

From Andrew Tranham



Ministry
of Defence

Ministry of Defence
Main Building (Level 1 Zone N)
Whitehall
London SW1A 2HB
United Kingdom

Telephone [MOD]: +44 (0)20 780 70028
Facsimile [MOD]: +44 (0)20 721 85471
E-mail: CIO-FOI-IR@mod.uk

Head - Information Rights Team

FOI 2015/02390

Mr Kieran Foster

Via e-mail: request-256075-b8ff12e1@whatdotheyknow.com

30 July 2015

De - Mr Foster,

ENVIRONMENTAL INFORMATION REGULATIONS (EIR) 2004 – INTERNAL REVIEW

1. I am writing in response to your e-mail to the Defence Infrastructure Organisation (DIO) of 30 May 2015. We have treated your email as a request for an internal review of MOD's processing of your information request dated 2 March 2015, which was initially handled under the Freedom of Information Act. The purpose of this review is to consider whether the requirements of the relevant Information Rights legislation have been fulfilled. The Department's policy is to treat any complaint from an applicant about the MOD's response to an information request as a formal internal review except where the complaint can be resolved quickly through informal resolution with the handling branch. The scope of Information Rights legislation internal reviews are defined by Part VI of the Code of Practice under section 45 of the Act, at: <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf> or for the EIR at <http://archive.defra.gov.uk/corporate/policy/opengov/eir/cop.htm>. This is my formal response following the review.

Handling

2. Although handled by 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 clearly falls under the definition of environmental information specified in section 2(1)(c) of the Regulations which defines environmental information as "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 (*my underlining*) 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".

3. In conducting my review of the handling of your request I have focussed in particular 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 7(1) which provides that where a request is made under Regulation 5, the public authority may extend the period of 20 working days to 40 working days if it reasonably believes that the complexity and volume of the information requested means that it is impracticable either to comply with the request within in the earlier period or to make a decision to refuse to do so;
- d. Para 7(3) which states that where para 7(1) applies, the public authority shall notify the applicant accordingly as soon as possible and no later than 20 working days after the date of receipt of the request;

Your request for information was received by the Department on 2 March 2015 and acknowledged next day; although an acknowledgement is not a requirement of the Regulations I consider it good business practice to do so. In accordance with Para 7(1) of the Regulations, a substantive response was due no later than 30 March 2015. Your request was as follows:

'I am writing to request copies of the following internal MOD documents

*i) **current** and/or **former** editions of the 'integrated land management plan' or 'integrated rural management plan' for the Aldershot, Hankley, Ash, Pirbright and Longmoor military training areas in ATE Home Counties*

ii) reference is made in a 2003 MOD commissioned report that:

"EN and DE have produced 'Guidelines for Assessment of Recreational Events by Defence Estates' for all of the MOD sites within the Thames Basin Heaths pSPA and Thursley Ash, Pirbright and Chobham cSAC. This guidance outlines the possible impacts of recreational events/recreation and best practice to minimise the impact."

*I wish to request a copy of these guidelines, both **former** and **current**.'*

(NB The emboldening is my own for emphasis.)

You were advised on 24 March 2015 that information was held by the Department in relation to your request, but that a further 20 working days was required in order to test the public interest in relation to the exemption at section 22 of the Freedom of Information Act, an exemption which permits the withholding of information if it is intended for future publication. The letter advised that additional time is permitted by the Act to process your request solely with regard to determining the balance of the public interest in relation to a 'qualified' exemption¹. An equivalent provision exists in the Regulations at Para 7(1). The substantive response to your information request dated 27 April 2015 met the extended 40-day deadline for a response. You were each time informed of your right to appeal in the first instance to MOD and then if still not content following internal review, to the Information Commissioner.

¹ Information which can only be withheld provided the public interest in doing so outweighs the public interest in disclosure.

4. In summary, I find that the response you received was handled correctly in accordance with the Regulations albeit the request was incorrectly processed under the Act for which I must apologise.

Substance

5. The final response advised you that a search for the information had now been completed and that with regard to the first part of the complaint a copy of the Aldershot Integrated Land Management Plan (ILMP), dated 3 November 2004, had been identified; and in relation to the second part of the information request a document entitled 'Guidelines for Assessment of Recreational Events by Defence estates' held by MOD is the current: *User Guide to Holding Recreational Events in SSSI Designated Lowland Heathland and Conifer Plantation within the Army Estate (Home Counties)* met the description of the request. Both documents were released to you with a small amount of personal data withheld under Section 40(2) of the Act which specifically protects the personal data of third parties from release into the public domain. Section 40 is an 'absolute' exemption which means that information falling into this category of exemption can be refused without consideration of the public interest.²

Information in Scope

6. As part of this internal review I have sought to establish whether MOD holds any similar documents for other sites besides Aldershot. I can confirm that no other ILMPs have been completed for Aldershot since the edition published in 2004 and that IRLPs have not been completed for any other military training areas in the Home Counties. Similarly, with regard to the second part of your request, I have established that there are no separate user guides for individual sites. As the title suggests of the document provided, the user guide covers the whole of the Home Counties area.

7. Given that your request was for the current and/or former editions of ILMPs and Recreational Event Assessments, I find that reference to the potential future publication of other reports was frankly confusing: future publications were not within the scope of your request and the use of the exemption at section 22 of the Act therefore did not apply. However, I do accept that it is incumbent upon public authorities to provide help and assistance to requesters but I find that it would have been more appropriate if reference to future publication had been made in the context of general advice to you rather than appearing that we were withholding information from you that was in scope of your request on the grounds that it would be published at some point in the future. This is not the case.

Advice and Assistance

8. It has been the Department's intention to have in place ILMPs for other sites in the Home Counties area but none have been completed so far. I am advised that a new programme for delivery of IRLPs is currently being developed. Preparatory work began some 12 years ago on drafting IRLPs for other sites but they will need considerable rework and updating as part of the new programme of IRMP production before they are ready for management consideration and official sign-off.

9. In summary, I am satisfied that you have been provided with all the information that meets the description of your request. Whilst I have determined for compliance reasons that the

² I have not examined the appropriateness of the application of this exemption in this context as this is not the focus of your complaint.

appropriate legislative regime for handling your request is the EIRs, I should add that the application of this regime has no impact on the outcome of your request in terms of releasable information and you have not been disadvantaged as a result.

Conclusion

10. To conclude, I find that:

- It was more appropriate to handle this request under the provisions of the EIR rather than the FOI Act;
- All the information in scope of your request has been provided;
- The exemption at section 22 of the Act was not correctly engaged;
- Information about future publication should have been provided in the context of advice and assistance and not the impression given that certain information in scope of your request was being withheld.

If any aspect of this review is unclear, I should be happy to explain it. 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 his website at: www.ico.gov.uk. His address is: Information Commissioner's Office, Wycliffe House, Water Lane, WILMSLOW, Cheshire, SK9 5AF. Fax 01625 524 510.

Yours sincerely,
