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FOI2020/09634 and FOI2020/10192

Mr Carl Cookson
Via email

11th December 2020

Dear Mr Cookson

FREEDOM OF INFORMATION ACT 2000 INTERNAL REVIEW

1. I am writing in response to your emails of 16 and 22 October in which you requested an internal review of the processing of your requests for information under the Freedom of Information Act 2000 (the Act) which are available on the WhatDoTheyKnow (WDTK)¹ website. 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 internal review.

2. As you may be aware, the ongoing pandemic has required MOD staff to change the way that they work and there are limited resources available to process the unprecedented demand for information relating to the Ash Range complex. The overall impact of the measures in place to prevent the spread of COVID-19 combined with the volume of requests received on this topic has resulted in undue delay in dealing with them.

Handling

3. In conducting my review of the handling of your requests, 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;

¹ https://www.whatdotheyknow.com/request/detailed_cost_of_vandalism_on_as
https://www.whatdotheyknow.com/request/full_list_of_lost_training_hours

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

- d. 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; and
- e. Section 12(4) which states that where two or more requests for information made to the public authority by one person or by different persons acting in concert or in pursuance of a campaign the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them;
- 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; and
- g. Section 17(5) which states that a public authority which is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

4. This review focusses on the following requests made by you to the Department.

FOI2020/09634

5. Your request for information, received on 26 August 2020, was worded as follows:

'I am writing to request detail on the effects of vandalism on Ash Ranges between January 2015 and August 2020.

The costs are summarised in a statement made to the Guildford Dragon as being £170000. I would like to see a list of the individual items making up this figure, the dates when the transactions were made, a description of the activity and the contractor used if applicable.

For reference, article is here

<https://www.guildford-dragon.com/2020/08/25/mods-vigorous-response-to-campaigners-over-army-ranges-access-restrictions/>

6. Your request was acknowledged by email on 27 August, confirming that it had been logged under FOI2020/09634. Section 10(1) of the Act requires that you receive a response by no later than the twentieth working day following date of receipt, which in this case was 24 September, as advised in the acknowledgement. I note that the response dated 22 September 2020 was provided to you on 24 September, and so met this requirement. In accordance with section 1, you were advised that MOD may hold information in scope of your request but that section 38 (health and safety) may apply. As such it was necessary to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosure. You were advised that a further response would be provided by 22 October. The right to appeal to this office was provided to you.

7. The substantive response of 22 October was provided within this timescale. You were informed that a search had been completed and that information in scope of your request may be held. However, you were advised that the Defence Infrastructure Organisation (DIO) would not be able to answer your request without exceeding the appropriate limit because to locate and extract the information would involve at least some 11 days of effort; section 12 was, therefore, applied.

8. Under section 16, you were asked to reduce or refine your request, for example, to expenditure incurred as a result of vandalism on Ash Ranges for a single month between January 2015 and August 2020, to bring the cost of compliance under the limit. You were correctly provided with the right to appeal.

9. In summary, you were not provided with a refusal notice within the first twenty days following receipt which confirmed that section 12 applied. Therefore, MOD did not meet the requirements of section 17(5) of the Act.

Appeal

10. On 22 October 2020, you raised a complaint to this office, using your personal email account, and as follows:

'Please take this as a request for an independent internal review of the above FOI request.

The request asks for detailed figures of the cost of vandalism between January 2015 and August 2020, the dates are attributed to an article in the Guildford Dragon, which attributed an MOD spokesperson as a source.

<https://www.guildford-dragon.com/2020/08/25/mods-vigorous-response-to-campaigners-over-army-ranges-access-restrictions/>

I believe as this article states the figures, the information should already be available and hence not require the effort stated in the article.

Further, the response sent on the 22nd September did not highlight any restrictions on costs and just highlighted the possible Section 38 restriction.

It is imperative for honest accountability that this information is made available.

This information should be readily available or information that has been published as fact can not be crossed checked. If the MOD has been able to use the statement in a public context then please provide the detail that is attributed to this claim.'

