

From Mrs S Gardiner



Ministry of Defence

Head - Information Rights Team

Our reference: FOI2021/15328

Mr Simon Brown

Via email: request-815818-9d741af9@whatdotheyknow.com

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13th April 2022

Dear Mr Brown,

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email of 14 January 2022 in which you requested an internal review of the handling of request you submitted to the MOD under the Freedom of Information Act 2000 (the Act) which is available on the WhatDoTheyKnow (WDTK) website titled 'Arrests, Prosecution and Convictions under Military Byelaws'¹. The purpose of this review is to consider whether the requirements of the Act have been fulfilled. Its scope is defined by Part 5 of the Code of Practice² under section 45 of the Act. I apologise for the delay in providing this response.

Handling

2. In conducting my review of the handling of your request, I have focussed on the following provisions in 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; and
- d. Section 14(1) which states that a public authority is not obliged to comply with a request for information if the request is vexatious.

¹ https://www.whatdotheyknow.com/request/arrests_prosecution_and_convicti_2

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

3. Your request for information, received by the MOD on 13 December 2021, was worded as follows:

"I am interested in finding out the following information:

Number of arrests.

Number of convictions.

Offence and applicable Byelaw section for each arrest and any subsequent conviction.

And if recorded:

Approximate location.

Month/year.

For offences committed in the scope of the following Byelaws:

Aldershot and District Military Lands Byelaws (1976).

Ash Ranges Byelaws (1983).

Longmoor Ranges and Demolition Training Area (1982).

Within the following dates:

Records held from 1st Jan 2015 to date of this FOI.

Records held from 1st Jan 2010 to 31st Dec 2015.

Records held from 1st Jan 2000 to 31st Dec 2010.

Should the above scope see the cost of response rise above accepted limits then later data/information is of higher priority than older records, and the additional information of location and date may be limited/omitted accordingly."

4. Your request was acknowledged on 17 December 2021, and you were advised that the target date for response was 14 January 2022, which represents the twentieth working day following receipt. The MOD's response of that date met the statutory timescales required under section 10(1) of the Act. The response advised you that the Department was refusing to process your request and was *"declaring you vexatious on any matters relating to access in the Aldershot area including Ash Ranges, or the implementation or review of the Aldershot Byelaws under Section 14(1) (vexatious request) of the Act"*. You were correctly informed of your right to appeal.

5. In summary, this request was handled in accordance with the Act.

Substance

6. Although the Act was designed to give individuals a greater right of access to official information with the intention of making public authorities more transparent and accountable, the Information Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests.

7. Section 14(1) of the Act is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. It is important to note, however, that section 14 applies to the subject of requests received by a public authority, not to the person who has submitted them.

8. The Information Commissioner has produced guidance to help public authorities determine if a request is vexatious and also provides guidance on how to deal with a such a request, and this can be accessed on their website at:

<https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

9. From the guidance you will note that there are various relevant factors which can be taken into consideration when determining if a request can be considered vexatious under section 14(1) of the Act. I apologise that the response did not explain the factors that had been considered when refusing your request. As part of this review, I will set out these considerations and make an objective assessment as to whether the Department was correct to consider this request vexatious.

10. On 12 November 2021 you submitted a request to the Defence Infrastructure Organisation (DIO) seeking information regarding the ‘*arrest, prosecution and conviction of individuals*’. This request was logged under reference FOI2021/13847 and is attached at the Annex to this letter. MOD responded to this request on 13 December 2021 by neither confirming nor denying (NCND) any information in scope of your request was held under sections 30(3) (criminal investigations and proceedings) and 40(5) (personal data) of the Act. You did not request an internal review into the substance of that response.

11. Considering that only a few hours had elapsed since you received a response to your first request, it would have been reasonable to assume that the Department's position on this subject would not have changed. It is also reasonable that a second request, seeking the same or similar information, would also result in a response that neither confirmed nor denied that the information was held. I find that the initial response to you was clear and understood, as you did not request an internal review or seek clarification. I therefore consider that your second request served no obvious intent to obtain any information, as you already knew the position of the Department in this case.

