

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2024

Public Authority: Ministry of Defence (MOD)
Address: Whitehall
London
SW1A 2HB

Decision

1. The complainant submitted a request for information regarding a named employee's attendance at tribunals for the department. The MOD initially responded citing section 14(1) (vexatious) of FOIA to withhold the requested information. However, at internal review, it changed its reliance to section 12(1) (cost of compliance) of FOIA to refuse the request.
2. The Commissioner's decision is that the MOD is entitled to rely on section 12(1) (cost of compliance) of FOIA to refuse to provide the requested information.
3. No steps are required as a result of this decision.

Request and response

4. The complainant made the following information request to the MOD on 7 March 2024:

“I wish to know the following:

How many Tribunals has (name redacted) of the Veterans Agency has he attended as the Department Representative during his career?”

5. The MOD responded on 5 April 2024 citing section 14(1) of FOIA to refuse the request.
6. The complainant requested an internal review on 15 April 2024 setting out their arguments to support their request.
7. Despite a number of chasers for the internal review response by the complainant, the MOD failed to provide its internal review until after the Commissioner’s interventions on 4 and 21 October 2024.
8. The MOD provided its internal review on 24 October 2024 where it cited section 12(1) of FOIA to refuse the request and advised a refined request focusing on a specific timeframe could be considered but stated depending on the scope it may still exceed the appropriate limit.

Reasons for decision

9. This reasoning covers whether the MOD is entitled to rely on section 12(1) of FOIA to refuse to provide the requested information.
10. The MOD considered this request against the cost limits in the Act and determined that as the number of tribunals that (name redacted) was allocated was over 1,574 between August 2020 and July 2024, ascertaining how many were attended would be difficult and greatly exceed the section 12 cost limit.
11. The MOD states that the complainant’s request was wide ranging and due to the volume and mix of paper and electronic based records it had concluded the request would greatly exceed the cost limit of £600.
12. The Commissioner is aware that the MOD had initially cited section 14 of FOIA to refuse the request. However, during the internal review it sought clarification internally from the relevant department, and took the view the scope was not vexatious and therefore instigated searches for information in scope of the request.

13. The MOD confirmed that a preliminary search between the date range of August 2020 to July 2024 (which was when the department started to record allocations electronically) had resulted in 1,574 records being located and confirmed each record would need to be reviewed separately to establish its relevance to the request i.e. whether the employee attended that tribunal.
14. It concluded that in order to review the electronic records an estimated 15 minutes would be needed for cross-referencing and checking, this would result in over 393 hours. Even if given a reserved timescale of two minutes for each record to be scanned for relevance, this amounts to over 52 hours, which is a minimum estimate to do a preliminary search to establish information in scope. This did not include a search of any manual records prior to 2020.
15. The MOD had advised the complainant, were they to limit the scope of the request and specify a particular time period; it may be able to process a further request.
16. The Commissioner's decision is that the request exceeds the threshold for section 12 and therefore, the MOD is entitled to rely on section 12(1) of FOIA to refuse to comply with the request. The Commissioner is also satisfied that, having provided the complainant with suitable advice and assistance, it had complied with its section 16 obligations.
17. The Commissioner requires no further action to be taken by the MOD in relation to the request.

Other matters

18. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA.
19. Part VI of the section 45 Code of Practice states that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; and that this will only be required in complex and voluminous cases.

20. The Commissioner is concerned that on this occasion it took over six months for an internal review to be completed.
21. The Commissioner will use intelligence gathered from individual cases to inform his insight and compliance activity to improve standards of accountability, openness, and transparency.

Right of appeal

22. 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

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Joanna Marshall
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Wilmslow
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