

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 May 2024

Public Authority: Ministry of Defence

Address: Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Defence (MOD). By the date of this notice the MOD has not issued a substantive response to this request.
2. The Commissioner's decision is that the public authority has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of FOIA.
3. The Commissioner requires the MOD to take the following steps to ensure compliance with the legislation.
 - Either issue a refusal notice, that cites an appropriate exemption from the duty to confirm or deny that the information is held; or
 - Confirm or deny that it holds information within the scope of the request; and
 - If the public authority is able to confirm that some information is held, either disclose that information or issue a refusal notice, that cites an appropriate exemption from the duty to communicate information.
4. The public authority must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant, following previous requests on the same subject, submitted the following request to the MOD on 25 February 2024:

"1. "Can you provide an estimate of the UK government's expenditure for the military assistance provided in the Ukraine war, including costs related to weapons, tanks, armored vehicles, and the government-funded scheme supporting Ukrainians who have moved to the UK?"

3. "Does the UK government have a system in place to track the weapons it has sent to Ukraine, and if so, what measures are taken to prevent their sale on the black market or their transfer to locations outside of Ukraine, such as Africa?"

2. " I would like to request information on the number of Armed Forces personnel from the UK who are currently deployed in Ukraine in support of the war."

4. "Is there any evidence indicating that President Zelensky or any of his associates have financially profited from the war in Ukraine?"

The questions have been adjusted to focus on obtaining specific information within the cost limit."

6. The complainant contacted the MOD, again on 25 February 2024, and refined question 2 as follows:

"I would like to request information on the number of Armed Forces personnel from the UK who are currently and have been deployed in Ukraine in support of the war and also how many have been killed and injured".

7. The MOD contacted the complainant on 26 March 2024 and explained that:

"This letter is to inform you that the MOD may hold information related to your request, but that we believe the information, if held, falls within the scope of the absolute exemption Section 23(5) (information supplied by security bodies) and the following qualified exemptions: Section 24 (National Security), Section 26 (Defence) and Section 27 (International Relations). As such it is necessary for us to decide whether, in all the circumstances of the case, the public interest in

maintaining the exemption and neither confirming nor denying if we hold the information outweighs the public interest in disclosing whether or not we hold the information.”

8. The MOD explained that it planned to provide the complainant with the final decision on the balance of the public interest by 23 April 2024.
9. To date the public interest considerations in relation to this request have not been completed.

Reasons for decision

10. Section 1(1) of FOIA states that:

“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.”

11. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.
12. Section 17(3) of FOIA states that where a public authority is relying on a qualified exemption, it can have a “reasonable” extension of time to consider the public interest in maintaining the exemption or disclosing the information (or in this case deciding whether to confirm whether or not the information is held).
13. FOIA does not define how long a reasonable time is. The section 45 Code of Practice on request handling states that “it is best practice for an extension to be for no more than a further 20 working days”.² This means that the total time spent responding to a request should not exceed 40 working days unless there are exceptional circumstances.
14. In this case, the total time taken by the MOD has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, the MOD has not complied with section 17(3).

15. The MOD is now required to finalise its public interest considerations under section 17(3) of FOIA and respond to the complainant.

Right of appeal

16. 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

17. 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.
18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jonathan Slee
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Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF