

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 April 2015

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

### Decision (including any steps ordered)

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1. The complainant has submitted two requests to the Ministry of Defence (MOD) seeking information about atomic bombs tests which took place in 1958. The MOD explained that it did not hold information falling within the scope of the first request albeit that it had located some information which may fall within the scope of request 2 and it provided the complainant with an annotated version of this. The complainant disputed that the MOD's position that it did hold any information falling within the scope of request 1 and also argued that the information provided was not relevant to request 2, albeit that he believed that the MOD was likely to hold some information of relevance falling within the scope of that request.
2. The Commissioner has concluded that the information initially provided to the complainant does not fall within the scope of request 2. Furthermore, the Commissioner has concluded that the MOD does not, on the balance of probabilities, hold any information falling within the scope of either request.

### Request and response

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3. The complainant submitted the requests to the MOD on 29 September 2013 which concerned two atomic bomb tests (Pennant and Burgee) carried out in the South Pacific by UK authorities in 1958 under the code name 'Operation Grapple – Z'. The requests were as follows:

*I refer to your reply to my FOI 11-03-2013-114455-007 dated 3 May 2013.*

*In the 'Bunker' located at ground Zero, or 'Steel Cubes' as they appear to be referred to, could you please inform me as to the purpose of the instruments located within this structure.*

*I counted at least five or six instruments prior to detonation of the devices detonated during 'Grapple 'Z' but more may have been added after cessation of my duties within this structure.*

*1. Could you please advise me on the total number of instruments located within the afore mentioned structure on detonation for both Pennant and Burgee atomic detonations?*

*2. Could you please advise me as to the information being monitored, and recorded, by each of these instruments during both Pennant and Burgee detonations?'*

4. The MOD acknowledged receipt of the requests on 2 October 2013. On 25 October 2013 the MOD contacted the complainant and explained that it held information falling within the scope of his requests but it considered this to be exempt from disclosure on the basis of section 24 (national security) of FOIA and that it needed an additional 20 working days to consider the balance of the public interest.
5. The MOD continued to send him similar letters over the next 9 months until it provided him with a substantive response on 30 July 2014. In this response the MOD explained that it did not hold any information falling within the scope of request 1. With regard to request 2, it explained that it held four documents falling within the scope of that request and provided redacted copies of them. The redactions were made on the basis of the exemptions contained at sections 24, 27 (international relations) and 40 (personal data) of FOIA.
6. The complainant contacted the MOD on the same day and asked it to conduct an internal review. He explained that:  
  
*'the reply to my Freedom of Information Questions which did not answer the questions raised regarding the 'Number' and the 'Purpose' of the recording machines situated inside the bunker at 'Ground Zero' for the atomic bombs Pennant and Burgee.*  
  
*The information supplied [in relation to request 2] relates to 'D' and 'F' sites. It is 'Ground Zero', the area where I worked, that I am interested in discovering the facts.'*
7. The MOD informed him of the outcome of the internal review on 17 October 2014. The MOD explained that it had interpreted his request for

an internal review as seeking to challenge the relevance of the information provided rather than the application of the exemptions.

8. With regard to request 1, the MOD explained that although it did not hold any information on the numbers of instruments located during the detonations in ground zero it was confident that such instruments were monitors not recording equipment. The MOD suggested that it was possible that recorders may have been located in ground zero for pre-detonation checks but these would have been removed prior to detonation as they would not have survived the blast. Furthermore, the MOD explained that if any recording instruments remained in close proximity to ground zero at the time of the detonation they would have been completely destroyed by the subsequent blast along with any recorded data.
9. With regard to request 2, the MOD explained that the readings were taken during detonation but not by recording instruments located in the area specified in his request. Rather readings were taken by protected *monitoring* equipment in the steel cubes described in his request and the data from those sensors was relayed via cables to *recording* instruments located at remote stations which were sited at a sufficiently safe enough distance from ground zero to ensure they were not irradiated during the detonation. The MOD explained that the complainant was provided with the four documents in question because it was reasonable to assume that they contained data from the sensors in ground zero and recorded by the remotely located instruments. However, the MOD acknowledged that this required a certain amount of interpretation of the extant data on the part of the subject matter experts and it might have been helpful if the request had been clarified with the complainant before the response was issued. Furthermore, the MOD argued that a narrow interpretation of the request 2 would require it to state that no actual information is held. This is because although information is held about readings taken during detonation this was not recorded by instruments sited as described in his request; rather the information provided to him was from readings recorded by other instruments nearby.
10. The complainant contacted the MOD again on 17 October 2014 and made a number of points, including noting that its assertion that it did not hold any information falling within the scope of request 1 '*does not conform with the other literature provided by the Ministry of Defence stating that 'Meticulous Recordings of Information' were made.'*

## Scope of the case

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11. The complainant contacted the Commissioner on 27 October 2014 in order to complain about the MOD's handling of his requests.
12. With regard to request 1, the complainant explained that he disputed the MOD's position that it did not hold any information falling within the scope of this request. This was on the basis that as such operations were meticulously recorded it is reasonable to assume that the relevant records would detail the number of instruments in the 'bunker'/'steel cubes' at ground zero.
13. With regard to request 2, the complainant explained that he remained of the view that the information provided to him on 30 July 2014 was not the information sought by this request. This was on the basis that the information provided relates to a different site rather than data taken from the instruments at ground zero.

