

From Andrew Tranham



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CIO-SPP-Information Rights Compliance

Ref: 29-11-2012-115638-005

Mr D. Mackenzie

request-132365-a53d7df4@whatdotheyknow.com

25 February 2013

Dear Mr Mackenzie,

### **FREEDOM OF INFORMATION ACT 2000 - INTERNAL REVIEW**

1. I am replying to your letter of 27 January 2013 to the Deputy Head of Corporate Information in which you requested an internal review of the MOD's failure to disclose information in scope of a request you submitted under the Freedom of Information Act (hereafter referred to as 'the Act'). In your initial request you asked for the following information:

*Referring back to my original request [which was for a list of purchases from Cohort Plc], I would like you to prioritise the information firstly in that order [1.MASS, 2.SEA, 3.SCS] within that information, I would like you to prioritise the information on 'warlike stores'.*

2. I have now completed a full independent review of the handling of your request and substance of the response you received. The purpose of the internal review is to consider whether the requirements of the Act have been fulfilled. The scope of the review is defined by Part VI of the Code of Practice under section 45 of the Act, which can be found at <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>.

### **Handling**

3. In conducting my review of the handling of your request, I have focussed in particular on the following requirements of the Act:

- a. Section 1(1)(a) which, subject to certain exclusions, gives any person making a request for information to a public authority the entitlement to be informed in writing by the public authority whether it holds information of the description specified in the request;
- b. Section 1(1)(b) which, subject to certain exemptions, creates an entitlement to receive the information held by the public authority;

c. Section 10(1) which states that, subject to certain provisions allowing extensions of time, the public authority must comply with the requirements of section 1(1) promptly, and in any event not later than the twentieth working day following the date of receipt;

d. Section 12(1) which states that Section 1 (1) does not oblige a public authority to comply with a request for information where the cost of compliance exceeds the appropriate limit;

e. Section 16(1) where it is the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, request for information to it;

f. Section 17(1) which states that, where it claims information is exempt, the public authority must, within the time for complying with section 1(1), give the applicant a notice which states the fact, specifies the exemption(s) in question and states why the exemption applies;

g. Section 17(3)(b) which states that, where the public interest in maintaining the exemption outweighs the public interest in disclosing the information, the public authority must state the reasons for claiming this.

4. Your request for information was received by the Department on 29 November 2012. In accordance with section 10(1) of the Act, a substantive response was therefore due not later than 31 December 2012. You received a response on 21 December 2012, within the timescale set out in the Act. Although it was not explicitly stated that all of the information in scope of your request was held, as demanded by section 1(1)(a) of the Act, this was implicit from the response.

5. You were informed that only a proportion of the information you had requested was able to be provided under the cost limit. Some of this information was released to you. However, you were also informed that some of it was exempt under section 26(1) of the Act (Information likely to prejudice the defence of the British Isles) and that the public interest test in regard to this exemption was being considered. This was in line with section 17(1) of the Act. Section 17(1) allows the public authority, when considering the public interest, to take as much time 'as is reasonable in the circumstances' in order to do this. The ICO considers that this should be no more than twenty days and, as such, you should have received a further notice by 29 January 2013. You received a further response from the Department on 21 January 2013, which provided you with some further information. However, it also informed you that the result of the public interest test had fallen on the side on non-disclosure. As section 17(3) demands, the response stated the Department's reasons for this decision.

6. You replied to this letter on 23 January 2013. In this reply you stated that you were dissatisfied with some elements of the Department's handling of your request and asked clarification with regard to other parts. You received a further response from the Department on 25 January 2013, explaining the use of the exemption in section 26(1) in more detail. The MOD also clarified part of your request. I consider this an attempt at informal resolution, which you brought to an end on 27 January 2013 when you requested an internal review of your request.

7. Throughout the correspondence you were informed of your right to appeal and in all other respects your request was dealt with in line with the Act.

## **Substance**

8. Some of the details relating to one contract title (which relates to a number of transactions within the information you requested) were redacted. The information provided to you, for numerous transactions, read 'Provision of In-Service Support XXXXXX'. The redactions were made under section 26(1) of the Act. Section 26(1) states that 'information is exempt information if its disclosure under this Act would, or would be likely to, prejudice (a) the defence of the British Islands or of any colony or (b) the capability, effectiveness of security of any relevant forces.' I consider that the information was withheld incorrectly under this exemption. The ICO's guidance on this exemption states that 'information will be covered by the exemption if its disclosure would assist or be likely to assist an enemy or a potential enemy.' This was deemed to be the case with regard to this information. Following a fresh look at the information, however, I believe that this is not the case. As such, I am now releasing the information to you. The information previously withheld reads:

'Provision of In-Service Support to Performance & Effectiveness Assessment and Targeting Support.'

## **Further Guidance**

9. In your email of 30 November 2012 you stated that, as one of your emails 'should be classed as a clarification... the target response time should be ten working days.' I can confirm that this has no statutory basis in the Act and the Department's decision to log it as a new request, and hence give a deadline of twenty working days, was correct.

10. You have stated that you view the '*generation of such generic and non-specific information for the purposes of this request as an attempt to evade exposure of such activities.*' I can confirm that the Department has not 'generated' any information in scope of your request. Section 1 of the Act allows individuals to request recorded information held by public authorities and does not require public authorities to create information in order to satisfy requests. While it was assimilated from different lists, the information you were provided with was information already held in recorded form by the Department and hence was not 'generated' in response to your request.

11. You have stated that '*what I am seeking is the information from which this documentation was taken from without redactions which would hide activity or capability.*' I must inform you that the internal review is intended as a mechanism of scrutinising a public authority's initial response to a request for information and hence public authorities are unable to accept any refinement or changes to a request at the review stage.

## **Conclusion**

12. In summary, I find that:

- The initial response was handled in a timely manner and met the statutory requirements set out by the Act.
- The Department was not justified in its use of the exemption in section 26. The previously withheld information has now been released to you.
- The Department provided appropriate advice and assistance in compliance with the department's responsibilities under section 16 of the Act.

13. If any aspect of this review is unclear, I would be happy to explain it. If you are dissatisfied with the review, you may make a complaint to the Information Commissioner

under the provisions of section 50 of the Act. Further details of the role and powers of the Commissioner can be found on his website at: [www.ico.gov.uk](http://www.ico.gov.uk). His address is: Information Commissioner's Office, Wycliffe House, Water Lane, WILMSLOW, Cheshire, SK9 5AF. Fax 01625 524 510.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alan Turing', with a horizontal line underneath.