes of FOIA.

The complainant's position

13. The complainant argued that it is reasonable to expect the MOD to know where the jobs in question are taking place, particularly given the content of the press release quoted in the request. Furthermore, the complainant argued that given such claims it was not acceptable for the MOD to simply state that it was up to a private company, acting on its behalf, to account for the location of the jobs.

The MOD's position

14. As part of his investigation of this complaint the Commissioner asked the MOD a series of questions focused on determining whether it held any information in the scope of the request, and whether Babcock could, for the purposes of FOIA, be said to hold the information on its behalf. The Commissioner has reproduced these questions and summarised the MOD's answers below.
15. Questions: What searches have been carried out to check no information was held within the scope of the request and why would these searches have been likely to retrieve any relevant information?

Please describe thoroughly any searches of relevant paper/electronic records and include details of any staff consultations.

16. Response: The MOD considered where information of this nature would most likely be held in the department. As set out in the internal review the Skynet Delivery Team, the team who manage the contract placed on Babcock for the provision of a Skynet service, conducted thorough searches of their record holdings, and no information was located. The MOD explained that as the team managing the contract for the service, it was determined that their department would be the area which would definitively hold any information relevant to this request; albeit the same information might be held by others within MOD. Therefore, it was determined that further searches beyond the Skynet Delivery Team were not required.

17. Questions: Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?

If recorded information was held but is no longer held, when did the MOD cease to retain this information?

Does the MOD have a record of the document's destruction? What does the MOD's formal records management policy say about the retention and deletion of records of this type?

If there is no relevant policy, can the MOD describe the way in which it has handled comparable records of a similar age?

18. Response: The MOD confirmed that no information relevant to this request had been held by the department.

19. Question: Is there a business purpose for which the requested information should be held? If so what is this purpose?

20. Response: There is no business purpose for this information to be held by the MOD. MOD did not make it formal condition in its contracts for Babcock to hold or provide it with information on the jobs that will be supported as a consequence of our commitment.

21. The MOD also explained that in relation to the wording of the request it is important to recognise that the press release cited by the complainant only referenced "supporting" 400 jobs, not creating new jobs (MOD's emphasis) as the complainant stated. The MOD explained that the press release also stated that the "contract is expected to support around 400 UK jobs in Corsham, Bristol and Plymouth", that reflected MOD's understanding of where Babcock would likely undertake the contracted activity. The MOD explained that the press release used the word "expected" because it is Babcock's decision on the numbers needed to meet the delivery obligations within the contract and where the staff will work.

22. The MOD further explained that it is not normal practice for it to request details on job numbers or location on a Fixed Price contract won under competition. It also noted that the competitive tenderers do not need to provide the full detail of the make-up of their bid. Instead, they offer an outcome for a price, with MOD assessing the deliverability of the outcome against that price to determine the best value for money. The MOD explained that it is entirely up to the bidders how they wish to undertake the activity to achieve the stated outcome. The intention being to allow industry to fully self-decide and thus hold the risk for the delivery of the contract obligations.
23. In addition the MOD explained that the contract is for managed service provision, and therefore MOD does not need to know exactly what roles are fulfilled by whom and where. MOD holds Babcock to account for achieving service delivery targets and delivery milestones in order to meet defence outputs including support to operations, not on the 'how' they achieve that.
24. The MOD further explained that for it to hold the information sought by this request a specific obligation on the recording of job numbers and their locations would have needed to have been included within the initial specification at the start of the competition. This would also have been accepted by the bidders. As with all other contracts for this type of delivered service, the MOD did not ask for job forecasts or monitoring as part of this competition, nor in the subsequent contract.
25. In summary, the MOD explained that there is no obligation on Babcock to provide it with employee numbers and locations, nor to hold that information on behalf of MOD, and MOD has never requested it.

The Commissioner's position

26. Based on the MOD's submissions to him the Commissioner is satisfied that it does not physically hold the information sought by the request, ie the number of posts recruited so far and their locations. If such information was held by the MOD the Commissioner accepts the logic that it would be held by the Skynet Delivery Team and that they have conducted searches of their records and no relevant information is found. The Commissioner considers that this finding is supported by the MOD's explanations as to why it has no business need to hold such information.
27. Furthermore, given the nature of the contractual arrangements as described by the MOD the Commissioner is satisfied that Babcock do not, for the purposes of section 3(2)(b), hold this information on behalf of the MOD. In reaching this conclusion the Commissioner has noted that it is not normal for the MOD to require access to such information

on a contract such as this; the MOD does not need access to such information to hold Babcock to account for its performance of the contract; and no requirement for the monitoring and provision of such information to the MOD was included in the contract.

28. Although the Commissioner can understand why the complainant, having considered the press release, would have expected such information to be held by the MOD, for the reasons set out above the Commissioner is satisfied that the requested information is neither held by the MOD nor held by Babcock on behalf of the MOD.

Right of appeal

29. 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

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jonathan Slee
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