

**FREEDOM OF INFORMATION ACT 2000 (SECTION 52)
ENFORCEMENT POWERS OF THE INFORMATION COMMISSIONER
ENFORCEMENT NOTICE**

DATED: 20 May 2026

To: Ministry of Defence

**Of: Whitehall
London
SW1A 2HB**

1. The Ministry of Defence (MOD) is a “public authority” listed in Schedule 1 and defined by section 3(1)(a)(i) of the Freedom of Information Act 2000 (“**FOIA**”). FOIA provides public access to information held by public authorities.
2. The MOD’s obligations as a public authority under FOIA include –
 - a. Being obliged to publish certain information about its activities;
 - b. Responding to requests for information from members of the public.
3. The Information Commissioner (the “**Commissioner**”) hereby issues the MOD with an Enforcement Notice (the “**Notice**”) under section 52 FOIA. The Notice is in relation to the MOD’s:
 - a. Continuing non-compliance with section 1(1) FOIA;
 - b. Continuing breach of section 10(1) FOIA.

4. This Notice explains the Commissioner's decision to take enforcement action. The specific steps that the MOD is required to take are set out in **Annex 1**.
5. The Commissioner expects the MOD to ensure that it continues to meet its obligations to comply with subject access requests under the UK GDPR whilst actioning the steps in **Annex 1**.

Terms of this Notice

6. The Commissioner exercises his powers under section 52 of FOIA to serve an Enforcement Notice requiring the MOD to take specified steps to comply with FOIA. The specified steps are set out in **Annex 1** of this Notice.
7. The consequence of failing to comply with an Enforcement Notice is that the Commissioner may make written certification of this fact to the High Court pursuant to section 54 of FOIA. Upon consideration and inquiry by the High Court, the MOD may be dealt with as if it had committed a contempt of court.

Legal Framework for this Notice

8. A person requesting information from a public authority has a right, subject to exemptions, to be informed by the public authority in writing whether it holds the information, and to have that communicated to them, if the public authority holds it. This is set out in section 1(1) FOIA–

"(1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it

*holds information of the description specified in the request,
and*

*(b) if that is the case, to have that information communicated to
him."*

9. Section 10(1) FOIA specifies that public authorities must respond to requests within 20 working days:

"... a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following receipt."

10. There is provision under FOIA for a public authority to claim a reasonable extension to this limit in certain circumstances but in all cases, the public authority must give the requestor a written response within the standard time limit for compliance.

11. The Commissioner has various powers under FOIA. One of these is the issuing of an Enforcement Notice. Section 52(1) of FOIA states –

"If the Commissioner is satisfied that a public authority has failed to comply with any of the requirements of Part I, the Commissioner may serve the authority with a notice (in this Act referred to as an "enforcement notice") requiring the authority to take within such time as may be specified in the notice, such steps as may be so specified for complying with those requirements."

12. Section 52 FOIA has effect subject to section 53 FOIA, which provides details of the exceptions from the duty to comply with a decision notice or Enforcement Notice.

Background

13. The Commissioner has been liaising with the MOD about its FOI performance for a number of years. As a result of this engagement the Commissioner has taken previous formal proactive regulatory action.
14. Firstly, in June 2023 the Commissioner issued the MOD with an Enforcement Notice which required it to ensure that a defined set of outstanding requests - which were already the subject of an action plan by the MOD - were closed by 30 November 2023.¹ The Commissioner considered that the Enforcement Notice was an essential step to act as a backstop to ensure that the requests subject to the plan were closed given the extended time the MOD had already taken to address these requests.
15. Secondly, the Commissioner issued the MOD with a Practice Recommendation (PR) in October 2024.² The PR highlighted that the MOD had a consistently poor level of performance in terms of the age profile of overdue requests which had led to the Enforcement Notice being issued in June 2023. Whilst the Enforcement Notice was complied with, performance since then in this area had not significantly improved. The PR also highlighted that there was a consistent pattern of internal reviews being delayed. In the PR the Commissioner acknowledged the actions and commitment of the MOD's Information Rights Team (IRT) in meeting the department's FOI obligations. However, the PR explained that in the Commissioner's view what appeared to be preventing the MOD from improving and maintaining its performance in respect of the age profile of overdue requests was a lack of resource.

¹ <https://ico.org.uk/media2/migrated/4026119/mod-enforcement-notice.pdf>

² <https://ico.org.uk/media2/cyij2k4y/ministry-of-defence-practice-recommendation.pdf>

16. The PR therefore included the following recommendations:

"...the MOD should ensure that it has adequate levels of resource for those within its business areas responsible for answering FOI requests – and its central IRT - to ensure that FOI requests are processed in a timely manner. This is to ensure that it is able to improve and maintain its performance in respect of the age profile of overdue requests, but not at the expense of ensuring that 90% of new requests are answered 'in time'."

