

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 November 2022

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 five files concerning information about blinding laser weapons. The MOD refused to comply with the request on the basis of section 14(1) (vexatious) of FOIA given the burden in processing it.
2. The Commissioner's decision is that the MOD is entitled to refuse to comply with the request on the basis of section 14(1) of FOIA. However, the MOD breached section 10(1) by failing to provide the complainant with a response to his request within 20 working days.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the MOD on 2 July 2021:

'I am conducting research on the 1995 Protocol on Blinding Lasers, with a specific focus on debates about whether the harm inflicted by these weapons caused unnecessary suffering and/or superfluous injuries.'

There are several files held by the MOD that might contain information that is pertinent to this project. I am writing to request access to the following:

- 1. Proceedings of the first symposium on laser sensor damage weapons (reference DEFE 72/580 or D/SDSIP/7/7/14 VOLUME 2). I would also like access to Volume 1 and any other volumes.*
 - 2. Vulnerability of UK aircraft to Soviet laser weapons: an executive summary (reference AVIA 6/26351)*
 - 3. A preliminary assessment of the vulnerability of helicopter aircrew to laser sensor damage weapons during tow anti-tank operations and reconnaissance missions (AVIA 6/25994)*
 - 4. Pullman Shingle Committee on laser damage weapons (reference DEFE 69/1449 or DI51/008/19/2 PART 02). Could I also have access to Part 01 and any other Parts.*
 - 5. A highly efficient, compact laser design for use as a laser sensor damage weapon (reference AVIA 6/25993).'*
5. The MOD responded to the request on 12 January 2022 and explained that it was refusing the request on the basis of section 14(1) (vexatious) of FOIA because of the burden of complying with the request.
 6. The complainant contacted the MOD on the same day and asked it to conduct an internal review of this refusal.
 7. The MOD informed him of the outcome of the internal review on 10 February 2022. The review upheld the application of section 14(1) of FOIA to refuse the request. Under section 16(1) (advice and assistance) of FOIA the MOD explained that the files in scope of parts 2 and 5 of the request consist of a total volume of 35 pages of information. The MOD explained that they were reviewed in full as part of the sample exercise conducted to determine the burden imposed by the request and found to be suitable for release to The National Archives (TNA). As result the MOD explained that if the complainant were to submit a fresh request for these two files then section 14(1) would not apply. The MOD also noted that part 1 of the request sought 'access to Volume 1 and any other volumes' and part 4 sought 'Part 01 and any other parts'. The MOD explained that after conducting relevant searches it had determined that no other volumes were held.

Scope of the case

8. The complainant contacted the Commissioner on 16 May 2022 in order to complain about the MOD's handling of his request. He raised the following three grounds of complaint:
 1. The MOD did not explain the delay in responding to his request.

2. He disagreed with the MOD's reliance on section 14(1) of FOIA to refuse his request.
3. He argued that the MOD should provide him with the information falling within the scope of parts 2 and 5 of the request without him having to submit a further request just for this information.

Reasons for decision

Complaint 1

9. Section 10(1) of FOIA requires a public authority to respond to a request promptly, and in any event, within 20 working days.
10. Clearly in this case the MOD failed to do so and consequently breached section 10(1) of FOIA.
11. The complainant is dissatisfied that the MOD did not offer any explanation for the delays in responding to his request. However, under the requirements of FOIA the MOD was under no obligation to do so. Nevertheless, the Commissioner did ask why the MOD why such delays occurred and has considered this matter further in the Other Matters section at the end of this notice.

Complaint 2

12. Section 14(1) of FOIA allows a public authority to refuse to comply with a request if it is considered to be vexatious.
13. In the Commissioner's view, section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
14. In particular, the Commissioner accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the MOD in this case.

15. The Commissioner believes that there is a high threshold for refusing a request on such grounds. This means that a public authority is most likely to have a viable case where:
- The requester has asked for a substantial volume of information **and**
 - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner **and**
 - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.¹

The MOD's position

16. With regard to the first criterion, the total volume of information captured by the request comprises 889 pages and the MOD was satisfied that this is a substantial volume of information.
17. With regard to the second criterion, the MOD consider this to be met for two reasons. Firstly, by the fact that these files have previously been reviewed and subsequently been withheld from public release under the terms of the Public Records Act. The MOD continues to hold these documents under a Retention Instrument. Secondly, the MOD noted that as suggested by the complainant in his request for an internal review, the requested files have a bearing on the subject of 'weapons banned on the grounds they cause unnecessary harm or superfluous injury to their victims, which includes blinding lasers'. The MOD argued that given this subject matter this places a considerable responsibility on it not to release information into the public domain that might lead to the proliferation of such weapons. Noting the complainant's intentions to write a book on this subject the MOD emphasised that FOIA does not permit private access to information; rather all requests under the legislation require the release of information to the world at large.
18. With regard to the third criterion, the MOD argued that the fact that this was met was demonstrated by the information sought by part 1 of the request. It explained that this file is a compilation of MOD's laser weapon knowledge as it stood in the mid-1980s. Whilst some of this information is out of date and no longer sensitive, much of it is still utilised by the United Kingdom and its allies, and it would be necessary

¹ This approach is set out in the Commissioner's guidance on section 14(1) of FOIA <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/how-do-we-deal-with-a-single-burdensome-request/#section-12>

to separate the information that would prove useful to any contemporary adversaries and withhold it under the exemptions at sections 26 (defence) and 27 (international relations). Similarly, the MOD explained that information in the scope of parts 3 and 4 of the request remains sensitive as it refers to principles and technologies still relevant today.

