

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 20 July 2011

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

### Summary

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The complainant requested information relating to specific radiation figures on a graph in his possession. The MOD eventually concluded that none of the requested information was held. The Commissioner has investigated and finds that the MOD was correct in this response, but breached section 10(1) in responding outside the statutory time limit. He requires no further remedial steps to be taken.

### 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 22 May 2010 the complainant requested the following information:

*"I am in possession of a Graph (ES1/602) showing the decay rate, in hours, of Gamma Radiation at ground zero during the Atomic Bombs 'Pennant' and 'Burgee' in 1958. The graph shows, on the left, the figures 1, 10, 10 squared, 10 cubed etc: As these figures bear no relation to known radiation levels could you please supply me with the corresponding readings in Rads for figures 1, 10, 10 squared and 10 cubed."*

3. On 2 August 2010 the MOD provided a substantive response to the complainant in which it offered information about the radiation levels given on the graph ES 1/602.
4. On 2 August 2010 the complainant responded to the MOD stating that *"the figures...given bear no resemblance to the radiation levels for Atomic Bombs"*.
5. On 12 November 2010 the MOD wrote to the complainant in an attempt to clarify the information previously supplied to him.
6. On 15 November 2010 the complainant wrote to the MOD stating that it had denied him the requested information and again disputing the accuracy of that which had been provided to him previously.
7. On 9 December 2010 the MOD responded with the details of the internal review it had carried out following the complainant's correspondence. As part of the internal review the MOD had attempted to identify the source of the information previously given and locate the information used to interpret the graph. The MOD established that it did not hold the requested information and that previous correspondence sent to the complainant explaining the figures on the graph and clarifying the information already provided by the MOD were attempts to provide advice and assistance under section 16 of the Act.

## **The Investigation**

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### **Scope of the case**

8. On 24 January 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant disputed the MOD's position that it did not hold information pertaining to the request. The complainant also questioned the accuracy of the information that the MOD had provided in correspondence leading up to its internal review. With regard to the accuracy dispute, this is not something within the Commissioner's remit to investigate under the obligations of the Act. Therefore, the Commissioner's investigation will solely focus on determining whether relevant recorded information is held by the MOD.

### **Chronology**

9. On 10 June 2011 the Commissioner wrote to the MOD with a series of questions regarding the types of searches that had been undertaken for the requested information and how the information might be recorded, retained or destroyed.

10. On 8 July 2011 the MOD responded to the Commissioner's enquiries.

## Analysis

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### Substantive Procedural Matters

#### Section 1 – General right of access

11. Section 1(1) of the Act states the following:

*"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."*

12. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority held at the time of the request any information which falls within the scope of the request.
13. In the internal review of 9 December 2010 the MOD stated that its previous responses of 2 August and 12 November 2010 had been late due to the relevant department trying to locate the recorded information and confirm that it was held. The MOD informed the complainant that the previous responses had been attempts to *"explain the figures on the left hand side of the graph ES 1/602..."*
14. However, the MOD went on to say that, as part of the review, it had made enquiries regarding the source of the information that had been provided to the complainant, and that it had been established that the information requested was not held by the MOD. The MOD stated:
- "the information provided to you was not extracted from any recorded information held. It was created by DE&S [Defence Equipment and Support] solely in response to your request..."*
15. The Commissioner made enquiries to the MOD regarding its position that no information relevant to the request was held. He asked the MOD to explain how relevant information may be held, how recorded information

had been searched for and for details of the MOD's retention and destruction policy.

16. In its response to the Commissioner, the MOD confirmed that the graph ES 1/602 was contained within a specific report and that the report had been obtained from the Atomic Weapons Establishment (AWE) by the MOD to assist with answering the request. The MOD explained that the only other search for relevant information that had been undertaken was for the original record or 'log book', as this might contain information which would help to interpret the figures on the graph. The MOD confirmed that:

*"there was no requirement to carry out additional searches as the information in scope is the Interim Report...if information was held that would explain the details of the graph, it would be within the Interim Report..."*

17. The MOD went on to explain that:

*"it is believed that the graph was derived from manually recorded data. A search was made for the original record (log book) but no trace was found. It has been assumed that the manual record was either lost/destroyed at some time after the generation of the Interim Report in 1958 containing graph ES 1/602."*

18. With regards to the content of the specific Interim Report containing the graph available from AWE, the MOD stated in its correspondence that *"there is no recorded information within the report that explains the details of the graph"*. It provided a copy of the graph to the Commissioner, adding *"from the original graph attached, you will see that the y axis is not labelled"*.

19. The MOD explained that it was probable that the original data on which the graph was based, *"remained as written data only given the date of the report"* (which was 1958). The MOD confirmed that there were no statutory requirements for the MOD to retain the original data and that all information of historical value required to be retained was transferred after 30 years to TNA in line with the Public Records Act.

20. The Commissioner understands that the complainant may find it frustrating to be in possession of a piece of information, namely the graph ES 1/602, which the MOD cannot explain or clarify. However, the Commissioner is mindful that the existence of the graph alone does not guarantee that the MOD would necessarily hold further related information. The Commissioner accepts that no explanatory information was found in the Interim Report and that it is likely that the original log book data has been destroyed. Therefore, on the balance of

probabilities, the Commissioner considers that the requested information is not held by the MOD.

## **Section 16 – Duty to provide advice and assistance**

21. Section 16(1) of the Act states the following:

*“It shall be 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, requests for information to it.”*

22. The Commissioner accepts that the information previously provided by the MOD was created in an attempt to answer the complainant’s request. The Commissioner would like to make the point that this goes beyond the obligations of the Freedom of Information Act. The Act gives an applicant the right to access recorded information held by public authorities. The Act does not require public authorities to answer questions, provide explanations or give opinions, unless this is recorded information that they hold.

23. The Commissioner acknowledges that the MOD’s responses prior to the internal review were attempts to explain and clarify the figures contained in the graph without reliance on any recorded information. The Commissioner notes that in much earlier correspondence pre-dating the request in this case, the MOD provided the necessary details of the Interim Report that contained the graph and that this report is available in the public domain. In providing the earlier responses attempting clarification, the Commissioner considers that the MOD complied with its obligations under section 16(1) of the Act and provided adequate advice and assistance to the complainant.

## **Procedural Requirements**

### **Sections 10 – Time for compliance**

24. Section 10(1) of the Act states that, on receipt of a request for information, a public authority must comply with its obligations under section 1(1) within 20 working days from the date of receipt.

25. From the correspondence provided to the Commissioner on this case, including the internal review conducted by the MOD which acknowledged the breach, it is evident that the MOD failed to confirm or deny within the statutory time limit whether it held information falling within the request, which was a breach of section 10(1).

## **The Decision**

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26. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- the MOD confirmed to the complainant at the time of the internal review that no information was held and therefore complied with section 1(1)(a); and
- the MOD provided advice and assistance under section 16(1) of the Act by attempting to interpret the information on the graph already in the complainant's possession and directing the complainant to The National Archives.

27. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- the MOD failed within the statutory 20 working days to confirm or deny whether it held the requested information, and therefore breached section 10(1).

## **Steps Required**

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28. The Commissioner requires no steps to be taken.

## Right of Appeal

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29. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

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)

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 20<sup>th</sup> day of July 2011**

**Signed .....**

**Jon Manners  
Group 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 –

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

(d) 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."

### Duty to provide Advice and Assistance

#### **Section 16(1) provides that -**

"It shall be 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, requests for information to it."