

From: Mrs S Gardiner



Ministry
of Defence

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Head - Information Rights Team

Our reference:
FOI2020/06829

Mr John Fuerst
Via email: request-662186-d0884cd0@whatdotheyknow.com

24th September 2020

Dear Mr Fuerst

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email of 24 July 2020 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 (WDTK) website at https://www.whatdotheyknow.com/request/raf_apititude_test_results_per_et#incoming-1608515. 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.

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 1(3) which stipulates that, where an authority has informed the requester that it requires clarification, it will not be under any further obligation to comply until the requester supplies the information it requires;

¹

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 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

e. 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.

Handling of Original Request FOI2020/05318

3. Your first request for information, received by the Department on 5 May 2020, was worded as follows:

“Please provide the means, samples sizes, and standard deviations for the Naval Royal Air Force (RAF) aptitude test by narrow ethnic group for the last 5 years.

Ethnicity should be as narrow as possible, e.g. Bangladeshi rather than Asian if that applies to your recording. Preferably, a summary general cognitive scores would be reported, however, we can compute this from the 7 cognitive subtest scores if necessary.

If it is more convenient, please generate this data in a raw format for each individual with ethnicity in one column and results in the other columns. This may be simpler and circumvent restrictions on generating new information.”

4. Section 10(1) of the Act requires that you receive a response by no later than the twentieth working day following date of receipt, which in this case was by 4 June 2020. The substantive response of 15 May 2020 was therefore issued within the statutory deadline. You were advised that the Ministry of Defence (MOD) required further information in order to determine whether any information which fell in scope of your request was held. The response advised you that the ‘Naval Royal Air Force’ was not a recognised term and informed you that the Royal Air Force (RAF) and Royal Navy are two different Services within the UK Armed Forces and that each keep separate records. You were asked to clarify which of the Services you wished to receive information about. The letter also correctly advised you of your right to appeal.

5. In summary, I find that this request was handled in accordance with the Act.

Handling of Clarified Request FOI2020/06498

6. Your response to the request for clarification, received by MOD on 14 May 2020, was worded as follows:

“Thank you for the clarification request. I would like "Royal Air Force' aptitude test scores by narrow ethnic groups for the last 5 years. Please include sample sizes, means, and standard deviations, if available.

Ethnicity should be as narrow as possible, e.g. Bangladeshi rather than Asian if that applies to your recording.

Preferably, a summary general cognitive score would be reported, however, we can compute this from the 7 cognitive subtest scores if necessary."

7. Section 10(1) of the Act required that you receive a response within 20 working days, and the substantive response issued to you on 11 June 2020 met this. In accordance with section 1 of the Act you were advised that the information you requested was not held by MOD. Under section 16 (advice and assistance) you were advised that the ethnicity categorisations on the recruiting IT system does not record the detail of specific ethnicity as per your example of Bangladeshi rather than Asian. Additionally, Air Secretariat advised you that they do not analyse the data from the aptitude test scores by means of ethnic category and advised that this was because there is no requirement to identify their ethnicity to the level requested by you. They also advised that was an insufficient sample of data in the BAME sub-categories for any reliable statistical analysis to be conducted or for any robust conclusion to be drawn. You were correctly advised of your right to appeal.

8. In summary, I find that this request met the timeliness requirement of the Act.

Further Request - FOI2020/06829

9. You wrote to the Department again on 16 June 2020, as follows:

"You replied: "the recruiting IT system does not record the detail of specific ethnicity as per your example of Bangladeshi rather than Asian. Additionally, we do not analyse the data from the aptitude test scores by means of ethnic category"

Could you then provide, instead, a two-column file of individual scores. In the first column, give the broad ethnic category (Asian, Black, Whites...) of the individual and, in the second, the percentile summary score for that individual. And do this for the years requested. I will analyze the data."

10. This enquiry was processed as a new information request, and again a substantive response was provided within the statutory timeframe. The response of 30 June 2020 confirmed that data was held which could be used to produce the statistical information that you required, but that it would require such '*significant data manipulation including complex analysis and sophisticated judgement*' that doing so would be considered the creation of 'new' information. As public authorities, such as the MOD, are not required to create new information to respond to requests, the response stated that the information requested was not held.

11. In summary, I find that this request met the timeliness requirement of the Act.

Substance

12. I have looked at the handling of your request again from first principles and find that the Department was incorrect to state that the information you had requested was not held. You had specifically stated that you would be content to receive the raw data that was held, listed by whatever the narrowest level of ethnicity grouping was available.

