



Ministry of Defence

Ministry of Defence
Main Building
Whitehall
London SW1A 2HB
United Kingdom

Ref: FOI2021/04673

E-mail: TOG-FOIandPQ@mod.gov.uk

Iain Overton
request-698427-
fc8fb466@whatdotheyknow.com

09 June 2021

Dear Iain Overton,

Thank you for your email of 30 April requesting the following information:

“Can the MOD confirm or deny that in the month of March 2021, its Special Advisers to your ministry used WhatsApp to conduct any business that might be considered pertinent to their roles as Civil Servants.

If so, how many WhatsApp messages were sent during this month by your Special Advisers.”

I am treating your correspondence as a request for information under the Freedom of Information Act 2000 (FOIA).

I apologise for the delay in responding to your request.

We are writing to advise you that the Ministry of Defence is unable to confirm or deny whether the information you have requested in your first question is held under section 31(3) of the Freedom of Information Act 2000 ('the Act').

We consider that confirming or denying that such information is held would be likely to prejudice (a) the prevention or detection of crime, (b) the apprehension or prosecution of offenders and (c) the administration of justice. A confirmation or denial that Ministry of Defence officials used WhatsApp would provide information as to which messaging service those officials used.

It would either confirm that those officials use WhatsApp (which is neither confirmed nor denied) or it would deny that those officials use it, which leaves open the possibility that it uses other messaging services. It would then be open to other requests for information as to whether Ministry of Defence officials use those other messaging services. If such requests were answered with a similar confirmation or denial, it would logically point to the messaging service (or services, as the case may be) that Ministry of Defence officials use.

The revelation of such information would undermine the security of the Ministry of Defence's systems by potentially assisting those with malicious designs in the planning of cyber attacks on the Ministry of Defence. Such acts would constitute criminal offences and confirming or denying that the information requested was held would be likely to prejudice efforts to prevent or detect the commission of such offences and the apprehension or prosecution of those who commit them.

Even if the Ministry of Defence were to confirm or deny whether it held the information you requested, we consider that it would not be possible to comply with your second question under section 12 of the Act. This provision relieves public authorities of the duty to comply with a request for information if the cost of dealing with it would exceed the appropriate limit. The appropriate limit has been specified in regulations and for central Government this is set at £600.

This represents the estimated cost of one person spending 3½ working days in determining whether the Ministry of Defence holds the information, and locating, retrieving and extracting it. The reason that your request exceeds the cost limit is that, in order to locate information that is relevant to your request, it would be necessary to search through multiple devices used by special advisers. Searching all those that might contain relevant information to determine whether the Ministry of Defence holds any information relevant to your request would exceed the appropriate limit laid down in the regulations. Digital communications undertaken for personal or party political purposes would not be held by the Ministry of Defence under the terms of the Act.

We can confirm that special advisers receive appropriate advice on the security of their communications.

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact us in the first instance at the address above. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not normally investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.org.uk>.

Yours sincerely,

Top Office Group Business Manager