

From: Mrs S Gardiner



Ministry of Defence
Main Building (Ground Floor, Zone D)
Whitehall
London SW1A 2HB
United Kingdom
Telephone [MOD] +44 (0)20 721 89000
Email: CIO-FOI-IR@mod.gov.uk

Head - Information Rights Team

FOI2021/00285

Mr Simon Brown
request-717174-a96ec9a1@whatdotheyknow.com

29th March 2021

Dear Mr Brown

ENVIRONMENTAL INFORMATION REGULATIONS (EIR) 2004 – INTERNAL REVIEW

1. I am writing in response to your email of 10 February 2021 in which you requested an internal review of the processing of your information request dated 11 January 2021 which was initially handled by the Defence Infrastructure Organisation (DIO) under the Freedom of Information Act. A full history of the processing of your request is available at https://www.whatdotheyknow.com/request/all_activities_authorized_under.

2. I have now completed an independent review of the handling of your request and substance of the response you received. The purpose of this review is to consider whether the requirements of the relevant Information Rights legislation have been fulfilled. The scope of internal reviews are defined by Part VI of the Code of Practice¹ under section 45 of the Act, while guidance on reviews in relation to the EIR is available on the Information Commissioner's website².

Handling

3. Although handled by the DIO under the Freedom of Information Act ('the Act'), I have determined that the EIR is the more appropriate statutory information access regime to engage in relation to a request of this kind because it falls under the definition of environmental information specified in section 2(1)(c) of the Regulations:

"any written, visual, aural, electronic or any other material form of information on measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in 2(1) (a) and (b) of the Regulations as well as measures or activities designed to protect those elements".

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

² https://ico.org.uk/media/for-organisations/documents/1613/internal_reviews_under_the_eir.pdf

4. In conducting my review of the handling of your request I have focussed on the following requirements of Parts 2 and 3 of the EIR:
- a. Para 5(1) which provides that a public authority holding environmental information shall make it available on request;
 - b. Para 5(2) which states that the information shall be made available no later than 20 working days after the date of receipt of the request;
 - c. Para 9(1) which states that a public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants; and
 - d. Para 12(4)(a) which states that a public authority may refuse to disclose information to the extent that it does not hold that information when an applicant's request is received.
5. Your request of 11 January 2021, received the same day, was worded as follows:
- "Please provide a list of activities that have been authorised using the powers of Section 8(3) of the Aldershot and District Military Lands Byelaws between Jan 1st 2010 and December 31st 2020.*

Ideally the list should include:

Date of issue

Rank or position of issuing authority

Authorised activity or purpose".

6. Although not a requirement of the EIR, your request was acknowledged on 13 January 2021, which I consider is good business practice. In accordance with Para 5(2) of the Regulations, a substantive response was due no later than the twentieth working day following date of receipt: in this case by 8 February 2021. The response issued to you on this date met this statutory requirement. It stated that that a search for the information had been completed within the Department and it was confirmed that no information in scope of your request was held.

7. Under Para 9(1) of the EIR (advice and assistance) you were advised that the Defence Infrastructure Organisation (DIO) did not record activities that had been authorised using the powers of Section 8(3) of the Aldershot and District Military Lands Byelaws. However, they may be able to provide you with some information if you were to request information relating to a particular six-month period if you specified an activity. You were correctly informed of your right to appeal.

8. In summary, I find that the response dated 8 February 2020 met both the statutory deadlines presented at section 1 of the Act and at Para 5(2) of the Regulations, although due to the nature of the request, it should have been processed under the Environmental Information Regulations rather than under the Act, for which I apologise.

Substance

9. As part of this review I have looked at this request from first principles and my findings are as follows.

10. Before declaring that information is not held, it is necessary for public authorities to have completed a search of all the most likely places where such information would be held within the Department or held on its behalf. In this case, I can confirm that were completed in the electronic and hard copy holdings with the offices of the South East region of the Defence Training Estate and at the Training Estate Headquarters in Warminster. The local region also checked whether information was held by Landmarc on MOD's behalf.

11. No information was located through these searches, which were conducted in all the most likely places where information of this description would be held if it existed.
12. As such, I find that the MOD should have applied the exception at Para 12(4)(a) of the EIR, which allows a public authority to refuse a request in cases where the information being requested is not held.

Advice and assistance

13. The reason that no information is held is because the present byelaws specify an out-of-date process of obtaining exemption to the byelaws that, with the exception of obtaining permission from the Secretary of State for Defence, refer to appointments that no longer exist. Permission to undertake such activities that would otherwise be in breach of the byelaws is currently being granted by DIO Officials on a case by case basis with the delegated authority of the Secretary of State. Anyone wishing to seek such permission should, depending on the location, write to DIO Land Management Services at either:

Royal Military Academy Sandhurst,
35 Winstanley Way,
Camberley,
Surrey,
GU15 4PQ

or

DIO Longmoor,
Longmoor Training Camp.
Liss,
Hampshire
GU33 6EL.

14. You may wish to be aware that work formally commenced in 2017 on the review of byelaws relating to the Aldershot & District Military Lands and Ash Range. It is being conducted by the MOD's central Byelaws Review Team (BRT). Although progress has been slower than initially anticipated, the BRT are preparing the documents which will be issued to inform that public consultation process. This process was due to commence by the end of last year but has had to be postponed due to the Government's restrictions aimed at preventing the spread of Coronavirus. It is currently anticipated that the consultation will begin later this year, but it is not possible to provide any indicative dates at the present time.

15. In your appeal I note that you state that "*Clearly there are activities that would otherwise be in breach and knowing the complete list of all activities is important*". I have been unable to find a definitive list of all activities that are in breach of the byelaws, and it is unlikely that one exists. The purpose of byelaws is to ensure that only those activities which are acceptable and safe are carried out in the relevant area for the benefit of all users. Both prohibited and permitted activities may change over time and byelaws are, therefore, not too prescriptive. That said, some information has previously been released about past incidents and accidents in response to a separate request for information in 2019³ which you may find is instructive on the types of incidents which are not acceptable.

16. Further information on the byelaws consultation process can be found <https://www.gov.uk/government/publications/notice-of-proposed-new-byelaws>

17. Some information on the byelaws review project, including a brief explanation of why it is being undertaken is available online at - <https://www.gov.uk/guidance/ministry-of-defence->

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https://www.whatdotheyknow.com/request/670053/response/1597989/attach/4/20200706%20Annex%20A.pdf?cookie_passthrough=1

[byelaws](#). This notes that the review is primarily to ensure that legal, practical and technological developments have been considered and that existing byelaws are updated where necessary to reflect the current position.

Conclusion

18. In summary, I find that:

- a. This request should have been handled under EIR rather than FOI Act.
- b. The application of the EIRs in place of FOI Act has not materially affected the outcome of your information request.
- c. The exception at Para 12(4)(a) applies in this case as the information requested is not held.
- d. Advice and assistance has been provided to the applicant in accordance with Para 9(1).

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 online at: <https://ico.org.uk>. The address for mail correspondence is: Information Commissioner's Office, Wycliffe house, Water Lane, WILMSLOW, Cheshire, SK9 5AF.

Yours sincerely,



Sandra Gardiner