"The MOD should also consider how it can further ensure, beyond the steps already taken, that staff within its various business areas responsible for request handling are also aware of the importance of processing requests in a timely manner."

"...it is the responsibility of the MOD as an organisation to ensure that sufficient resources are in place to ensure that this [completing internal reviews in the timeframe recommended in the section 45 Code of Practice] is achievable. As the internal reviews are carried out by the IRT this means that this team should be adequately resourced to undertake this work.

Albeit that the Commissioner accepts that the IRT is dependent upon the input of officials from across the department as the information holders to ensure reviews can be completed. The MOD should therefore consider how it can further ensure, beyond the steps already taken, that staff within its various business areas responsible are also aware of the importance of internal reviews being completed in a timely manner, and adequately resourced to allow them to do so."

17. The PR also highlighted that:

"...whilst the option is open to him [the Commissioner] at any point

in time to issue an EN [Enforcement Notice] requiring the MOD to complete all existing overdue requests over a certain date, he does not wish to start a cycle where, following the previous EN, such formal action becomes a necessary – and repeated – step.

Rather, the Commissioner's intention by issuing this Practice Recommendation to the MOD is that it draws attention to the fundamental issues – primarily resourcing – which he considers are significantly contributing to the poor performance in terms of the age profile of old requests and internal review delays. Furthermore, the Commissioner expects the MOD to build upon the work already taken by its IRT in addressing these points."

18. In response to the PR the MOD provided the Commissioner with an action plan in January 2025 designed to address the concerns highlighted. In respect of resourcing, the MOD explained that it was under pressure to reduce expenditure and as a result there were significant constraints imposed on recruitment of staff. However, the MOD explained that the Second Permanent Secretary had directed senior leaders within the department to ensure that FOI is sufficiently resourced and prioritised within their respective areas. The MOD explained that it had supplemented the compliance team by one post. The action plan also set out a range of further changes, which built upon previous initiatives, through which it expected the volume and age profile of requests could be significantly reduced and subsequently maintained.

19. The MOD continued to send the Commissioner updates on its FOI performance over the following months. Having reviewed these figures the Commissioner wrote to the MOD on 17 September 2025 and acknowledged the actions taken by it in response to the PR, including those in relation to resourcing. However, the Commissioner explained

that he was concerned that the monthly returns provided to him for 2025 so far (i.e. up to June) demonstrated that the number and age profile of overdue requests remained significant and indeed had increased since the point at which the PR was issued (see the table in **Annex 2**).

20. The Commissioner acknowledged that this performance was against a backdrop of increasing request volumes and that despite this, the overall percentage of requests completed 'in time' had only dropped marginally over the last year. He also acknowledged the points made in the MOD's response of January 2025 to the PR in relation to the funding challenges the MOD faces and, in turn, the impact this has on resourcing. However, the Commissioner explained that the rising high level and age profile of overdue requests – which had been a feature of the MOD's previous performance - could not, in line with the approach of his FOI and Transparency Regulatory Manual, be overlooked.³ In particular, the Commissioner noted that the latest data could merit him issuing another Enforcement Notice at that stage with a step requiring the MOD to answer all overdue requests.

21. However, the Commissioner explained that he was prepared to provide the MOD until the end of 2025 to address this aspect of its FOI performance and if the figures for December 2025 did not show a significant improvement in both the volume and age profile of overdue requests, he would issue an Enforcement Notice.

22. The MOD provided the Commissioner with updated statistics in relation to its recent performance in early 2026. These are set in **Annex 3**. In providing these returns, and to set them into context, the MOD highlighted a number of points:

³ <https://ico.org.uk/media2/eifogh1c/foi-and-transparency-regulatory-manual-v30.pdf>

23. Since the Commissioner's letter of 17 September 2025 it had made significant progress in addressing the oldest requests: on that date it had 179 outstanding overdue requests and of those, by 12 January 2026, only 22 remained outstanding. However, such progress had meant that the age of some of the newer requests had increased.

24. The MOD emphasised that its FOI performance was impacted by a number of underlying factors and sustained operational pressures:

- **Resourcing constraints:** Like many areas across the department, the FOI function is operating with reduced staffing levels, which has had a significant impact on its capacity to process requests and complaints at pace while also managing an increasing volume of complex cases.
- **Significant increase in parliamentary business:** The past several months has seen a marked rise in Parliamentary Questions (PQs) and related briefing demands. These tasks require rapid input from the same subject-matter experts and policy teams who support FOI handling, creating unavoidable competing pressures on the system.
- **Competing Defence priorities:** Ongoing operational commitments and higher-priority tasking across the department continue to demand considerable attention from the business areas the IRT rely on for input across the department's FOI obligations. This has contributed to delays, particularly in cases requiring specialist review or sensitive material handling.

