

From Mrs S Gardiner



# Ministry of Defence

Head - Information Rights Team

Our reference:  
FOI2020/11443

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Mr Iain Overton

Via email: [request-698427-fc8fb466@whatdotheyknow.com](mailto:request-698427-fc8fb466@whatdotheyknow.com)

20<sup>th</sup> January 2022

Dear Mr Overton,

## **FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW**

1. I am writing in response to your email of 19 July 2021, in which you requested an internal review of the handling of your request under the Freedom of Information Act 2000 (the Act) which is available on the WhatDoTheyKnow website<sup>1</sup>. 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 Practice<sup>2</sup> under section 45 of the Act. I apologise for the delay in responding to you.

### **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; and

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<sup>1</sup> [On what platforms your special advisors communicate - a Freedom of Information request to Ministry of Defence - WhatDoTheyKnow](#)

<sup>2</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/744071/CoP\\_FOI\\_Code\\_of\\_Practice\\_-\\_Minor\\_Amendments\\_20180926\\_.pdf](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 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. Your request for information, received by the MOD on 13 October 2020, was worded as follows:

*“How many digital and/or written messages did the MOD's SPADs send on the 7 September 2020 in their capacity as Special Advisors to the MOD.*

*Can you please let me know:*

- 1. The number of total messages.*
- 2. The platforms on which such messages were sent, broken down by numbers (i.e. email, What'sApp, SMS text, letter, Snapchat, Zoom DMs, Twitter DMs, etc.).*
- 3. Whether they used private or state-given platforms (emails, mobile phones etc.) for such correspondence - again broken down by numbers and platforms”.*

4. In accordance with section 10(1) of the Act, a substantive response to this request was due no later than 10 November. On 16 April 2021 you were issued with a final response which was some 5 months overdue, and therefore did not meet the statutory deadline for which I apologise. The Department wrote to you several times during this period, however, to keep you informed of the delay. The response advised you that information in scope of your request is held and it was provided to you, in addition confirming that the SpAds did not send out any work-related messages using other platforms on the 7th of September 2020.

5. You were correctly advised 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 in accordance with section 50(1) of the Act.

6. In summary, your request was not handled in accordance with the timeliness requirements under section 10 of the Act.

### **Substance**

7. Under section 1 of the Act, the MOD has a duty to confirm or deny whether information is held at the time of the request and, where held, provide the information to the requester, subject to the application of any exemptions. In conducting my review, I have considered your request from first principles and I have sought to confirm whether the information you were provided with is the entirety of the information in scope of this request that is held by the MOD.

8. I can confirm that there were two Special Advisers appointed to the MOD as at 7 September 2020. As part of the initial handling of this request, both Special Advisers were asked to conduct relevant searches of their holdings to locate any correspondence that they sent by any electronic means, or in the form of a handwritten letter, on the day in question.

9. The results of these searches show that one individual held 26 emails that met the description of your request and confirmed that these were the only outgoing communications sent in their capacity as a Special Adviser to the MOD.

10. The other Adviser located 8 outgoing emails. While they did not specifically confirm that no other method of communication was used, I have evidence that they were made fully aware that the scope of the request included all means of communication.

11. I am satisfied that all relevant searches have been made and the department has identified all of the information in scope of this request.

12. In hindsight, it may have been more appropriate for the Department to neither confirm nor deny (NCND) the use of any other specific software/applications used by selected personnel to send messages on a particular day. The release of information about which applications are or are not used on individual days could be used in conjunction with other information (such as press releases and formal Parliamentary announcements) to develop a picture of how certain personnel will likely communicate in specific circumstances. This might in turn encourage those with hostile intent to target certain applications or systems with a view to intercept or disrupt selected communications channels at critical times. However, all requests for recorded information are processed on a case by case basis and this response does not affect MOD's decision to NCND the use of WhatsApp by its Special Advisers in the month of March 2021 in response to another request<sup>3</sup> that you submitted.

## **Section 16 (advice and assistance)**

13. Section 16(1) of the Act places a duty on a public authority to provide advice and assistance, where possible, to those making or intending to make a request for information.

14. MOD staff are able to choose the most appropriate means for any communications they make on behalf of the department. All MOD staff are required to retain any documents that provide a record of our decisions, actions and policies. These key documents must be made accessible, appropriately protected, and be made available for audit, and only destroyed at the end of the agreed retention periods specified in departmental policy.

## **Conclusion**

15. In summary, I find that:

- a. Your request was not handled in accordance with the timeliness requirements under section 10 of the Act.
- b. All relevant searches for information have been made, and all the information in scope of this request has been provided.
- c. Some section 16 (advice and assistance) has been provided.

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<sup>3</sup> [https://www.whatdotheyknow.com/request/on\\_what\\_platforms\\_your\\_special\\_a#outgoing-1180513](https://www.whatdotheyknow.com/request/on_what_platforms_your_special_a#outgoing-1180513)

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 by following this link - <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>. 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 stylized, cursive script.

Sandra Gardiner