

From Mrs S Gardiner



Ministry of Defence

Head - Information Rights Team

Our references:
FOI2020/08514
FOI2020/09232

Mr Simon Brown

Via email:

request-679189-b81b2bf4@whatdotheyknow.com
request-684568-45feefab@whatdotheyknow.com

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27th November 2020

Dear Mr Brown

FREEDOM OF INFORMATION ACT (FOIA) / ENVIRONMENTAL INFORMATION REGULATIONS (EIR)– INTERNAL REVIEW

1. I am writing in response to your emails of 14 August and 15 September 2020 in which you requested an internal review of the handling of your requests under the Freedom of Information Act 2000 (“FOIA”) which are available on the WhatDoTheyKnow (WDTK) website¹. The purpose of this review is to consider whether the requirements of the FOIA have been fulfilled. Its scope is defined by Part 5 of the Code of Practice² under section 45 of the FOIA. I apologise for the delay in providing this internal review.

Handling of FOI2020/08514

2. Your request of 22 July 2020, received on the same day, was worded as follows:

‘I am writing to you with reference to the recent chain link fencing installed along the eastern boundary of Long Valley (training area B4) along Rushmoor Road between OS Grid Ref: SU 85185 52364 and OS Grid Ref: SU 84949 51798

1. Please can you provide all internal correspondence (email, minutes of meetings, records of decisions etc) relating to the erection of the fence as stated above. I am happy for personal details such as names to be removed however, I am interested in the organisational positions of the individuals concerned, so where these appear in email signatures please can they be retained (I believe this request is inline with ICO guidance).

2. All costs, charges incurred to install the fence as stated above. This cost would be considered a one-off charge and therefore not subject to commercial-in-confidence restrictions or redaction.’

¹ FOI2020/08514: https://www.whatdotheyknow.com/request/new_fencing_at_long_valley_b4_tr and
FOI2020/09232: https://www.whatdotheyknow.com/request/installation_of_new_fence_traini

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, FOI2020/08514, was handled by the Defence Infrastructure Organisation (DIO) under the FOIA. On 23 July, your request was acknowledged, and you were advised that the target date for response was 20 August 2020. DIO's response of 14 August was provided within the statutory timescale. It stated that MOD may hold information on the subject requested but would not be able to answer your request without exceeding the appropriate limit. You were advised that to locate, retrieve and extract information in scope of your request would involve at least six working days of effort and section 12(1) of the FOIA was, therefore, applied.

4. Under section 16 (advice and assistance), you were advised that MOD may be able to provide some information in scope of your request if you were to reduce or refine it to bring the cost of compliance under the limit. For example, if you were to limit your request to the cost of installing the fence. You were correctly informed of your right to appeal, in the first instance to the MOD for an internal review, and then if still not content, to the Information Commissioner.

5. You requested an internal review on the same day. You also sent further emails on 13 and 20 October and 15 November which are all available on the WDTK website.

Handling of FOI2020/09232

6. Your subsequent request of 14 August 2020, FOI2020/09232, was worded as follows:

'I am writing to you with reference to the recent chain link fencing installed along the eastern boundary of Long Valley (training area B4) along Rushmoor Road between OS Grid Ref: SU 85185 52364 and OS Grid Ref: SU 84949 51798.

Please provide copies of all emails regarding the above fence from the following:

DIO RD OSTrg-SE HQ TSO SyPA - Training Safety Officer (Security and Access), South East Region, UK Training

DIO RD OSTrg-SE HQ Comd - Commander | South East Training Estate | UK Training

Please include full email chain and all relevant attachments.'

7. On 17 August, DIO advised that the target date for response was 14 September. On the same day, you sent a further email as follows: *'To clarify I seek all emails within the scope of the stated subject matter 'to' and 'from' the email accounts specified'*.

8. This request was handled by DIO under the EIR. MOD's substantive response of 14 September advised that DIO may hold the information on the subject you have requested but it could not be answered as it was deemed to be manifestly unreasonable under section 12(4)(b) of the EIR. You were advised that to extract the information in scope of your request would involve at least 10 working days of effort. Section 12(4)(b) of the EIR allows public authorities to refuse a request for information which is manifestly unreasonable when the cost of compliance with the request would be too great. You were informed that MOD may be able to provide some information in scope of your request if you reduced or refined your request to specific documents to bring the cost of compliance under the limit. You were provided with the right to appeal.

9. I note that the estimated cost of compliance for this request was higher than that provided for your original request, even though you had reduced the request to two email accounts. You were, however, still seeking *'copies of all emails'*, including *'full email chain and all relevant attachments'* and had not specified a time period.

10. On 15 September, you contacted the DIO Secretariat to express your dissatisfaction with the handling of this request. This correspondence was treated as a request for an internal review. A separate request for an internal review, in which you asked for your request to be considered under the FOIA, was received by this office on 17 September.

Processing Regime Considerations

11. The ICO's guidance '*What is environmental information? (regulation 2(1))*'³ states that if some of the information held is environmental information and some is not, then the public authority will have to apply the EIR to the environmental information and FOIA to the non-environmental information.

12. As part of this review, I have been provided with some sample correspondence to identify the correct access regime for the handling of your requests. It appears that the information could potentially fall in scope of both the FOIA and EIR. This is because the installation of the Long Valley fence was part of a wider programme of fence building in the Aldershot area that took place as part of the Training Estate Public Safety (TEPS) Programme. I have also had sight of one document which confirms that the fence was installed, partially due to a safety requirement in order to protect members of the public when defence training activities are taking place.

13. However, from the sample of correspondence provided, I have not seen any information which specifically suggests that the information requested is environmental in nature i.e. that the installation of the fence could specifically impact on the environment. My review has, therefore, focussed on the following requirements of the FOIA:

- 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;
- 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 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.