13. I have therefore gone on to consider whether or not the requested raw data held can be provided to you. In doing so, I have considered the rights and freedoms of the individuals who participated in the aptitude tests.

Section 40(2) (third party personal information)

14. Section 40(2) of the Act provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3) or 40(4)² is satisfied. In this case the relevant condition is contained in section 40(3)(A), which applies where the principles relating to the processing of personal data set out in Article 5 of the General Data Protection Regulations (GDPR) ('the DP principles'). In particular, Article 5(1)(a) GDPR states that 'Personal data shall be process lawfully, fairly and in a transparent manner in relation to the data subject'.

15. In deciding whether it is lawful to disclose the information, I have considered Article 6(1)(f) of the General Data Protection Regulation (GDPR) in relation to each part of your request. The application of Article 6(1)(f) in the context of a request for information under FOIA requires the consideration of the following three-part test, bearing in mind that it is the view of the Information Commissioner that the test of 'necessity' under stage (b) must be met before the balancing test under stage (c) is applied:

- a. Legitimate interest test: whether a legitimate interest is being pursued in the request for information;
- b. Necessity test: whether disclosure of the information is necessary to meet the legitimate interest in question;
- c. Balancing test: whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

16. In considering any legitimate interests in the disclosure of the requested information under FOIA, MOD is committed to the principles of accountability and transparency. There has been academic study conducted into the use of aptitude tests and potential bias against certain cultural groupings. I therefore accept that there is a legitimate interest being pursued by the request.

17. Turning to the second part of the test, which is one of reasonable necessity, I considered whether disclosure under the Act was the least intrusive means of achieving the legitimate aim in question. I accept that disclosure of the requested information would meet the full requirement of the request, however, where the numbers of those participating the test from a specific ethnic group are low, I find that the release could have an impact on the rights and freedoms of those individuals.

18. MOD has a duty of confidentiality towards the participants because they would have a reasonable expectation that MOD would keep any personal data, including details of any scores they achieved in aptitude tests, confidential. Individuals will most likely have informed friends and family that they were applying, and . Where the number of candidates in a specific ethnic group is very low during any single year, the possibility that someone could estimate the scores achieved by those candidates exists.

19. Taking these factors into account I find that that the public interest can be met by the release of the requested information, suitably redacted to withhold specific numbers of participants where doing so could assist others to directly or indirectly identify them. This action is in accordance with the exemption at section 40(2) of the Act.

² <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

Section 16 (advice and assistance)

20. Section 16(1) of the Act 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'.

21. The raw data provided in the attached tables presents the average results attained by candidates broken down by declared ethnic group. There is no requirement for applicants to declare their ethnicity and the results for those who did not make a declaration are included for completeness. I can also advise that the Tri-Service Ethnicity Categories were updated in 2017/2018, and the updated categories are shown for all years in the tables provided.

22. There are four sets of test score data in the Annex to this review, each of which refer to a specific type of work:

- AIS - Generic/support type work such as Chef, Personnel Administration.
- BIS - Work which also requires spatial aptitude, e.g. Logistics(Driver).
- CIS - Work that is more academically based, e.g. RAF Medics, Dental Nurse.
- DIS – Trades that are technical in nature.

The scores for AIS/BIS/CIS/DIS are calculated from the base score results of each applicant.

23. There is a minimum pass mark for each trade and the pass mark can change. In general, a number of factors are considered in deciding the appropriate pass marks, such as the training risk that is deemed acceptable for the trade, the number of candidates applying for the trade, the number of vacancies available, the difficulty of trade training and pass rate.

24. Finally, it should be noted that candidates may have made multiple attempts within the five year period, but would only be counted once per year. The sum and distinct totals for numbers of applicants have been included in Table 5 for clarity. The symbol '~' has been used to denote where the exact number of candidates has been withheld under the exemption at section 40(2) of the Act.

Conclusion

25. In summary I find that:

- a. It was reasonable for the MOD to clarify your original request (FOI2020/05318) as the term 'Naval Royal Air Force' was not recognised.
- b. The MOD was incorrect to state that no information in scope of your clarified (FOI2020/06498) or further (FOI2020/06829) request was held.
- c. The use of section 40(2) is engaged to withhold figures where the number of candidates is very low and a risk of re-identification exists.
- d. Advice and assistance relating to the caveats associated with the raw data presented in the tables have been provided under section 16 of the Act.

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,

A handwritten signature in black ink, appearing to be 'Sandra Gardiner', with a long horizontal stroke extending to the right.

Mrs Sandra Gardiner