

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 January 2014

Public Authority: Ministry of Defence
Address: Main Building
1-N-9 Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant has requested information about Operation Ore, an investigation into computer crime.
2. The Commissioner's decision is that the Ministry of Defence was correct to state that it did not hold the requested information.
3. The Commissioner does not require the Ministry of Defence to take any further steps.

Request and response

4. On 29 September 2012, the complainant wrote to the Ministry of Defence (MoD) and requested information in the following terms:
"Famously at the time many men were arrested under Operation Ore under allegations of crimes which were later disputed or found to be fraudulent. Subsequently 40 of them committed suicide. Can you confirm or deny whether or not any of the nearly 4,000 men who were targeted were the subject of Information Operations. If any or many were, can you specify how many were listed as targets."
5. The MoD responded on 25 January 2013, stating that it did not hold the requested information. It also explained that if the complainant was not satisfied with the response or wished to complain about any aspect of the handling of his request, he should contact the MoD in the first instance. If informal resolution was not possible and the complainant was still dissatisfied, the MoD explained that he should apply for an

independent review, and provided contact details. The MoD also stated that a request for an internal review should be made within 40 working days of the date on which the attempt to reach informal resolution came to an end.

6. The complainant responded on the same day asking the MoD to clarify whether the relevant target lists were consulted and to specify them.
7. On 28 January 2013, the MoD contacted the complainant clarifying its reply of 25 January 2013. It explained that it did not hold any information including "target lists" relating to information operations, in connection with Operation Ore. The MoD also reiterated that if the complainant was not satisfied with the response or wished to complain about any aspect of the handling of his request, he should contact the MoD in the first instance. If informal resolution was not possible and the complainant still remained dissatisfied, the MoD explained that he should apply for an independent review, and it provided contact details. The MoD also stated that a request for an internal review should be made within 40 working days of the date on which the attempt to reach informal resolution came to an end.
8. On 3 July 2013 the complainant contacted the MoD stating that he believed that the MoD had left out the possibility that those targets of Operation Ore could have been on target lists. He explained that the MoD only seemed to have ruled out the possibility of them having their own "target list". He requested that this be cleared up.
9. The MoD responded on 9 July 2013 explaining that it had already informed the complainant that it did not hold the information he had requested. It also confirmed that it had attempted informal resolution on 28 January 2013. The MoD also explained that it considered that the complainant was out of time requesting an internal review but that, in any case, it had nothing to add to its earlier clarification of 28 January 2013.

Background

10. Operation Ore was a computer crime investigation carried out in 2002. Thousands of people were accused of downloading images of child pornography; some were found to be innocent and some people committed suicide.
11. The complainant has made several requests to the MoD regarding Information Operations in the past and complained about the way in which the MoD handled these requests. These complaints have been dealt with in separate decision notices.

Scope of the case

12. The complainant contacted the Commissioner on 12 July 2013 to complain about the way his request for information had been handled. He explained that he had conducted a review of previous responses in order to see whether any had been worded evasively or inconclusively. He found that his present request regarding the DTIO/TIO use of Information Operations seemed to be worded evasively or inconclusively. The complainant subsequently clarified that he meant that the MoD's response to his request was worded evasively or inconclusively.
13. The complainant sought informal resolution from the MoD. He explained to the Commissioner that, although his delay had been partly caused by various factors, including illness and commitments, he had not mentioned this to the MoD as he had not anticipated a refusal to cooperate. The complainant alleged that the MoD refused to attempt informal resolution and had made references to issues which he believed were not relevant.
14. The complainant explained that he would like the ICO to investigate and request that the MOD respond appropriately and explicitly in relation to the ambiguity of the request, or provide an internal review and include this in the analysis. The Commissioner notes that the MoD has explained that it does not hold the requested information. The complainant also informed the Commissioner that the MoD police had already underlined to him that it had no involvement in Information Operations.
15. The Commissioner will consider, on the balance of probabilities, whether the MoD is correct to state that it does not hold the requested information. He will also consider the length of time taken to deal with the request.

Reasons for decision

16. Section 1 of FOIA provides that any person making a request for information to a public authority is entitled to be informed in writing whether the public authority holds the requested information and if it does, to have the information given to him.
17. The Commissioner asked the MoD the following questions.

- What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?
 - If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.
 - If searches included electronic data, which search terms were used?
 - If the information were held would it be held as manual or electronic records?
 - Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?
 - If recorded information was held but is no longer held, when did the MoD cease to retain this information?
 - Does the MoD have a record of the document's destruction?
 - What does the MoD's formal records management policy say about the retention and deletion of records of this type?
 - If there is no relevant policy, can the MoD describe the way in which it has handled comparable records of a similar age?
 - If the information is electronic data which has been deleted, might copies have been made and held in other locations?
 - Is there a business purpose for which the requested information should be held? If so what is this purpose?
 - Are there any statutory requirements upon the MoD to retain the requested information?
18. The MoD responded, confirming to the Commissioner that the MoD crime and intelligence database (UINIF) was searched but that no reference to "information operations" in the context of Operation Ore was found. The MoD went on to explain that as Operation Ore had been a civilian police operation, which had no connection to any defence functions, there was no reason to believe that any other part of the MoD would hold information and it was unnecessary to ask them to search.
19. Furthermore, the MoD explained that the request had been originally received by the Defence Operations Directorate. Once this department

realised that the request had no connection with military issues, they re-directed it to the MoD Police, who do hold information on Operation Ore. The MoD explained that the MoD police were involved purely because of their police function in support of the civil police.

20. The Commissioner has considered all of the above. He notes that the MoD has explained that the request did not have anything to do with military issues. He also notes that the request was passed to the MoD military police as it does hold some information on Operation Ore, but only in its police function in support of the civil police.
21. The Commissioner is satisfied therefore that, on the balance of probabilities, the MoD does not hold the requested information.

Section 10

22. Section 10(1) of FOIA states that:

"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."

23. In order for the MoD to have complied with the 20 day working limit set out in section 10, it should have responded to the complainant promptly and no later than the twentieth working day after receipt. In this case that would have been 26 October 2012. However, the MoD did not respond until 25 January 2013.
24. The Commissioner therefore considers that the MoD has breached section 10(1) of FOIA.

Other matters

25. In its response to the complainant of 25 January 2013, the MoD explained that if he was not satisfied with its response or wished to complain about any aspect of the handling of his request, he should contact the MoD. It also explained that if informal resolution was not possible and the complainant still remained dissatisfied, he should apply for an internal review within 40 working days after internal resolution has been attempted.
26. In its letter to the complainant of 9 July 2013, the MoD explained that in this instance, its clarification of 28 January 2013 was the date that informal resolution had been attempted.

27. However, the Commissioner notes that the MoD did not explain to the complainant that informal resolution had been attempted, in its letter of 28 January 2013.
28. The Commissioner considers that when the MoD is attempting informal resolution, it should make that clear to the complainant and let the complainant know when it has finished. The Commissioner also considers that the MoD should remind the complainant that he then has 40 working days to request an internal review.

Right of appeal

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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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.

Signed

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF