

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

CIO-SPP-Information Rights Compliance

Ref: 24-05-2013-105825-006

Mr D. Gurtler,  
request-162619-8791d23a@whatdotheyknow.com

10 July 2013

Dear Mr Gurtler,

**FREEDOM OF INFORMATION ACT 2000 - INTERNAL REVIEW**

1. I am replying to your letter of 11 June 2013 in which you requested an internal review of the MOD's withholding of information in scope of a request you submitted under the Freedom of Information Act 2000 (hereafter referred to as 'the Act'). Your initial request is outlined below:

i. *The current restrictions to civilian use at RAF Northolt are:*

1. *A maximum number of 7,000 civilian flights (including business aviation and other civil operations)*
2. *A maximum of 28 civil movements per day (Monday to Friday)*
3. *Civil flights limited to 0800 to 2000*
4. *Civil flights limited to prior permission only*
5. *No scheduled flights*
6. *No aircraft exceeding 30 seats*
7. *No noisy aircraft*

*Could you please confirm that these restrictions are not being breached at RAF Northolt?*

ii. *I understand that the increase in civilian air movements is anticipated in the first year rising from 7,000 to 12,000 (a 70% increase) and by 2015 to increase to 17,500 (a 150% increase). Could you confirm whether the consultation has commenced? Also whether these are the figures that the MOD is discussing in the consultation?*

iii. *Please provide details of how this consultation will be carried out?*

iv. *Please outline how this will be both the 'fullest' and 'maximum' consultation as expressed by Mr Reid?*

v. *Could you advise how this will fit in with the Davies Commission review that is currently being undertaken and how this will not undermine, prejudice or pre-empt that consultation?*

vi. *Has the MOD taken any planning or legal advice as to the requirement to submit a planning application for the change of use from what was previously a military airfield, to what will now be predominantly an airfield for civilian movements?*

vii. *Will the airfield now be subject to the full controls of the CAA Safety Review Group and CAA Licensing?*

2. I have now completed a full independent review of the handling of your request and substance of the response you received. The purpose of the internal review is to consider whether the requirements of the Act have been fulfilled. The scope of the review is defined by Part VI of the Code of Practice under section 45 of the Act, which can be found at <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>.

### **Handling**

3. In conducting my review of the handling of your request, I have focussed in particular on the following requirements of 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;
- d. 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;
- e. Section 17(1) which states that, where it claims information is exempt, the public authority must, within the time for complying with section 1(1), give the applicant a notice which states the fact, specifies the exemption(s) in question and states why the exemption applies;

4. Your request for information was received by the MOD on 24 May 2013 and, in accordance with section 10(1) of the Act, a substantive response was therefore due not later than 24 June 2013. A substantive response was sent on 11 June 2013, which was within the timescale set out by the Act. This response set out the Department's position with regard to your request (discussed in greater detail below) and I find that in all other respects the response complied with the Department's statutory duties for handling a request under the Act.

## Substance

5. Prior to addressing the substance of this review, I must first inform you that the purpose of section 1(1) of the Act is to provide an applicant with access to recorded information held by the Department at the time of request subject to certain exemptions. It does not require public authorities to answer questions, provide explanations or give opinions. In a decision notice of 15 February 2011 (FS5027927), the Information Commissioner stated that *"the Act does not provide a right to ask questions from public authorities. It provides the right to ask an authority for a copy of any recorded information that it holds... Although this is the case, the Information Tribunal has clarified that any written question to a public authority can be considered to be a freedom of information request. If a question can be answered by simply providing the applicant with copies of recorded information that it holds then it should do so. Otherwise it should simply state that it does not hold relevant information."* Further to that, there is no requirement under FOI to create information to respond to questions posed and submitted under the Act. The Information Commissioner's Office publishes guidance on how to make requests for information under the Freedom of Information Act in the ICO Charter for Responsible Freedom of Information Requests, available on the ICO website at the following address:

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/practical application/its\\_public\\_information\\_foi%20charter\\_final.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/its_public_information_foi%20charter_final.pdf)

6. Your questions are addressed in turn below.

i. *The current restrictions to civilian use at RAF Northolt are:*

- *A maximum number of 7,000 civilian flights (including business aviation and other civil operations)*
- *A maximum of 28 civil movements per day (Monday to Friday)*
- *Civil flights limited to 0800 to 2000*
- *Civil flights limited to prior permission only*
- *No scheduled flights*
- *No aircraft exceeding 30 seats*
- *No noisy aircraft*

*Could you please confirm that these restrictions are not being breached at RAF Northolt?*

In the initial response you were provided with a link to the RAF Northolt Aerodrome manual terms and conditions and were informed that, as these were available to the public, the Department did not need to provide you with the information due to the exemption in section 21 of the Act (information reasonably accessible to the applicant by other means). However I do not think that these regulations answered your question as set out. As you stated in your request for a review, this was a 'Yes' or 'No' answer, however such a response would not be a compliant response from the Department under the Act for the reasons explained in paragraph 5 above. The recorded information held in scope of the first part of your request will be found in the daily aircraft movement logs for RAF Northolt, recording the timings and details of aircraft flying in and out of Northolt on a daily basis. Although this information is held it does not appear from your complaint about the handling of your request that you are specifically seeking such detailed recorded information. In your request for an internal review you explicitly mentioned that you thought that the MOD had breached the policy of having no more than 7,000 civilian flights a year. However, under section 16 of the Act I can advise that I have had confirmation that the activity at RAF Northolt has 'complied with previous MOD policy of limiting the number of commercial movements to 7,000 per year and will comply with the new limit of 12,000 commercial

movements per year.' This excludes military and non-commercial civil movements, which have never been capped.

- ii. *I understand that the increase in civilian air movements is anticipated in the first year rising from 7,000 to 12,000 (a 70% increase) and by 2015 to increase to 17,500 (a 150% increase). Could you confirm whether the consultation has commenced? Also whether these are the figures that the MOD is discussing in the consultation?*

You were provided with a general outline of the consultation process in response to your question but not provided with any recorded information. As such, this was not a compliant response. However, the information that provides the answer to your question has since been provided to you by the Department on 18 June 2013 in response to your request reference 28-05-2013-093839-004. Following this, it is now exempt under section 21 of the Act. Regarding the figures the MOD is discussing in the consultation, I can confirm, that these are set out in the information already provided to you. We hold no information which includes the figures described in your request.

- iii. *Please provide details of how this consultation will be carried out?*

Please see the response to your question at ii. and the information previously released to you for your request reference 28-05-2013-093839-004. This is the information located in scope of this question.

- iv. *Please outline how this will be both the 'fullest' and 'maximum' consultation as expressed by Mr Reid?*

Please see the response to your question at ii. and the information previously released to you for your request reference 28-05-2013-093839-004. This information describes the parties consulted over the changes to civilian flight movements at Northolt. *Could you advise how this will fit in with the Davies Commission review that is currently being undertaken and how this will not undermine, prejudice or pre-empt that consultation?* No information is held on this. The Airports Commission is focussed on Major and Regional airports handling airline traffic and more information can be found at <https://www.gov.uk/government/organisations/airports-commission>.

- v. *Has the MOD taken any planning or legal advice as to the requirement to submit a planning application for the change of use from what was previously a military airfield, to what will now be predominantly an airfield for civilian movements?*

As RAF Northolt is to remain a military airfield a planning application for change of use is not required and therefore no information is held in scope of this part of your request.

- vi. *Will the airfield now be subject to the full controls of the CAA Safety Review Group and CAA Licensing?*

No information is held in scope of this request. The regulation of RAF Northolt is by the Military Aviation Authority, not the CAA. The relevant regulation is in the public domain and can be found at <http://www.maa.mod.uk/linkedfiles/regulation/mads.pdf>

## **Conclusion**

7. In summary, I find that:

- The initial response was handled in a timely manner and met the statutory requirements set out by the Act.
- The substance of the response was not entirely compliant with the Act in respect of those elements of your request where MOD directly answered

your questions without determining whether relevant recorded information was held.

- The MOD provided appropriate efforts in compliance with the department's responsibilities under section 16 (advice and assistance) of the Act.

8. If any aspect of this review is unclear, I would 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](http://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,

A handwritten signature in black ink, appearing to read 'A. S. Tranter', with a horizontal line underneath.