

From: Mrs S Gardiner



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FOI2016/04194

Mr Peter Rutherford
request-332690-2c7d507c@whatdotheyknow.com

13 September 2016

Dear Mr Rutherford

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your e-mail of 14 August 2016 requesting an internal review into the handling of your request for information dated 4 May 2016. The purpose of the internal review is to consider whether the requirements of the relevant Information Rights legislation have been fulfilled. The scope of the review is defined by Part VI of the Code of Practice under Section 45 of the Freedom of Information Act 2000 (referred to hereafter as 'the Act'), which can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf. This is my formal response following the review.

Handling

2. 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 that 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;

3. Your request for information, as posted on the WhatDoTheyKnow website¹, was received by the Department on 4 May 2016. Section 10(1) of the Act requires that you receive a response within 20 working days and the substantive response dated 27 May 2016 was within the statutory timescale. You were not advised if information in scope of your request was held, for which I apologise. You were advised of your right to appeal, in the first instance to MOD and then if still dissatisfied following an internal review, to the Information Commissioner in accordance with Section 50(1) of the Act.

4. In summary, your request was not handled in accordance with the Act.

Substance

5. Your request for information was worded as follows:

'What are the terms and conditions under which these facilities (UK bases) are made available to the USA? In the event of the office of US presidency being occupied by a person deemed by many people to be unsatisfactory to the point of almost being a threat, what freedom do we have to revoke these privileges before any lease terms might run out (if appropriate)?'

6. The substantive response on 27 May 2016 advised you that the principal agreement under which bases in the UK are made available to the United States Visiting Forces (USVF) is the NATO Status of Forces Agreement of 1951. There are no leasing arrangements. MOD retains ownership of the bases, with the USVF responsible for administering their own day-to-day activities. In regard to the future use of bases by the USVF, you were further advised that the UK Government will continue to make them available for as long as it is considered in our national interests to do so.

7. To meet with our Section 1 obligation, you should have been advised that some information is held by the Department, however it was exempt from disclosure under Section 21 (Information Available to the Applicant by Other Means) of the Act. The principle agreement under which bases in the UK are made available to the USVF is the NATO Status of Forces Agreement of 1951 and it is available in the public domain; it can be found via the following link:

http://www.nato.int/cps/en/natolive/official_texts_17265.htm

8. In a Decision Notice of 15 February 2011, FS50279127, 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."* The correct response would also have advised you that no other information is held by the Department, with the remainder of the response being provided under Section 16 of the Act (Advice and Assistance).

9. On 27 May 2015, you contacted the Department for a second time:

'I asked for the Terms and Conditions, which should have included any time period for a "Notice to Quit". Please advise any NTQ terms that might be applicable in the event of a temporary suspension of the arrangement, or rather less likely, of a shut down of the arrangement'

This should have been handled as a new request for information under the Act. Due to some administrative errors by the internal department handling your request, this message was not acknowledged until 7 June 2016. The email response you received by return that day, whilst providing you with your right to appeal, did not advise you that information was held. You were provided with a link to the NATO Status of Forces Agreement of 1951 and advised that there are no Notice to Quit terms in relation to the use of the bases. This was not a compliant response under the Act, I apologise that our standard of service fell well below those expected of the Department for the processing of information requests under the Act.

10. Unfortunately, the email link provided was incorrect and this prompted further exchanges between yourself and the Department. On 24 June 2016, you contacted the Department stating:

'I note that the document provides nothing relating to the NTQ query.

I understand that there are no Notice to Quit terms and therefore any requirement by HMG to leave, albeit temporarily, would be effective immediately. Please confirm if this is not the case'

Section 1 of the Freedom of Information Act gives an applicant the right to access recorded information held by public authorities at the time the request is made and does not require public authorities to answer questions, provide explanations or give opinions, unless this is recorded information held. Between 30 June 2016 and 9 August 2016, there was further correspondence as the Department endeavoured to answer your questions informally.

11. Whilst requesters are encouraged to seek an 'informal resolution' with the same official or internal department that provided the response on behalf of MOD as an alternative to a formal internal review, a period of resolution is not possible in every case and it is not an appeal stage stipulated in the Act. In this case, it is clear that the correspondence was on-going and you were still not satisfied with the Department's responses. On 14 August 2016, the Department issued a formal response under the Act advising you that no information was held in scope of your questions, providing you with some Section 16 advice and offering an internal review if you were still unsatisfied.

12. In conducting this review, I am satisfied that the only information held by the Department in scope of your request is the NATO Status of Forces Agreement of 1951 and that no further information is held by the Department.

Section 16 (Advice and Assistance)

13. Under Section 16(1) of the Act, it is the duty of a public authority to provide assistance, so far as it would be reasonable to expect, to persons who propose to make, or have made requests for information.

14. As previously advised, the bases are made available to the USVF under the terms of the NATO Status of Forces Agreement of 1951. The bases are not leased to the USVF and there are no standard notice to quit periods in relation to the use of the bases by the USVF. In the event the UK decided to no longer make bases available to the USVF, it is considered likely that a period of consultation between the Governments in power at that time would precede the formal notification to vacate. It is not known how long this period of consultation would be, this would be dependent on the circumstances at the time. There are a variety of issues that would need to be considered such as; the future use of the base, implications for MOD personnel and implications for personnel directly employed by the US Government.

16. The following research briefing published by the House of Commons library may be of further interest to you:

<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06808>

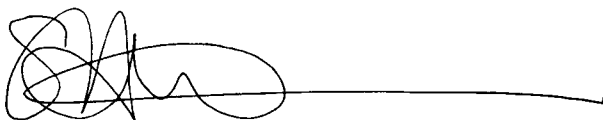
Conclusion

17. In summary I find:

- Your request was not handled in accordance with the Act.
- Some information is held in scope of your request, however it is exempt from disclosure under Section 21 (Information Available to the Applicant by Other Means). A link has been provided.
- Your email of 27 May 2016 should have been handled as a new request for information under the Act.
- It was not appropriate for the Department to continue correspondence on an 'informal resolution' basis when it was clear that no information was held in scope of your questions.
- No further information is held in scope of your request.
- Some additional Section 16 advice has been provided with this review.

If any aspect of this review is unclear, I would be happy to explain it. If you are dissatisfied with the review, you may wish to 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: <https://ico.org.uk> Her address is: Information Commissioner's Office, Wycliffe house, Water Lane, WILMSLOW, Cheshire, SK9 5AF. Fax 01625 524510.

Yours sincerely



Mrs S Gardiner