

From: Mrs S Gardiner



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FOI2018/06435

Mr R G Lockhart
Via email: request-476188-78e3bad2@whatdotheyknow.com

10th July 2018

Dear Mr Lockhart

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email of 12 June 2018 requesting an internal review into the handling of your request for information which is available on the WhatDoTheyKnow (WDTK) website at https://www.whatdotheyknow.com/request/communication_between_aoc_22_gro. 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.

Handling

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 1(3) states that if a public authority reasonably requires further information in order to identify and locate requested information and informs the applicant of this, it is not obliged to comply with the request until it has received the information in question.

- d. 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;
 - e. 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;
 - f. 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.
3. Your request was received by the Department on 8 April 2018 and was as follows:

'Please show all communications between AOC 22 GroupRAF and the AOC RAF Air Cadets in relation to the dismissal or restriction of action of civilian welfare committee's and their position in law in relation to the RAFAC and the Charity Commission regulations over the past five years. This does not include the 863 Squadron affair.'

4. Section 10(1) of the Act requires that you receive a response within 20 working days. MOD clarified your request within the statutory timescales on 27 April 2018. You were advised that MOD required further information to determine whether it held any information within the scope of your request:

'...please could you clarify if by "Air Officer Commanding the RAF Air Cadets" you are referring to the Commandant of the RAF Air Cadets? Additionally, it is not known what is meant in your email by "civilian welfare committee". Please could you clarify if you mean RAF Air Cadet Squadron Civilian Committees?'

I note that MOD did not provide you with the right to appeal which would have assisted if you had wished to challenge the handling of your request and the clarification. However, I find that it was reasonable for MOD to clarify your request under section 1(3) of the Act.

5. On 13 May 2018, your clarified request was as follows:

'Please provide all communications between OC 22 Group and AOC RAF Air Cadets regarding charity law and its implementation and compliance in regard to Civilian Welfare Committee's terms of reference [sic] as per ACP 11.'

MOD responded on 8 June 2018 and within the statutory timescales under section 10(1) of the Act. As required under section 1 of the Act, MOD confirmed that information relating to your request was held. However, you were advised that MOD would not be able to answer your request without exceeding the appropriate limit and section 12(1) (exceeding the cost limit) was applied. Some advice and assistance on refining your request was provided under section 16 of the Act. On this occasion, you were correctly informed of the right to appeal.

Substance

6. As part of this review, I have considered whether section 12(1) was correctly applied to your request and whether appropriate advice was provided under section 16; my findings are below.

Section 12(1) (exceeding the appropriate cost limit)

7. Section 12(1) of the Act does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with it would exceed the appropriate limit, which is set at £600 for central government departments by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations')¹. This limit is calculated at a rate of £25 per hour of staff time, and £600 equates to 24 hours work.

8. MOD explained in the substantive response that to provide information in scope of your request, it would be necessary to identify, locate, retrieve and extract emails and documents spanning the last ten years. I have established that this was an error and the cost estimate is over the last five years. A search of a number of different electronic locations/databases, some with no functioning search facilities, and a manual trawl of archived records would be required. As such, you were informed that it was estimated that it would take over eight working days to identify, locate, retrieve and extract any relevant information.

9. It is estimated that there are at least six members of staff at HQ RAF Air Cadets (RAFAC), and approximately eight staff in Air Officer Commanding (AOC) 22 Group's area who could potentially hold information in scope of your request. In addition, to locate, retrieve and extract the information you are seeking amongst the thousands of items of correspondence it would be necessary to trawl MOD team sites, Meridio (MOD's electronic records-keeping system), hard copy documents (held locally or possibly stored in the MOD Archives, TNT), and individual email accounts. I have been advised that it is unlikely that there have been large quantities of information generated on the subject matter of interest to you but it would be very time consuming to locate the information in scope of your request for the reasons explained above.

10. MOD was, therefore, correct to issue a refusal notice, citing section 12(1) (exceeding the cost of compliance) of the Act on the grounds that to determine if the information is held and then to locate, retrieve and extract it would exceed the cost limit.

Section 16 (advice and assistance)

11. Section 16(1) provides that a public authority is required to offer advice and assistance to any individual making an information request. In cases where section 12(1) is cited to refuse a request, a public authority should advise the requester as to how their request could be refined to bring it within the cost limit.

12. In the substantive letter, MOD advised you that it may be able to provide some information in scope of your request if you reduced or refined your request to bring the cost of compliance under the limit. For instance, limiting your request to information generated within the last six months may be provided within the cost limit.

13. I should also add that it would assist the Department if any future requests could be more focussed i.e. by being specific on the issue of interest to you (rather than all communications on the subject) and over a reduced time period so that it can be managed within the section 12 cost limit. It would also assist if you could restrict any refined request to electronic information held on a specific subject and over a reduced time period. MOD will, of course, consider any other refinement that you may wish to make.

¹ http://www.legislation.gov.uk/uksi/2004/3244/pdfs/ukxi_20043244_en.pdf

14. I hope this is useful in helping you to frame any future requests for information under the Act.

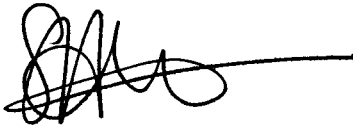
Conclusion

15. In summary, I find that:

- Your requests were handled in accordance with the Act albeit the Department did not provide you with the right to appeal on your original request of 8 April 2018.
- MOD correctly clarified your original request under section 1(3) of the Act.
- Section 12(1) (exceeding the appropriate cost limit) is correctly applied to your request on the grounds that to determine if the information is held and then to locate, retrieve and extract it would exceed the cost limit.
- MOD provided appropriate advice and assistance under section 16 of the Act.

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 the website at: <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 'S Gardiner', followed by a long horizontal line.

Mrs S Gardiner