

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 11 January 2010

**Public Authority:** Ministry of Defence  
**Address:** Main Building  
Whitehall  
London  
SW1A 2HB

### Summary

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The complainant submitted a request to the Ministry of Defence for information about expenditure on school fees for children of members of the Armed Forces and Ministry of Defence staff. A response to the request was not provided. The Commissioner's decision is that the Ministry of Defence breached section 10(1) of the Act and must now comply with section 1(1) within 35 calendar days of the date of this notice.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 15 June 2009 the complainant requested the following information:

"How much has the Ministry of Defence spent in each of the last ten years contributing in full or part to the school fees of children of members of the armed forces and civil service staff of the MoD. By school fees I mean the fees paid to non state (private) schools for education or boarding costs.

I would like the information broken down:

- a) annually by financial year from 1999/2000 to 2008/2009

- b) amount spent for service children in the Army, Navy and Air Force and civil service staff.
  - c) the number of children whose fees were paid in full in each of the specified years.
  - d) the number of children whose fees were paid in part for each of the specified years
  - e) a list of the schools which received the fees
  - f) copies of any guidance issued to parents serving as members of the armed forces or MoD civil servants as to their rights to have school fees paid and how they might claim such fees”.
3. On 15 July 2009 and 4 September 2009 the complainant contacted the Ministry of Defence to resubmit his request for information and to enquire when he might receive a response.

## **The Investigation**

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### **Scope of the case**

4. On 9 September 2009 the complainant contacted the Commissioner to complain about the Ministry of Defence's failure to respond to his request.

### **Chronology**

5. On 28 October 2009, the Commissioner contacted the Ministry of Defence who confirmed that they had received the complainant's request for information of 15 July 2009 but had no record of the initial request of 15 June 2009. The Ministry of Defence confirmed that a response would be provided to the complainant's request for information as a matter of urgency.
6. The Commissioner notes that the Ministry of Defence has not responded to the complainant's request since that date, or indicated when it expects to respond either directly to the complainant or to the Commissioner.

## **Analysis**

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### **Procedural Requirements**

#### **Section 1**

7. Section 1(1) of the Act states that:

*“Any person making a request for information to a public authority is entitled –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him.”*

## **Section 10**

8. Section 10(1) of the Act states that:

*“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”*

The Commissioner considers that the Ministry of Defence has breached section 10(1) of the Act as it failed to respond to the request within twenty working days following the date of receipt.

## **The Decision**

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9. The Commissioner's decision is that the Ministry of Defence has breached section 10(1) of the Act in failing to comply with section 1(1) within twenty working days following receipt of the request.

## **Steps Required**

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10. The Commissioner requires the Ministry of Defence to respond to the complainant's request in accordance with section 1(1)(a) of the Act by informing the complainant whether it holds the information, or issuing a refusal notice explaining why it is excluded from the section 1(1)(a) duty to confirm or deny if information is held. If the exclusion from the duty to confirm or deny does not apply, and the information is held, then the Ministry of Defence should respond to the complainant's request in accordance with section 1(1)(b) by either communicating the information to him or issuing a valid refusal notice. Any refusal notice issued should comply with the requirements of section 17.

11. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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12. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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13. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 11<sup>th</sup> day of January 2010**

**Signed .....**

**Jo Pedder  
Senior FOI Policy Manager**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### General Right of Access

**Section 1(1)** provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

### Time for Compliance

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

**Section 10(6)** provides that –

“In this section –

“the date of receipt” means –

(a) the day on which the public authority receives the request for information, or

(b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

### Refusal of Request

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

**Section 17(2)** states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

**Section 17(3)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
- (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

**Section 17(4)** provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

**Section 17(5)** provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

**Section 17(6)** provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

**Section 17(7)** provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”