

From: Mrs S Gardiner



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Mr P Dehay  
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18 May 2017

Dear Mr Dehay

**FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW**

1. I am writing in response to your e-mail of 19 April 2017 requesting an internal review into the handling of your request for information dated 16 February 2017. The purpose of the internal review is to consider whether the requirements of the relevant Information Rights legislation have been fulfilled. The scope of the review is defined by Part VI of the Code of Practice under section 45 of the Freedom of Information Act 2000 (referred to hereafter as 'the Act'), which can be found at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235286/0033.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf).

**Handling**

2. 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 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;

e. Section 17(1) that requires a public authority which is relying on an exemption(s) in the FOI Act to state that face, to specify the exemption(s) and to state, (if not otherwise apparent) why that exemption applies;

f. Section 17(2) which states that the notice under section 17(1) must, if applicable, state that a decision has not yet been made whether the public interest in maintaining an exemption outweighs the public interest in disclosing the information and give an estimate of the date that the authority expects such a decision will be made;

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.

3. Your request for information was received by the Department on 16 February 2017. Section 10(1) of the Act requires that you receive a response within 20 working days. On 15 March 2017, the Department wrote to you and advised that it held information in relation to your request but considered that the information fell within the scope of the qualified exemption at section 43 (Commercial Interests) and a Public Interest Test (PIT) was being conducted to determine whether it should be released into the public domain.

4. The Act requires public authorities to comply with requests for information within 20 working days following receipt. In cases where a public authority is considering the application of exemptions subject to a PIT, the Act requires the authority to specify the exemptions and reach its decision '*within such time as is reasonable in the circumstances*'. The Information Commissioner, in her good practice guidance, considers that in cases where the public interest considerations are exceptionally complex it may be reasonable to take longer than 20 days, but that, in his view, in no case should the total time exceed 40 working days, in this case no later than 18 April 2017.

5. You received a substantive response on 13 April 2017. This advised that some information in scope of your request was held, however as it fell within scope of the qualified exemption at section 43 (Commercial Interests) of the Act it was being withheld from release. You were correctly advised of your right to appeal, in the first instance to MOD and then if still not content following an internal review, to the Information Commissioner in accordance with section 50(1) of the Act.

6. I find that your request was handled in accordance with section 10(1) of the Act.

### **Substance**

7. Your request for information was worded as follows:

*'Any document held by the 77th Brigade concerning, or relating to, or written by, or written to one or many of the following companies:*

- SCL;
- Strategic Communication Limited;
- Cambridge Analytica;
- IOTA-Global;
- Behavioural Dynamics Institute.'

On 13 April 2017, you were advised that the information was exempt from release under section 43(2) (Commercial Interests) of the Act, as it was copyrighted by Strategic Communication Laboratories Limited and Behavioural Dynamics Institute. You were further advised to contact those companies directly to request a copy.

8. On 19 April 2017, you requested an internal review of this decision. As part of this review, I have looked at your request and the use of exemptions from first principles.

### **Information held by the Department for the purposes of the Act**

9. The Act covers all recorded information held by a public authority. The ICO advises that information is deemed to be held by a public authority if:

- (i) it is held by the authority, otherwise than on behalf of another person, or*
- (ii) it is held by another person on behalf of the authority.*

The information that the Department considered was in scope of your request is course material held by a member of staff who currently works with 77 Brigade. The information was provided to this individual during a previous posting as part of his attendance on a NATO course which was not funded by MOD, or held on MOD premises. This information was provided to him for his personal use to aid his understanding of the subject matter. The staff member is not holding this information on behalf of MOD and it is not required for his current role with 77 Brigade. I should explain, because of the transient nature of a Service person's career, it is not uncommon for individuals to carry course material from one posting to another and store it within personal storage spaces at their current unit.

10. In conducting this review, I have studied the potential information in scope and the terms in which it was held within 77 Brigade. I have determined that MOD has no requirement to access this information, and that the access is controlled by the staff member, who also has complete discretion over the storage and retention of the information. As MOD has no control or rights over the information I therefore consider that, under the terms of the Act, this information is not held by MOD. I apologise that you were incorrectly advised that information in scope of your request was held and the undue delay in MOD's response whilst a PIT was conducted to support the use of the section 43 (Commercial Interests) exemption.

### **Conclusion**

11. In summary I find:

- Your request was handled in accordance with section 10(1) of the Act.
- MOD failed in its section 1 obligation, as it incorrectly advised you that information in scope of your request was held and applied the section 43 (Commercial Interests) exemption to information it considered to be in scope.
- In reviewing the information that was considered to be in scope of this request, I consider that, under the terms of the Act, it is not held by MOD.

If any aspect of this review is unclear, I would be happy to explain it. If you are dissatisfied with the review, you may wish to 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 her website at: <https://ico.org.uk> Her address is: Information Commissioner's Office, Wycliffe house, Water Lane, WILMSLOW, Cheshire, SK9 5AF.

Yours sincerely

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.

Mrs S Gardiner