Substance

11. I have looked at your request again and my findings are below.

Section 12 (exceeding the cost of compliance): FOI2020/09634

12. The specific sub section that applies to this request is section 12(1) of the Act. A public authority can refuse to comply with a request for information if it is estimated that the cost of doing so 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'). This limit is calculated at a rate of £25 per hour of staff time, and £600 equates to 24 hours work.

Locating, retrieving and extracting the information

13. I can advise that an explanation of the tasks involved in collating the information that you have requested is publicly available in a review report that has been published on the WDTK website³. The request that was the subject of that review sought the cost of repairing or replacing infrastructure following acts of vandalism on the Ash ranges complex for two of the five years in scope of your request. As your request asks for the same information over a broader time period, the estimate of effort involved in processing your request would be considerably higher.

14. DIO have identified at least 445 entries in the Untoward Occurrence Register (UTO) that may fall in scope of your request. Using the same conservative estimate of an hour per entry to calculate the effort involved in processing your request, it would take one person 445 hours, or just over 59 working days to process your request. This equates to £11,125 which exceeds the cost limit by a considerable margin.

³ https://www.whatdotheyknow.com/request/cost_of_vandalism_to_sitebuildin.

15. In summary, DIO was incorrect to engage section 38 at the outset. I find that section 12(1) of the Act is correctly engaged to refuse your request because to locate, retrieve and extract the information that is held in scope of your request would exceed the cost limit. As section 12(1) was not applied to your request within the time for complying with section 1(1), MOD breached section 17(5) of the Act.

16. I have also determined that the costs of £170,000 published in the news article were based on corporate knowledge of such events, and have been advised that there is no recorded information held on how the actual figure was calculated.

17. I now turn to the handling of your request under FOI2020/10192.

FOI2020/10192

18. Your request for information of 11 September 2020, was received by the Defence Infrastructure Organisation (DIO) on the same day, and was worded as follows:

'Please provide a list of all hours of training lost from 2015 to present for the Ash Ranges complex. Please include dates, reason and number of hours lost.

This is listed as hundreds of hours per year in an article on Ash Parish council here

<https://www.ashpcsurrey.gov.uk/ash-ranges-update-4/>

19. The acknowledgment of 14 September advised that a response was due by 9 October 2020, which was the twentieth day following receipt. The substantive response dated 2 October 2020 was, therefore, provided within the statutory timescale required under section 10(1) of the Act. In accordance with section 1, you were advised that no information in scope of your request was held. Under section 16 (advice and assistance), you were advised that *'due to the way in which information is recorded, we are unable to answer your request. For example, if training has to be moved, the original schedule is over written and therefore historic data is not kept. You may also find it helpful to note that any information released by Ash Parish Council would have been based on verbal estimates from those Units impacted by loss of training rather than formal recorded data'*. You were correctly informed of the right to appeal.

Appeal

20. On 16 October 2020, you raised a complaint to this office, as follows:

'The FOI request FOI 2020/10192 has been replied to but contains no information of relevance. Please take this as a request for internal review of the available information to be made public.

If the information was able to be passed to the parish council, there should be documented evidence to support this. Please provide the information in emails, notes or any other documentation that contributes to the published information give to Ash Parish Council.

If no detail list is available, please provide detail about the recorded verbal estimates, which I assume were written down as someone would have to surmise and understand the dates to come to the conclusion that has been published.'

Substance

21. Section 1(1) of the Act states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them, subject to the application of any exemptions. I have looked at your request again from first principles and my findings are below.

Building Blocks / Section 12 (cost of compliance)

22. A public authority is considered to hold information that is requested if it holds the building blocks required to generate it and no complex judgement is required to produce it.

23. I can advise that '*a list of all hours of training lost*' is not specifically held by the Department format as it does not routinely capture and record data in the form of 'training hours' lost. I have, therefore, gone on to determine whether or not the Department hold the building blocks of information that could be used to calculate the number of hours lost.

