

From: Mr Andrew Tranham



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CIO-SPP-Information Rights Compliance

CIO/3/18/1/776
(10-01-2013-105056-004 and 09-05-2013-150952-010)

Mr J Todd

Via email: request-160721-a763299a@whatdotheyknow.com

30 July 2013

Dear Mr Todd,

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email of 2 July 2013 in which you asked for an internal review of MOD's processing of your request for information at https://www.whatdotheyknow.com/request/knowledge_of_vital_interests_jus under the Freedom of Information Act 2000 (the Act). The purpose of this review is to consider whether the requirements of the Act have been fulfilled. Its scope is defined by Part VI of the Code of Practice under section 45 of the FOI Act at: <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>.

Handling of your requests

2. In conducting my review of the handling of your request, I have focussed 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 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, requests for information to it.

Request: 10-01-2013-105056-004

3. As part of this review, I have also looked at the handling of your initial request for information received on 10 January 2013 at

https://www.whatdotheyknow.com/request/vital_interests_justifying_nucle, which was as follows:

*"In reference to the "UK nuclear deterrence" policy in which point 3 of the 5 main principles states: * "we do not define what we consider to be our vital interests" <https://www.gov.uk/government/policies/maintaining-an-effective-independent-nuclear-deterrent/supporting-pages/uk-nuclear-deterrence>*

This is an unfortunate term because I do not know what the definition of "we" is. It is also all too easy to suspect that the determination of a vital interest is going to be made up on the fly as a matter of convenience during a crisis. Please can you disclose as much as possible of the following information:

1) Does there exist an up-to-date confidential document that contains an itemized list of the set of "vital interests" that would cause the contemplation of the use of nuclear weapons?

2) Which people have authorized access to know the set of "vital interests"?

3) What is the process for amending this set of "vital interests"?

*4) Who has the authority to determine that a specific threat actually matches a member of the set of "vital interests"? A small matter of a peculiar statement later in the document. * "The UK has ***probably*** the smallest nuclear arsenal of the 5 states recognised as nuclear weapons states under the NPT." Really? You don't know if it is or it isn't the smallest nuclear arsenal of only 5 countries? I would send an email directly to the person who maintains that policy page for clarification, but there isn't a contact address. Perhaps you could tell me who is responsible for that statement."*

This request was initially incorrectly handled as a "Treat Official" letter i.e. routine business, by the Department despite the fact that you made the request under the public FOI website called "What Do They Know" This was contrary to our internal guidance and I apologise for this. Advice was provided to you in the response dated 5 February 2013 which explained that *"we deliberately maintain a policy of ambiguity about precisely when, how and at what scale we might contemplate using our nuclear deterrent as we will not simplify the calculations of any potential future aggressor, and as part of that process, we (i.e. the UK) do not define a list of what the UK considers to be its vital interests. You were advised that only the Prime Minister can authorise the use of the UK's nuclear deterrent."* An explanation to question 4 at paragraph 3 was provided to you i.e. the size of the UK's nuclear arsenal in comparison with the other states.

4. When you asked for an internal review on 1 March 2013, the Department corrected the handling; it advised that your original request should have been handled under the Act and would now be treated as a FOI request. The substantive response of 11 March 2013 advised that section 1 of the Act gives an applicant the right to access recorded information held by public authorities at the time the request is made and does not require public authorities to answer questions, provide explanations or give opinions, unless this is recorded information held. As required under section 1 of the Act, it was confirmed that MOD holds no recorded information that would provide an answer to the questions raised in your request.

5. I find that your original request at paragraph 3 above should have been handled in accordance with the Act from the outset and the Department's response should have stated that the information was not held in accordance with its obligations under section 1 of the Act. The advice that was provided to you in the Department's initial reply of 5 February 2013 might also have been included in an FOI compliant response under section 16 of the Act to explain why the information you requested is not held.

Request: 09-05-2013-150952-010

6. You restated your request, which is available at https://www.whatdotheyknow.com/request/knowledge_of_vital_interests_jus, on 9 May 2013 as follows:

"1) Does there exist a set of persons and internal agencies within the MOD and the rest of government among whom the contemplation of the use of "our nuclear weapons" is not ambiguous?

