

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 March 2025

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 health and safety assurance checks undertaken at RAF cadet squadrons. The MOD explained that it could not confirm or deny, within the appropriate cost limit, whether it held any information falling within the scope of the request and it therefore relied on section 12(2) (cost limit) of FOIA to refuse the request.
2. The Commissioner's decision is that the MOD is entitled to rely on section 12(2) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the MOD on 23 July 2024:

"Overview

RAFAC Regulations require a "Health and Safety Assurance check" to be undertaken for each Sqn in the Corps on an annual basis and requires the completion of a reporting form that details areas of compliance or non compliance. This form should be provided to the Sqn after each check for action.

These checks are to be conducted by a person who is not a member of the Sqn staff and are in addition to the routine H&S checks that are conducted by Sqn staff on a weekly or monthly basis.

Request for Information For each Sqn in London and South East Region, please provide

1. All dates that these "Health and Safety Annual Assurance check"s were undertaken between Nov 2014 and Dec 2021,
2. For each date, whether any non compliance reported was considered minor or serious (or whichever terms are used to categorise the non compliances)

Each Wing should maintain a record of these Assurance Checks that will make the the information I have requested easy to obtain."

5. The MOD responded on 19 August 2024 and confirmed that it held some information falling within the scope of the request but this could not be provided within the cost limit and therefore the request was being refused on the basis of section 12(1) of FOIA. The MOD also explained that in the circumstances of this case it was unable to offer any advice and assistance to allow a refined request to be submitted. However, the MOD explained that this was because complying with the request would require it to access and review records across 150 individual squadrons and potentially cross referencing these with individual Reserve Forces and Cadets' Associations.
6. The complainant contacted the MOD on 19 August 2024 and asked it to conduct an internal review. He challenged the application of section 12(1) on two grounds. Firstly, he argued that contacting all the squadrons in question would not exceed the cost limit. Secondly, he argued that in any event, for the reasons set out in his correspondence, it would not be necessary to contact all of the squadrons. Rather, the requested information would be available in the Wing HQ and/or Region records.
7. The MOD informed him of outcome of the internal review on 28 February 2025. The MOD explained that it was now of the view that it could not, within the cost limit, establish whether it held any information falling within the scope of the request. It explained that it was therefore relying on section 12(2) of FOIA to refuse to confirm or deny whether it held information falling within the scope of request. The internal review addressed the complainant's point that the information would be available in the Wing HQ and/or Region records, and explained why in its view, this method would not provide a basis to fulfil the request. With regard to section 16 (advice and assistance) of FOIA and whether it was possible to refine the request the MOD advised that it had:

"considered whether the Department can provide you with any meaningful suggestions for refinement to bring your request within the cost limit. You could refine your request to one Squadron for any H&S assurance report records held on the electronic system. Although I understand this will not meet the full scope of your request."

Scope of the case

8. The complainant contacted the Commissioner on 24 October 2024 in order to complain about the MOD's handling of his request. He was dissatisfied with its failure – at that stage – to complete the internal review. Furthermore, he explained that for the reasons set out in his request for an internal review he was of the view the MOD could comply with this request within the cost limit.

Reasons for decision

9. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations').
10. Section 12(2) further provides that a public authority is not obliged to confirm or deny whether requested information is held if it estimates that to do so would incur costs in excess of the appropriate limit.
11. The appropriate limit as set in the Fees Regulations for central government departments such as the MOD is £600. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, effectively imposing a time limit of 24 hours for the MOD to deal with this request.
12. Where section 12(2) is relied upon, regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following activity:
 - determining whether the information is held.
13. Section 12(2) requires a public authority to estimate the cost of confirmation or denial, rather than to formulate an exact calculation. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004,

the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”.

14. If section 12(2) of FOIA applies, there is no need to consider the public interest in the disclosure of the information.

The complainant's position

15. As noted above, the complainant argued that contacting the individual squadrons would not exceed the cost limit. He suggested that if an email was sent to each of them requesting the data, then it would simply be a matter of collating the information.
16. In any event, the complainant argued that it would not be necessary to contact each squadron in order to fulfil this request. He noted that the MOD's own regulations stipulate that firstly, on an annual basis each squadron is to be subject to a Wing Staff Officer HS&EP assurance check who will complete a standardised checklist (HSEP 010). Following this, the checklist is to be copied to Sqn OC, Wing HQ and Region Safety Advisor. Secondly, the complainant noted that on a three yearly basis the Regional Safety Advisor will conduct an in depth assurance check on all of the squadrons, again with a standardised checklist being used, with this also being copied to Sqn OC, Wing HQ, Regional Commandant and Safety Centre.
17. Therefore, the complainant argued that as the records of the Wing and Regional assurance check reports are copied to both the Wing HQ and Region Safety Advisor or Regional Commandant, the Wing and Region assurance checks are therefore available just through the Wing HQ and/or Region records, and that these could be used to fulfil the request. He noted that there are full time staff employed at Wing HQ and Region level to manage and provide these records.
18. Furthermore, the complainant argued that there was a public interest in the information being provided.

The MOD's position

19. With regard to the complainant's suggestion that the information relevant to his request would be held centrally, and therefore, it would not be necessary to review the records of each squadron, the MOD's internal review explained that:

“In your appeal you have stated that each Wing should retain a copy of the HSEP10 forms. However, although the policy states that the forms should be held at Wing Headquarters this is not the case with the LaSER [London and South East] Air Training Corps Region. This particular Air Cadet Region operates in functional pillars therefore any

HSEP10 forms completed by the volunteer Wing Staff Officers are retained at the local Squadron.