24. To calculate the number of training hours lost and provide a reason for each lost hour, the Department would have to search recorded information to:

- a. Identify the dates and times that the range complex, or elements of it were unavailable during the period covered by the request;
- b. Identify the number of personnel who either has their training suspended, delayed or cancelled on the dates/times the range, or relevant areas of it, were unavailable; and
- c. Identify the reasons for the range, or relevant elements of it, being unavailable.

25. If a training session has to be suspended due to a member of the public entering the danger area, either on foot or by bicycle, the exact time or length of the suspension may not be recorded. It is, however, possible that the 'incursion' event would be recorded electronically in the UTO, which may give an indication of the time at which it occurred. It is also possible that acts of vandalism that prevented or delayed training sessions may be recorded in the UTO.

26. The UTO does contain records relating to '*lost training days*'. However, there is no set definition for the length of a training day, which can vary from 7.5 to 15 hours. The published firing times for the Ash Ranges during October 2020⁴ also state that firing times can change at short notice. However, I have been advised that MOD is unable to calculate the training hours lost if a booking was cancelled as a result of vandalism.

27. I am aware that the Bidding and Allocation Management System (BAMS Online)⁵ booking system went live in the Summer 2019 and replaces paper forms and processes for troops looking to book facilities on the UK's training areas and ranges. While this system would help identify training days that were booked, and it will show the number of personnel booked, it will not show the number that actually attended on any given date.

28. Range logs for individual days may contain some information about lost training time, and they are held for the entire period covered by your request. However, only a review of the hardcopy range logs at the site will confirm the actual hours of training that took place. There is no definitive source that could confirm whether a late start could be attributed to any specific source.

29. The number of personnel engaged in training at the time of the suspension, delay or cancellation would also be required. As noted in the original response, it is possible that historic data is no longer kept by the units who were due to undertake cancelled training, or present during suspended or delayed training sessions. To locate the information that is held, DIO would have to identify all units that have undertaken, or were booked to undertake, training at the Ash Range complex since 1 Jan 2015.

⁴ <https://www.gov.uk/government/publications/south-east-training-estate-firing-times/ash-ranges-firing-times-october-2020>

⁵ <https://insidedio.blog.gov.uk/2019/09/23/new-online-booking-system-for-training-facilities-will-make-life-easier-for-our-armed-forces/>

30. In summary, the information requested is not held in one central location and an electronic and manual search of records held across several locations and units would be required to locate, retrieve and extract the building blocks required to calculate the information you have specifically requested. I therefore find that section 12(1) of the Act is engaged, as the effort to provide the information in the format you have requested would exceed the appropriate cost limit.

31. Furthermore, I can advise that although the response of 22 October did not specifically apply section 12(4) (aggregation of requests) of the Act, I find that it is necessary to consider whether DIO is entitled to refuse your requests on this basis.

Section 12(4) - aggregation of related requests

Requests of 26 August (FOI2020/09634), 11 September (FOI2020/10192) and 16 October 2020 (FOI2020/12395)

32. Under section 12(4), MOD is permitted to regard the estimated cost of complying with any of the requests to be the estimated total cost of complying with all of them under the Act.

33. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out at paragraph 5 of the Fees Regulations associated with the Freedom of Information legislation⁶ can be satisfied. I have, therefore, considered whether the following conditions apply in this case:

- (a) are by one person, or
- (b) are by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign (section 12(4)(b) of FOIA);
- (c) relate, to any extent, to the same or similar information; and
- (d) are received by the public authority within any period of sixty consecutive working days.

34. I am satisfied that for (a) above, your requests were submitted by one person, namely yourself, and so the first criterion is met.

35. As criterion (a) has already been met, there is no requirement for me to assess whether or not (b) is engaged. However, I do note that MOD has received several requests on the same or similar subject from a number of people within a relatively short period.

36. The third criterion at (c) allows requests to be aggregated where they relate “to any extent” to the “same or similar information”. The Information Commissioner has stated that requests will be similar where there is an overarching theme or common thread running between them in terms of the nature of the information requested⁷. I am satisfied that your requests contain the common thread of information which relates to the resources (including time and money) that are used at the Ash Range Danger Area (ARDA).

37. The test of the fourth criterion is similarly a matter of fact in that your requests included in the aggregation were received by the Department within a period of 60 consecutive working days. Your requests were submitted between 26 August and 11 September; I note that a further new request was received in your email of 22 October (outlined at paragraph 19 above and logged under reference FOI2020/12395). I find that these three requests can be aggregated as they were received within 36 consecutive working days.

⁶ <http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

⁷ https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

38. I therefore find that your requests meet the criteria for aggregation as outlined at (a), (c) and (d) above and MOD is entitled to rely on section 12(4) to refuse to comply with them.

39. I should explain that whilst MOD will be able to handle a new refined request if it falls within the cost limit, it should be noted that any subsequent new requests, on the same or similar subject, received within 60 consecutive working days can be aggregated under section 12(4) of the Act.

Section 16 (advice and assistance)

40. Section 16 states that a public authority should provide advice and assistance, 'so far as it would be reasonable to expect the public authority to do so', to anyone who has made a request for information. In their responses, DIO provided some advice and assistance.

41. I can further advise that some recorded information that may be of interest to you has been released in response to another FOI request as follows:

a. FOI2020/09634

An extract of the UTO covering the period from 1 January 2017 to 13 August 2020 was provided at Annex A to the response dated 12 November 2020 which is available at

https://www.whatdotheyknow.com/request/specific_recorded_incidents_in_t.

The information available in this Annex may assist you in refining your request regarding the costs arising from acts of vandalism. The entries which relate to your request are those designated as 'Criminal Damage' and 'Litter'.

b. FOI2020/10192

The UTO extract provided at the link above contains some entries that are designated under 'Lost Training Day'. An indication of the reason for this loss of training time is noted in the 'Sub Designation Name' field. As mentioned previously in this review, events designated as 'Incursion' can also result in a loss of training time.

42. While it is recognised that the above may not provide you with all of the recorded information you are seeking, it would meet the description of your request to some extent.

43. The Department may be able to process a new request from you within the appropriate cost limit if you refine or limit your requests as follows:

a. FOI2020/09634

You could submit a new request to ask for the costs which relate to any one specific entry relating to vandalism recorded in the publicly available UTO extract, noting that a request, or series of requests, seeking the total costs for multiple entries would likely exceed the cost limit.

OR

b. FOI2020/10192 and FOI2020/12395

You could submit a new request that seeks the release of the information that was presented to the Ash Parish Council, as mentioned in the article to which you provided a link.

44. Finally, under FOI2020/09634, you asked for the '*contractor used*'. In the internal review at the same link above, MOD has confirmed that Landmarc work with the DIO to manage military training facilities across the Defence estate, as part of the National Training Estate Prime (NTEP) contract and it therefore follows that Landmarc is the '*contractor used*'.

Conclusion

45. In summary:

- a. Section 12(1) is applied to request reference FOI2020/09634 because to locate, retrieve and extract the requested information would exceed the cost limit.
- b. Under FOI2020/10192, the information requested is not held in one central location and an electronic and manual search of records held across several locations and units would be required to locate, retrieve and extract the building blocks required to calculate the information you have specifically requested. As explained, to undertake the work to fully answer your request would invoke section 12(1) of the Act.
- c. Your requests of 26 August (FOI2020/09634), 11 September (FOI2020/10192) and 16 October 2020 (FOI2020/12395) can be aggregated under section 12(4) of the Act.
- d. MOD has provided appropriate advice and assistance under section 16 of the Act. I have suggested how you could make a new request to the Department.

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 the website at: <https://ico.org.uk>. The address is: Information Commissioner's Office, Wycliffe House, Water Lane, WILMSLOW, Cheshire, SK9 5AF.

Yours sincerely,



Sandra Gardiner