

From Mrs S Gardiner



Ministry of Defence

Head - Information Rights Team

Our reference:

FOI2021/06282, 06283, and 06770

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Mr S Brown

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10th August 2021

Dear Mr Brown

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email of 12 July 2021 in which you requested an independent internal review of the processing of your request for information under the Freedom of Information Act 2000 (the Act). 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 Practice¹ under section 45 of the Act.

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;

¹https://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;
 - 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; and
 - f. Section 16(1) which states that it is the duty of a public authority to provide help 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, requests for information to it.
3. The details of the three requests you submitted between 14 and 28 June 2021 are presented in the Annex to this review.
4. In accordance with section 10(1) of the Act, a substantive response for each request was due no later than twenty working days after receipt by the Department (as detailed in the Annex). All the requests were replied to substantively in a single response provided by the Defence Infrastructure Organisation (DIO) Secretariat on 12 July 2021 which was within the statutory timescale.
5. The response did not make a declaration under section 1 but it implied that information was held meeting the description of each request as these enquiries were aggregated together under section 12(4) of the Act and the processing refused on cost grounds under section 12(1). While your requests were handled in a timely fashion under section 10(1), I apologise that the lack of a section 1 declaration meant that the response did not fully meet the handling requirements of the Act.
6. When refusing a request under section 12 of the Act there is an obligation placed upon the public authority to provide the requester with advice and assistance on how they may usefully refine the requests to bring them within the cost limit under section 16. I apologise that no advice or assistance was provided in this case. One possible refinement would have been to suggest you selected one of the three requests included in the aggregation for immediate processing that did not, of itself, exceed the cost limit.
7. You were correctly informed of your rights to appeal.

Substance

8. As part of this review, I have looked again at the substance of the response provided to you and my findings are below.

Use of section 12(4) (aggregation of requests)

9. The Fees Regulations² associated with the Freedom of Information legislation prescribe when requests may be aggregated for the purposes of section 12 of the Act. Regulation 4 states that two or more requests to one public authority can be aggregated for the purposes of calculating costs where they:

² <https://www.legislation.gov.uk/uksi/2004/3244/regulation/5/made>

- (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 the Act);
- (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.

10. As part of this review I have considered whether these conditions apply in this case. In relation to (a), I am satisfied that all the requests being combined were submitted by one person, namely yourself and (b), therefore, does not apply. The requirement of (d) is also met in that all these requests were received by MOD within a 10-day period.

11. Turning to the requirement of (c), which allows for the aggregation of requests where they relate to “any extent” to “the same or similar information”, the Information Commissioner’s guidance for section 12³ suggests that this can be a wide test. Requests are likely to relate to the same or similar information where, for example, the requester has expressly linked the requests, or where there is an overarching theme or common thread running between them in terms of the nature of the information that has been requested and where it might be located.

12. The information relating to ‘Bid numbers’ requested in FOI2021/06282 relates specifically to entries within booking records relating to the use of Ash Ranges that were previously released to you⁴. As FOI2021/06770 asks for the release of further booking records (containing ‘bid numbers’) for Ash Ranges, these requests are clearly seeking similar information. The overall topic that could be used to describe these requests would be ‘information relating to the use of Ash Ranges by military units’.

13. However, FOI2021/06283 seeks the release of ‘the supporting evidence and documents’ used to prepare the ‘Public Access and Recreation’ section of the Joint Service Publication (JSP) 850⁵. The information in scope of this request is highly unlikely to be the same or similar to that in scope of the requests described above as it concerns the development of the policy on public access and recreation in relation to the whole of the MOD Estate in the UK and Overseas.

14. Taking into account the difference in the type of information requested, and the fact there is no over-arching theme to these requests, I find that the Department should not have aggregated these requests together for the purposes of calculating the cost of compliance as set out in section 12(1) of the Act.

15. I also find that the disaggregated estimated cost of processing each request does not exceed the appropriate cost limit, and so section 12(1) of the Act cannot be applied to refuse them.

³ https://ico.org.uk/media/for-organisations/documents/1199/costs_of_compliance_exceeds_appropriate_limit.pdf

⁴ FOI response under FOI2021/04048, dated 13 May 2021.

⁵ JSP850 Infrastructure and Estate, was first published in 2018 and has recently been revised. The refreshed JSP 850 sets out both the policy framework, mandate, and direction for the operation of the Defence estate and the standards and guidance by which it operates.

Outcome

16. I have directed the DIO Secretariat to provide you with responses to your requests within 20 working days from the date of this review letter. However, I do recognise that that requests 2021/06282 and 2021/06770 may be aggregated together in their own right, or with other same or similar requests relating to the Aldershot Military District that you may have submitted within a specified 60-day period.

17. If, following a line by line assessment of the information, it is necessary to apply exemptions to the information in scope, the reasons for their engagement should be explained to you, along with the outcome of any relevant public interest tests that may be associated with 'qualified' exemptions, those where the information requested can only be withheld if the public interest in doing so outweighs the public interest in disclosure.

18. Moreover, I have advised DIO Secretariat that, should any of the 'supporting evidence or documents' in scope of FOI2021/06283 express concerns about the impact upon the environment of public access or suggest conservation measures to protect the land, consideration should be given to processing this information under the Environmental Information Regulations 2004.

19. Should the DIO require further time for these activities they will update you but please do not hesitate to contact me again if you experience any further difficulties. Your right to appeal to me in relation to any new responses issued is unaffected by this present decision.

Conclusion

20. In summary I find that:

- a. Your request was not fully handled in accordance with the Act.
- b. MOD was incorrect to aggregate these three requests, as they did not meet the criteria at section 12(4). Section 12(1) of the Act was, therefore, incorrectly applied to these requests in aggregation.
- c. You were not provided with any advice and assistance under section 16 on how to submit a suitably refined request, for which I have apologised.

If you remain 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 following website: <https://ico.org.uk>. The address is: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,



Sandra Gardiner

Details of Requests Received Between 14 and 28 June 2021

Request	Date Received	Response Due
FOI2021/06282 <i>I am interested in the following records regarding the use of the lands as defined by the Aldershot and District Military Lands Byelaws: B84466 B78450 B84648 B72155 Which are recorded as "Bid Number" in previous responses as detailed in your ref 2021/04048. Redaction is expected for personal identifiable details but rank/title of individual(s) submitting and/or responsible for the bid is considered in-scope as it carries no identifying information.</i>	14 June 2021	13 July 2021
FOI2021/06283 <i>Please supply supporting evidence and documents used to prepare JSP 850 (Public Access & Recreation).</i>	14 June 2021	13 July 2021
FOI2021/06770 <i>Please provide copies of booking on and booking off records for the following areas: G2 B3 B4a B4b B4d B4e B6 B7 B4a - B4e inclusive may also be known as B4 and is known locally as Long Valley. All of which forms part of the military training estate as defined by the Aldershot and District Military Lands Byelaws. I believe it is a requirement for anyone using the lands to book on upon arrival and book off upon departure and notification is recorded by the South East Operations Room on 01420 483405. The scope of the request should be restricted the following dates: 1st March 2021 to 31st May 2021 I am happy to accept the redaction of personal details as per 2021/00283 but knowing if those booking on were military or civilian would be useful too.</i>	28 June 2021	27 July 2021