25. The MOD explained to the Commissioner that despite these challenges it remained committed to improving FOI timeliness and quality. As part

of this it stated that it continued to strengthen FOI processes, including refinements to workflows, enhanced triage activity, and targeted resourcing interventions where feasible. It explained that it was also maintaining close engagement with business areas to support case progression and reduce the age profile of outstanding requests.

The Contravention and Reasons for this Notice

26. FOIA requires a public authority to inform people whether it holds information they have requested and to communicate it to them within 20 working days of receipt of their request, unless a public authority extends the period time to consider to the balance of the public interest under section 17(3) of FOIA.

27. As is clear from the MOD's recent figures (see **Annex 3**) a consistent aspect of its FOI performance is a recurring volume of overdue requests, the age profile of which often extends to requests over 9 months old and sometimes extends to requests over 12 months old. (Albeit the Commissioner recognises that for the latest figures included in annex 3, i.e. February 2026, no requests fell into either of these categories.) As is also evident from the Commissioner's previous Enforcement Notice in June 2023 and the PR in October 2024, such a pattern of performance is one that has been recurring for a considerable period of time. In essence, carrying a notable volume of old requests up to – and sometimes beyond 12 months in age – is a feature which is essentially baked into the MOD's handling of FOI requests.

28. The Commissioner does not consider it to be acceptable for this to effectively be a permanent feature of a public authority's FOI performance.

29. The Commissioner also notes that the MOD has not achieved the minimum standard of adequacy as set out in his toolkit of a minimum of 90% of requests being responded to within 20 working days.⁴ The Commissioner considers that the volume of outstanding requests is also impacting on the MOD's timeliness compliance figures.
30. The Commissioner recognises, as he has done in the previous Enforcement Notice and PR, the professionalism and commitment of the MOD's IRT. Throughout the Commissioner's liaison with the MOD, that team's engagement has been positive and they have driven previous FOI performance improvements via a range of different initiatives and process refinements. However, the Commissioner reiterates a point he made in the PR: it is the responsibility of the MOD as an organisation as a whole to ensure that sufficient resources are in place to ensure its FOIA obligations are met. Moreover, the Commissioner highlights that FOIA is a statutory duty with timeframes set by parliament and it is the responsibility of the MOD as a body subject to the legislation to ensure compliance with it.
31. In terms of mitigating factors in respect of the MOD's performance, the Commissioner appreciates the resource pressures that it faces. He also acknowledges that increased volumes of PQs place further demands on staff who are involved in handling FOI requests, alongside rising FOI volumes. The Commissioner also recognises the complexity of the MOD as an organisation and the increased pressures – given external events and factors relating to defence – that it faces.
32. The Commissioner does not seek to dismiss the operational challenges such factors place on the MOD's FOI performance, albeit he notes that resource pressures and rising request volumes are common challenges faced by other government departments.

⁴ <https://ico.org.uk/for-organisations/foi/foi-self-assessment-toolkit/topic-1-timeliness/response-rates/>

33. Taking the above into account the Commissioner considers it a proportionate regulatory step to issue this Notice requiring the MOD to ensure that any requests which are currently overdue, at the date of this Notice, are responded to within six months.
34. Such a step is similar to that required in previous Enforcement Notices issued by the Commissioner, including the one issued to the MOD in June 2023, and is designed to tackle outstanding requests that the MOD currently has at the date of this notice.
35. However in order to address the MOD's recurring performance of notable volumes and old age profile of overdue requests, the Commissioner also requires it to ensure that by 31 March 2027 and at the end of the two subsequent quarters (30 June 2027 and 30 September 2027) it should ensure that it has achieved an average "in time" compliance rate for new requests of 90%.⁵ Furthermore, at the end of each of these quarters, the MOD should also ensure that it has no requests over three months old (not including requests subject to a valid public interest extension under section 17(3) for complexity).
36. When the MOD provides the Commissioner with its quarterly return for each of these periods he requires it to also provide him with a list of any requests that are over three months old, including those subject to a public interest extension, along with a summary of the reasons for each. This is to ensure the Commissioner can actively monitor that a backlog does not develop of requests and consider whether the MOD's reasons for extending the time for public interest considerations under section 17(3) on any requests over three months old are valid.

⁵ Requests considered to be "in time" are those a) closed within 20 working days of receipt and b) requests closed with a permitted extension under section 17(3).

Right of Appeal

37. By virtue of section 57 of FOIA there is a right of appeal against this Notice to the First-tier Tribunal (Information Rights). If an appeal is brought against this Notice, it need not be complied with pending determination or withdrawal of that appeal.

38. Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963

Email: GRC@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Enforcement Notice is sent.