19. The MOD explained that it had established that it would not be easy to separate the sensitive material from any relatively harmless information in the files as it is scattered throughout the contents. It was therefore satisfied that there was no easy short cut method to determining what information could be released under FOIA and what information would need to be retained under appropriate exemptions.
20. The MOD explained that using an estimate of 5 minutes per page to conduct a line-by-line assessment of the material to identify the potentially exempt information, conduct any necessary public interest tests and then apply any necessary redactions it is assessed that it would take one individual around 74 hours to process the request in full.

The complainant's position

21. The complainant argued that the MOD had wilfully misinterpreted section 14(1) of FOIA to avoid having to review these files. He noted that the MOD's refusal was based on the fact that the request covers 889 pages in total. The complainant argued that in his view public bodies do not have the right to refuse requests on the basis that their documents are long. He noted that the MOD states that there might be sensitive material in these documents, which he acknowledged could be the case. However, he argued that the MOD should review these files, remove the sensitive information, and release what is not sensitive.

The Commissioner's position

22. With regard to the complainant's submissions, the Commissioner appreciates his frustration at not being able to access the information he requested. Whilst FOIA does not allow public authorities to refuse requests simply on the basis that the volume of information sought is large, section 14(1) of the legislation does allow them to refuse the request if the burden involved in processing such a large volume of information for disclosure is grossly oppressive. That is to say, if the three criteria set out above are met.
23. Turning to the criteria themselves, the Commissioner is satisfied that 889 pages does represent a significant volume of information and the first criterion is therefore met.
24. Furthermore, given the subject matter of the requested information the Commissioner accepts that it will very likely contain information that is

exempt under sections 26 and 27 of FOIA. The Commissioner also notes that the complainant himself acknowledges that some material is likely to be exempt from disclosure. The second criterion is therefore met.

25. With regard to the third criterion, as a result of the sampling work undertaken by the MOD to review the content of the requested information the Commissioner accepts the MOD's assessment that potentially exempt information is scattered throughout the files. Furthermore, he accepts that an estimate of 5 minutes per page to conduct a line by line assessment of the material is valid one. As a result the Commissioner accepts that to process the request in full would take 74 hours, or over 10 working days, using a standard 7 hour working day.
26. The Commissioner is therefore satisfied that the MOD has demonstrated that the three criteria are met and consequently complying with the request would place a grossly excessive burden on it. However, the Commissioner has considered whether the purpose and value of the request are enough to justify the impact on the public authority.
27. The Commissioner understands that the complainant wishes to access the requested information as part of his academic research. Furthermore, the Commissioner notes that from the advice and assistance provided to the complainant at the internal review stage the review dates for the files sought by parts 1, 3 and 4 of the request under the Public Records Act are some way off (either 2028 or 2030 depending on the file). The Commissioner is sympathetic to the complainant's desire to access these files under FOIA.
28. However, in the Commissioner's view whilst the complainant has a particular interest in accessing such information, he does not consider that there is any wider public interest in the files in question or pressing need for them to be reviewed and disclosed. As a result in the Commissioner's view the purpose and value in the request, whilst notable to the complainant, is when seen more broadly, arguably limited. Therefore, in the Commissioner's opinion the significant burden that would be imposed on the MOD if it complied with the request in full cannot be justified. Not only would processing this request distract and delay the processing of other FOI requests being handled by relevant the areas of the MOD, it would also distract from the core activities of non-information rights staff who have to advise and review the material in question before it can be released.

Complaint 3

29. Section 1(1) of FOIA provides an individual with the right to make a request to a public authority for recorded information held by it.

30. Section 14(1) states that 'Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.'
31. Given how these two provisions apply, the Commissioner is clear that there is no obligation under FOIA placed on a public authority to answer any part of a request once it has been refused on the basis of section 14(1). This remains the case even if one part of the request could be answered without any burden being placed on the public authority. Rather, section 14(1) essentially acts as a guillotine and absolves the public authority of any further section 1(1) obligations in respect the request in its entirety.
32. Therefore, the MOD was under no obligation when responding to the request of 2 July 2021 to provide the complainant with the files sought by parts 2 and 5 of the request.

Other matters

33. As noted above, the Commissioner asked the MOD to explain why it took several months for the complainant to be issued with a refusal notice citing section 14(1). The MOD explained that this was due to the delay in the relevant areas of the organisation who were processing the request establishing that the level of effort that would be involved in preparing and redacting copies of parts 1, 3 and 4 meant that section 14(1) would be applicable. The MOD also noted that this request was being processed at a time when the areas in question were processing a considerable backlog of other FOI requests caused by national lockdowns and other measures in place to prevent the spread of COVID-19.
34. The MOD explained that the handling of this case had been used to highlight to the relevant area of the organisation that they do not have to process requests in full when doing so would involve a significant burden. Therefore, in the future the MOD envisaged that any such requests would be met with timely section 14(1) refusal if appropriate.
35. The MOD acknowledged that it was regretful that section 14(1) had not been considered at an earlier stage in the process. However, the MOD noted that the process of reviewing the requested material for potential disclosure, prior to the application of section 14(1), did nevertheless result in two files being selected for 'open' transfer to TNA.

Right of appeal

36. 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

37. 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.
38. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF