

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 June 2024  
**Public Authority:** Ministry of Defence  
**Address:** Whitehall  
London  
SW1A 2HB

#### **Decision (including any steps ordered)**

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1. The complainant requested information regarding the issue of a new Tactical Recognition Flash (TRF) by The Royal Air Force Air Cadets (RAFAC). The Ministry of Defence (MOD) refused the request citing section 12 (cost of compliance) of FOIA.
2. The Commissioner's decision is that the MOD was entitled to rely on section 12 in response to the request. It has also complied with its duty to provide advice and assistance in line with the requirements of section 16 of FOIA.
3. The Commissioner does not require any steps as a result of this decision.

## Request and response

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4. On 10 July 2023, the complainant made a request for information in the following terms:

“Please provide me information:-

- (1) The business case for the new TRF and approving comments.
- (2) Correspondence showing the approval of the actual design of the TRF including in relation to any manufacturer proofs —> if this needs to be limited please focus on HQ RAFAC (including the Commandant, his warrant officer, WO [redacted] and approval with the RAF) and if possible Regional WOs within the last two years.
- (3) Correspondence discussing the phallic design feature of the actual TRF —> if this needs to be limited please focus on HQ RAFAC (including the Commandant, his warrant officer, WO[redacted]) and CAS WO and 22 Group.

Given the number of badges purchased at no doubt considerable cost, the clear design issue and that this is an organisation for children, there is a clear public interest in understanding how this happened please.”

5. On 1 August 2023, the MOD requested clarification of the request which the complainant provided on 20 August 2023.
6. The MOD responded on 13 September 2023 citing section 12 to refuse the request and explained the background to the administration process involved. It also provided advice regarding narrowing the scope of the request.
7. The complainant requested an internal review on 16 September 2023, setting out their grounds for dissatisfaction with the MOD’s response. They chased up a response over several months.
8. The MOD provided its internal review response on 11 March 2024 after the Commissioner’s intervention on 27 January 2024, again citing the cost limit exemption under section 12 of FOIA.

## Scope of the case

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9. The complainant contacted the Commissioner on 13 January 2024 to complain about the way their request for information had been handled. They included a link to the What Do They Know (WDTK) website and argued:

"No reply to internal review. More generally the authority is deliberately being unhelpful if they're responses to avoid disclosure and heavily using clarifications to hope people go away.

Link

[https://www.whatdotheyknow.com/request/rafac\\_trf\\_phallic\\_design\\_fature#comment-115309.](https://www.whatdotheyknow.com/request/rafac_trf_phallic_design_fature#comment-115309)"

10. The Commissioner considers the scope of this case is to determine if the public authority is entitled to rely on section 12(1) of FOIA. He has also considered whether the MOD complied with its duty to provide advice and assistance under section 16 of FOIA.

## Reasons for decision

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### Section 12 – cost of compliance exceeds the appropriate limit

11. Section 12 of 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 cost limit.
12. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for public authorities such as MOD.
13. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12 of FOIA effectively imposes a time limit of 24 hours for the public authority to deal with the request.
14. 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 permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
15. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and*

*Healthcare Products Regulatory Agency EA/20017/0004*, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.

16. Section 12 of FOIA is an absolute exemption and not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
17. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

**Would the cost of compliance exceed the appropriate limit?**

18. When dealing with a complaint to him under FOIA, it is not the Commissioner’s role to make a ruling on how a public authority deploys its resources or how it chooses to hold its information.
19. Therefore, as set out in the Fees Regulations, the Commissioner has considered whether the estimated cost of responding to the request would exceed the appropriate limit of 24 hours.
20. As is the practice in a case where a public authority has cited the cost limit under section 12, the Commissioner asked the public authority to provide a more detailed explanation of its cost estimate.
21. The MOD explained to the Commissioner that for part two of the request a sample search was carried out using key words and phrases of emails and messages. A secondary search was carried out to ascertain if information was held outside of the time period as the questions related to other individuals outside of the initial time period specified.
22. Any emails or documents located needed to be manually read to determine whether they fell within scope of the request. The estimate of the amount of time to locate, retrieve and extract information in scope was 2 hours per person. This results in a minimum of 38.5 hours to locate information relating to the approval of the Formation Patch.
23. The MOD explained that for part three of the request it used key search terms in order to try and pinpoint the relevant information. The central IT system provided 259 emails and it was estimated 3 minutes an email to determine if it were in scope resulting a further 13.58 hours. This did not include the wider email system which does not enable a central

search facility so it would not be possible to limit the task to a defined list.

24. Section 1 FOIA provides a general right of access to information requested. However, a public authority has a duty to consider whether any information located and retrieved is relevant to the request. For these reasons it is not a case of merely providing the information without reviewing it to determine if the information held could be in scope.
25. Therefore, to determine if information is held and provide the same, the MOD has demonstrated this would be well in excess of the 24 hours permitted.
26. Even if it were possible to halve the amount of time taken (to check the information, this would still be over the threshold limit of 24 hours.
27. Having considered the information provided, the Commissioner's overall conclusion is that the MOD has estimated reasonably and cogently that to comply with the complainant's request would exceed the cost limit of 24 hours. It was therefore entitled to apply section 12.
28. The Commissioner considers this was an appropriate response in the circumstances given the nature of the original request. He is therefore satisfied that MOD also met its obligation under section 16 of FOIA and does not require it to take any steps.

## **Right of appeal**

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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](mailto:grc@justice.gov.uk) <mailto:GRC@hmcts.gsi.gov.uk>

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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.

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**