2) Does there exist a set of persons and internal agencies within the MOD and the rest of government who know what "we consider to be our vital interests"?

3) Does there exist a set of persons and internal agencies within the MOD and the rest of government that can make amendments to what "we consider to be our vital interests"?

4) For each affirmative answer above, please define the sets of persons and internal agencies concerned.

5) For each negative answer above, please explain how the MOD and the rest of government administers the stated policy without the existence of such a sets of persons or internal agencies."

The substantive response dated 6 June 2013 was within the statutory timescale as required under section 10(1) of the Act. You were advised that the information in scope of questions 1-4 above was not held. Some information in scope of question 5 was held but section 21 (reasonably accessible to the applicant by other means) of the Act was applied. Some advice and assistance under section 16 of the Act was provided to you. You were correctly informed of your right to appeal. I find that this request was handled in accordance with the Act.

Substance of the reply

7. The Department's position was outlined to you in the substantive response of 6 June 2013 in that no recorded information is held which is in scope of Q1-4 at paragraph 6. As part of the review, I can confirm that no such lists exist and therefore the information requested is not held by the Department.

8. With regard to Q5, MOD's response stated that it held some information in scope of your request i.e. a copy of the 2006 White Paper 'The Future of the United Kingdom's Nuclear Deterrent' (Cm6994) in which it states that only the Prime Minister can authorise the use of the UK's nuclear deterrent. I find that this information is correctly exempt under section 21 (reasonably accessible to the applicant by other means) of the Act as it is available in the public domain and a link was provided to you. Similarly, the Strategic Defence and Security Review (SDSR) 2010 (Cm7948) (paragraph 3.5) makes clear that we remain deliberately ambiguous about precisely when, how and at what scale we would contemplate the use of nuclear weapons. You were also advised that in the formulation of deterrence policy, the Prime Minister is advised by the National Security Council (NSC), which is a Cabinet sub-committee, whose task is to consider nuclear deterrence and security and a link was provided to you.

9. Under section 16 (advice and assistance) of the Act, I can further explain that the Government considers a wide range of possible futures when considering the rationale for the nuclear deterrent, its posture and the nature of the public policy statements we make in order to explain the policy and maximise the deterrent effect to potential adversaries. Any decision to employ nuclear weapons would be the Prime Minister's (which has been outlined in several publications and as advised in the response of 6 June). In every aspect of that most significant

of decisions he will be advised by Ministers and that advice will be relevant and related to the exact nature of the crisis which demands such a decision. The Prime Minister will be particularly supported, in such circumstances, by the Cabinet Secretary, the National Security Adviser and the Secretaries of State for Defence and for Foreign and Commonwealth Affairs and their respective departments. It has long been the judgement and policy of successive Governments that to specify in advance the nature of our vital interests or the circumstances in which we would contemplate the employment of nuclear weapons would diminish the deterrent effect. Therefore, while the broad nature of our vital interests is well understood within Government, they clearly change with time; as they have changed significantly since the UK became a nuclear weapon state, and all the circumstances of the crisis triggering such advice would be brought to bear at the time.

Conclusion

10. In conclusion, this review finds that:

- Your original request received on 10 January 2013 should not have been handled as Treat Official correspondence but in accordance with the Act. Your subsequent request of 9 May 2013 was correctly handled under the Act.
- This internal review confirms that the information in scope of Q1-4 of your subsequent request at paragraph 6 is not held by the Department.
- Section 21 (reasonably accessible to the applicant by other means) of the Act is correctly applied to the information in scope of your request (Q5) which is available in the public domain.
- MOD provided appropriate efforts under section 16 (advice and assistance) of the Act.

11. I trust this has now clarified the position. 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. His address is: Information Commissioner's Office, Wycliffe House, Water Lane, WILMSLOW, Cheshire SK9 5AF, Fax: 01625 524510.

Yours sincerely,