The completed H&S assurance check forms are no longer sent to the Wing Headquarters. Whilst this is the case, I have been advised by the SME that searches have been conducted within the offices of the Wing and that no records relevant to your request are held in a central depository."

20. The MOD confirmed to the Commissioner that as per the above the only way to fulfil this request would be for a search to be undertaken of the records held by each of the 154 squadrons (ie four more in total than the figure cited in the internal review response) falling within the scope of the request.
21. The MOD also explained that since 2018 there has been an electronic system in place regarding records relevant to this request, and the HS&EP documentation retention policy, which was updated in July 2024, states that the forms should be retained in accordance with the policy as follows, "Although there is no specific legal requirement to retain certain records, they should be retained for as long as they are needed in order to meet legal and statutory obligations." It explained that it was possible that some squadrons may have retained their records beyond any retention period.
22. Therefore in order to fulfil the request the MOD explained that it would need to conduct a search of the 154 squadron units to manually review hard copy records (if retained) from 2014 to 2018. This effort would be to determine which, if any, records are held and extract the dates of each report and identify whether any non-compliance was reported. The MOD explained that, as stated in the refusal notice, even if documents are held between the dates of the request, the reports themselves vary significantly in the level of detail and categorisation of any potential non-compliance issues captured.
23. In addition, electronic searches of every squadron's files for 2018-2021 (3 years' worth) would be required.
24. In terms of the estimated cost of this work for information covering the period of the request, the internal review explained that:

"A rough calculation of the staff effort involved in locating, retrieving, and extracting any information (if held) and checking to determine if it meets the description of your request, even using a very conservative estimate of 3 hours per squadron equates to 462 hours. This represents a cost of over £11,500 which far exceeds the central government cost limit of £600."

25. The MOD explained that section 12(2) has been applied because from initial work, no recorded information in scope of the request had been located and as such the cost to determine whether any of the information in scope of the request is held would exceed the limit.
26. In submissions to the Commissioner, the MOD also explained that it had consulted Wing Headquarters if any electronic records were held which may have partially met the request. However, Wing Headquarters had advised that following a search of the LaSER Squadrons SharePoint folder structure no electronic forms in scope of the request are held for the periods in question.

The Commissioner's position

27. Based on the MOD's internal review response and clarification provided during the course of his investigation as to where records relevant to this request are held, the Commissioner is satisfied that it would be necessary for the records of each of the 154 squadrons in the region in question to be searched in order to locate any relevant information. That is to say, the Commissioner accepts that there is no central repository of relevant records that could be used to fulfil the request, even in part.
28. With regard to the process of searching these records, the Commissioner acknowledges that given the passage of time some records sought by the time period may no longer be held. He also notes that they are likely to vary significantly in terms of the level of detail and categorisation of any potential non-compliance issues captured on records that may be held.
29. Moreover, the Commissioner accepts that given the ways in which records held by each squadron are held, and as noted the variable ways in which the requested information is likely to be recorded, he accepts that an estimate of 3 hours to search the paper and electronic records of each squadron is not unreasonable. In reaching this finding the Commissioner is conscious that the period of the time period of the request is broad, namely seven years. He also notes that once the records of each squadron had been searched then it would then be necessary to collate the information from each squadron prior to its disclosure, and that process would also contribute to the three hour estimate. Given that there are 154 squadrons falling within the scope of the request, the Commissioner accepts that complying with the request would vastly exceed the cost limit of £600.
30. The Commissioner notes that even if the estimate of 3 hours per squadron was reduced considerably to, say 30 minutes – albeit for the reasons noted above he does not see any basis for doing so – the time

required to process this request would still significantly exceed the cost limit (30 minutes x 154 squadrons equals 77 hours).

31. Furthermore, the Commissioner is conscious that based on initial searches that have been undertaken, no information has been located. The MOD is not therefore in a position to confirm that information is held, and would need to undertake the searches set out above to determine if this was the case. The Commissioner is therefore satisfied that the MOD can rely on section 12(2) to refuse to confirm or deny whether it holds any information falling within the scope of the request.
32. In any event, even if the MOD had as part of these initial searches located some information falling within the scope of the request, the Commissioner is satisfied that for the reasons set out above, it would clearly exceed the cost limit to locate all information which is potentially held and therefore 12(1) of FOIA would apply.

Other matters

33. Although it does not form part of the decision notice the Commissioner has considered the complainant's dissatisfaction with the internal review.
34. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice recommends that such reviews should be completed within a reasonable timeframe.¹
35. The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated requests, reviews should be completed within a total of 40 working days, unless there are legitimate reasons why a longer extension is necessary.²
36. The complainant was dissatisfied that the MOD took 136 working days to complete the internal review.
37. The Commissioner has issued a Practice Recommendation to the MOD regarding its FOI performance, including its delays in completing internal reviews in October 2024. In response to this Practice Recommendation

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

² <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

the MOD has taken steps to address delays in the internal review process and the Commissioner will continue to monitor its performance in this regard.³

³ <https://ico.org.uk/media/action-weve-taken/practice-recommendations/4031462/practice-recommendation-fpr0987683.pdf>

Right of appeal

38. 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

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

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