**Warren Seddon
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Annex 1

TERMS OF THE ENFORCEMENT NOTICE

THIS NOTICE REQUIRES THE MOD TO TAKE THE FOLLOWING STEPS BY THE DATES SPECIFIED BELOW:

BY 20 NOVEMBER 2026 THE MOD WILL ENSURE THAT:

- (i) In respect of each information request where the response is outside of 20 working days as at the date of this notice, comply with section 1(1)(a) of FOIA and, if information of the description specified in the request is held, either communicate it pursuant to section 1(1)(b) FOIA; or issue a valid refusal notice under section 17 FOIA, unless section 17(6) FOIA applies.

BY 31 March 2027 THE MOD WILL ENSURE THAT:

- (ii) It has achieved an average "in time" compliance rate for requests of 90% for the three month period 1 January 2027 to 31 March 2027.
- (iii) Have no open requests over three months old (not including requests subject to a valid public interest extension under section 17(3) for complexity).

BY 30 JUNE 2027 THE MOD WILL ENSURE THAT:

- (iv) It has achieved an average “in time” compliance rate for requests of 90% for the three month period 1 April 2027 to 30 June 2027.
- (v) Have no open requests over three months old (not including requests subject to a valid public interest extension under section 17(3) for complexity).

BY 30 SEPTEMBER 2027 THE MOD WILL ENSURE THAT:

- (vi) It has achieved an average “in time” compliance rate for requests of 90% for the three month period 1 July 2027 to 30 September 2027.
- (vii) Have no open requests over three months old (not including requests subject to a valid public interest extension under section 17(3) for complexity).

Annex 2

	June 2024⁶	June 2025
Number of requests overdue	103	180
Total of overdue requests over one month old	88	180
Total of overdue requests over two months old	N/A ⁷	120
Total of overdue requests over three months old	30	81
Total of overdue requests over six months old	7	25
Total of overdue requests over nine months old	1	4
Total of overdue requests over 1 year old	0	1

⁶ The PR of October 2024 quoted the figures from June 2024, hence their use in this comparison table.

⁷ At that stage the statistics provided to the Commissioner did not include figures under this particular heading.

Annex 3**Overdue requests:**

Data collected	April 2025	May 2025	June 2025	July 2025	Aug 2025	Sep 2025	Oct 2025	Nov 2025	Dec 2025	Jan 2026	Feb 2026
Number of requests which are overdue	157	181	180	174	179	168	138	162	166	176	167
Total of overdue requests over one month old	157	181	180	174	179	168	138	162	166	176	167
Total of overdue requests over two months old	106	123	120	112	136	119	88	95	107	114	102
Total of overdue requests over three months old	62	75	81	77	83	77	57	48	62	78	66
Total of overdue requests over six months old	15	19	25	29	31	24	14	6	12	16	16

Reference: ENF0988398

Total of overdue requests over nine months old	3	2	4	8	7	3	6	3	3	3	0
Total of overdue requests over one year old	1	1	1	1	0	0	0	0	0	3	0

Requests received and closed:

Data collected	April 2025	May 2025	June 2025	July 2025	Aug 2025	Sep 2025	Oct 2025	Nov 2025	Dec 2025	Jan 2026	Feb 2026
Total requests received	475	460	507	557	556	501	475	447	369	440	438
Number of open requests	95	88	89	99	73	79	67	80	90	78	66
Number of requests dealt with in the month	380	372	416	458	483	422	408	367	279	362	372
Number of requests dealt with	394	350	409	459	462	400	390	371	276	321	377

within statutory deadline (i.e. 20 working days)											
Percentage completed 'in time'	82.95%	76.09%	80.67%	82.41%	83.09%	79.84%	82.11%	83.00%	74.80%	81.14%	86.07%

Internal reviews received and closed⁸:

Data collected	April 2025	May 2025	June 2025	July 2025	Aug 2025	Sep 2025	Oct 2025	Nov 2025	Dec 2025	Jan 2026	Feb 2026
Total internal reviews received	21	14	22	14	25	29	31	28	24	23	12
Total internal reviews closed	13	6	8	16	14	14	15	9	11	3	10
Total internal reviews closed within code	9	3	5	8	5	9	10	7	2	1	3

⁸ Although the action required by this Enforcement Notice does not cover internal review performance, the Commissioner has included these statistics for context given that this was an issue covered by the earlier PR.

of practice and statutory timescales ⁹											
Total internal reviews closed outside code of practice and statutory timescales	4	3	3	8	9	5	5	2	9	2	7

⁹ The statutory timescales refer to the Environmental Information Regulations (EIR) which require internal reviews to be completed within 40 working days. FOIA does not contain an equivalent statutory timescale but the section 45 Code of Practice explains that reviews should normally be completed within 20 working days and even in complex cases it is best practice for reviews to take no longer than 40 working days in total.