Substance

14. As part of this internal review, I have looked at your requests again from first principles and my findings are in the following pages.

³ https://ico.org.uk/media/for-organisations/documents/1146/eir_what_is_environmental_information.pdf

Application of section 12 (exceeding the cost of compliance)

15. Section 12(1) of the FOIA 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')⁴. This limit is calculated at a rate of £25 per hour of staff time, and £600 equates to 24 hours work.

16. There are significant difficulties in the handling of your original request i.e. to locate '*all internal correspondence (email, minutes of meetings, records of decisions etc)*' that would fall in scope of your request. It is clearly a very broad request and would include all recorded information held by the Department on this subject.

17. I have established that at least twenty individuals within seven different DIO teams, would hold information that relates to this subject. Each individual would therefore be required to search their email account to locate all of the information you are seeking, then retrieve and extract it. Although the majority of records are stored in Outlook, some information has been filed in other repositories, such as team sites. It is possible that internal correspondence may have been shared using this method and each team will have different approaches to storing and sharing information internally.

18. In addition, there has been a significant amount of correspondence that has been generated on this subject which would also fall in scope of your request such as requests for information under FOIA and ministerial correspondence, which cannot be easily isolated from a search. Nevertheless, they would fall in scope if they were subject to internal correspondence and relate to the subject of interest to you.

19. To search the email accounts for all of the individuals involved within DIO alone, and then to provide you with the information in scope of your request would take considerable staff effort. To provide you with an indication of the work involved, a sample search was conducted using one of the two accounts you named in your refined request. A number of key word searches were conducted with the following results:

- a. Long Valley – 923 emails and 314 records (filed on Training team site)
- b. B4 – 594 emails and 158 records (filed on Training team site)
- c. Rushmoor – 592 emails and 135 records (filed on Training team site)

20. These search terms are all relevant to the subject matter and are sufficient to identify the relevant information that would come within scope of your request.

21. Therefore, a total of 2109 emails for the period January 2018 to August 2020 and 607 other items in team sites have so far been identified which could be relevant and potentially fall in scope of your request. Each item found in this search would have to be read to identify those that contain information which falls within the description of your request, and then extract and prepare it for release, noting that emails may vary in length and contain attachments that would also have to be reviewed. Even if you allowed a reasonable 2 minutes per record, noting that there are a total number of 2716 items, it is estimated that it would take one person at least 90 hours to locate, retrieve and extract the information in scope of your request from just one account, which exceeds the cost limit by some considerable margin.

22. To process your original request this exercise would have to be repeated by at least nineteen other individuals within DIO alone, and the effort involved would significantly exceed the cost limit.

⁴ http://www.legislation.gov.uk/uksi/2004/3244/pdfs/uksi_20043244_en.pdf

23. It is likely that the information in scope of your first request is not confined to DIO teams and a wider search would be required of MOD holdings to locate all internal correspondence. In summary, I am satisfied that section 12(1) was correctly applied to your original request.

24. Furthermore, as the sample exercise undertaken during this review related to one of the email accounts specified in your second request (FOI2020/09232), I am satisfied that section 12(1) was correctly applied to that request.

25. Overall, I find that the regime used to process your requests makes no material difference to the outcome due to the significant effort involved.

Section 16 (advice and assistance)

26. Section 16(1) of the FOIA (or Reg 9 EIR) places an obligation on public authorities such as MOD '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, requests for information to it'.

27. Where section 12 (or Reg 12(4)(b) EIR) is cited to refuse a request, this duty requires a public authority to advise the requester on how their request might be refined to bring it within the cost limit. In the substantive responses, you were provided with advice on how to narrow your request.

28. I note that in your subsequent request, you attempted to refine the request of your own accord. Unfortunately, the Department is still unable to process this request within the cost limit as explained above. In particular, you have not specified a time period for your request and the scope has not been significantly reduced. I can advise that a request for all emails etc, with no defined time period, is likely to attract section 12 of the FOIA.

29. I can also advise that there were two phases of fence construction in the Long Valley/Rushmoor Road area during 2018, with the majority of the work being completed as part of the initial build in April 2018. However, correspondence relating to the installation of the fence continues to this day in the form of letters from the public and FOI requests such as those you have submitted. Given the volume of email correspondence held, it is not a particularly easy task to refine any new request to include it, even if your request was reduced to one month.

30. I would suggest that you may wish to consider refining your request to focus on one subject within a reduced and specified time period. This could be limited to

- a. Specified key documents or information which relate to the approvals and delivery process relating to the installation of the Long Valley fence. Examples of these would include a Statement of Need (business case) or Work Task (a set of documents that details the delivery of the completed work).

OR

- b. Records that identify the stakeholders who were consulted about the installation of the fence.

OR

- c. Information relating to costs of installing the Long Valley fence, as suggested in the response to your first request (FOI2020/08514).

MOD will consider any one of these options as a fresh request under the FOIA, subject to any exemptions that may apply.

Conclusion

31. In summary:

- a. Your requests were handled in accordance with the FOIA and EIR.
- b. Section 12 (exceeding the cost of compliance) of the FOIA is correctly applied as to locate, retrieve and extract all of the information in scope of your requests would exceed the appropriate cost limit.
- c. Under section 16 of the FOIA, MOD has provided further advice and assistance on how you could focus and limit your requests in order to make a new refined request to the Department.
- d. The processing of your request under the FOIA or EIR has not materially affected the outcome of your information requests.

A copy of this letter has been sent to the Information Commissioner.

If you remain dissatisfied with the review, you may make a complaint to the Information Commissioner under the provisions of section 50 of the FOIA. 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