12. I have considered whether it would have been more appropriate to consider refusing your request under section 14(2) (repeat request) of the Act.

Section 14(2) (Repeat Request)

13. Section 14(2) of the FOI Act states that “*Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.*”

14. As noted in paragraph 11 above, your request was submitted only a few hours after the Department had provided a response to an almost identical request. In such circumstances, the interval between this response and the submission of the new request cannot be considered ‘reasonable’. However, the ICO’s guidance on the application of section 14(2) states that public authorities can only refuse requests as repeated if they have:

- previously provided the same requester with the information in response to an earlier FOIA request; **or**

- previously confirmed that they do not hold the information, in response to an earlier FOIA request from the same requester.

As neither of these conditions apply in this case, your request cannot be considered as a 'repeat'.

15. Taking all the above factors into consideration, I find that the Department was correct to apply section 14(1) of the Act to refuse your request. However, I find that the topic or subject of vexatiousness as stated in paragraph 4 is too broad and instead should be on the more refined subject of 'the implementation and enforcement of the Byelaws as applied to the Aldershot and District Military Lands'. This includes all Byelaws applied to the lands listed in the Schedule to the Aldershot and District Military Lands Byelaws 1976.

16. I should also advise you that under section 17(6) of the Act, where a Public Authority seeks to rely on the provision at section 14(1) of the Act, there is no obligation to issue a further notice stating that we are relying on such a claim if we are in receipt of similar requests from you in the future. Any further request from you on this subject will therefore go unanswered.

Section 16 (Advice and Assistance)

17. Section 16(1) of the Act places a duty on a public authority to provide advice and assistance, where possible, to those making or intending to make a request for information.

18. I note that, since July 2020, you have submitted 36 requests that relate in some way to access to the Aldershot and District Military Lands, and the review of the Aldershot Byelaws. On occasions, your requests cross-refer to, or appear to be slight variations on, previous requests submitted by both yourself and other requesters. This suggests that at least some of your requests have been submitted as part of a wider campaign. I can advise that the Department may apply section 14(1) to refuse requests relating to campaigns and will do so if it is clear that they were submitted with the intention of causing disruption.

19. Similarly, requests that make unfounded accusations about a public authority or its staff members may be regarded as vexatious. I appreciate that you are concerned about the changes to public access at the Ash Ranges complex, however, the MOD will have little option but to consider refusing future requests from you under section 14(1) of the Act if vexatious traits are identified.

Conclusion

20. In summary:

- a. Your request was handled in accordance with the Act.
- b. The Department was correct to refuse your request as vexatious under section 14(1) of the Act. However, the subject covered was too broad.
- c. Advice has been provided on the application of section 14(1) of the Act and the traits that can result in requests being refused as vexatious.

If you remain dissatisfied with the review, you may make a complaint to the Information Commissioner by following this link - <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>. Further details of the role and powers of the Commissioner can be found on the following website: <https://ico.org.uk>. The address is: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Sandra Gardiner', with a long horizontal stroke extending to the right.

Sandra Gardiner

Request reference FOI2021/13847 dated 12 November 2021

I am interested in finding out the following information regarding arrest, prosecution and conviction of individuals for offences committed in the scope of the following Byelaws:

*Aldershot and District Military Lands Byelaws (1976) Ash Ranges Byelaws (1983)
Longmoor Ranges and Demolition Training Area (1982)*

Within the following scope:

Records held from 1st Jan 2015 to date of this FOI Records held from 1st Jan 2010 to 31st Dec 2015 Records held from 1st Jan 2000 to 31st Dec 2010

Should the above scope see the cost of response rise above accepted limits then later data/information is of higher priority than older records and the scope may be limited accordingly.