## Reasons for decision

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### Request 2

14. As noted above, at the internal review stage the MOD suggested that there were two possible ways to interpret this request, a narrow way and a broader way. It explained that the information disclosed to the complainant was likely to fall within this broader interpretation.
15. The Commissioner agrees that there are two different objective interpretations of request 2, which to re-cap sought:

*'information being **monitored, and recorded**, [emphasis added] by each of these instruments [in the 'Bunker' located at ground Zero, or 'Steel Cubes'], during both Pennant and Burgee detonations?'*
16. Firstly, in the Commissioner's view this request could be interpreted narrowly so that for information to fall within the scope of the request it would have to have been both monitored **and** recorded by instruments in the bunker at ground zero. (As noted above the instruments in the bunker at ground zero were apparently only monitoring data and not recording it, with the recording being done elsewhere).
17. Secondly, a broader interpretation of the request could be made given the wording of request 2, especially when seen in the context of the

remainder of the complainant's email of 29 September 2013 in which he refers to wanting to know the purpose of the instruments in question contained in the bunker at ground zero. In the Commissioner's opinion given this broader context it is also reasonable to conclude that request 2 simply sought information on the data captured by the instruments at the bunker at ground zero, regardless as to whether such data was recorded within the bunker itself or nearby.

18. In the Commissioner's view in scenarios where there are two objective interpretations of a request – as in this case - public authorities need to consider both interpretations in order to comply with FOIA.
19. The Commissioner has therefore considered whether the MOD holds any information falling within the scope of either interpretation of the request. Initially this involves reaching a decision as to whether the information provided to the complainant by the MOD on 30 July 2014 actually falls within a broader interpretation of the request.
20. In circumstances such as this 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.
21. In applying this test the Commissioner will consider:
  - The scope, quality, thoroughness and results of the searches; and/or
  - Other explanations offered as to why the information is not held or why the information provided falls within the scope of the request.

Does the information provided to the complainant on 30 July 2014 fall within the scope of a broad interpretation of request 2?

22. As part of his investigation, the Commissioner asked the MOD to confirm whether the information disclosed to the complainant actually fell within the scope of broad interpretation of his request.
23. In response the MOD noted that the internal review had explained that the documents were being released because *'it was reasonable to assume they contain data from the sensors in ground zero and recorded by the remotely located instruments'* albeit in doing so the internal review caveated this conclusion by saying that it *'required an amount of interpretation of the extant data on the part of the subject matter experts'*.
24. The MOD explained that the rationale for taking this approach was as follows:

- The MOD had confirmed to the complainant in response to a previous FOI request that 'there was no bunker at ground zero'. There could therefore be no monitoring equipment in a 'bunker' at ground zero.
  - While AWE had information to support the fact that the steel cubes contained recording equipment (not instruments), no records were found on the numbers or disposition of the recording equipment which were housed within the cubes.
  - The MOD knew that the steel cubes were partially buried in the ground and covered with sand bags, which were situated in the Instrument Lanes for the tests.
  - These instrument lanes were pre-assigned pathways along which personnel would enter/leave the ground zero area and along which cables would run between the monitoring equipment at the end nearest ground zero and the recording equipment located at safe distances from ground zero at sites within a few miles of the detonation points for Pennant and Burgee.
  - The sites in question lay to the east of the bombing area line as follows:
    - A – Site (around 6 miles from ground zero)
    - B – Site (around 2 miles from ground zero)
    - D - Site (around 2 miles from ground zero)
    - F, J, K and BW Sites (up to a few hundred yards from ground zero)
25. However, the MOD explained that on reconsideration it was necessary to row-back a little from the statements made at the internal review stage as it could not be 100% certain that the information contained in the reports disclosed to the complainant includes information from ground zero. The MOD explained that it did not hold any information that proved this point one way or another. However, it provided the information because they certainly contain information from the nearest monitors to ground zero. On checking the position again in light of the Commissioner inquires, the MOD explained that the subject matter experts confirmed that it is *unlikely* that the information released included actual monitoring readings from ground zero.
26. In the Commissioner's opinion, whilst he accepts that it could be technically argued that the information provided to the complainant falls within the broader definition of the request, on balance he is of the view that it does not do so. He has reached this conclusion on the basis that it is far from certain, based upon the MOD's submissions, that the

information relates to data about ground zero. Given that lack of such certainty, the Commissioner is of the view that on the balance of probabilities the information falls outside the scope of request 2. The Commissioner also notes that the complainant is of the view that the information provided to him is not the information he was seeking.

Does the MOD hold any other information that falls within the scope of either interpretation request 2?

27. Such a finding obviously leaves the outstanding question as to whether the MOD holds any *other* information which could fall within the scope of request 2, be either the narrow or broad interpretation of that request.
28. In order to address this point the Commissioner asked the MOD to explain the searches that had been undertaken to locate any such information. The MOD's response is summarised below. It should be noted that this response describes the searches conducted both in respect of request 1 and request 2:
29. The MOD emphasised that the complainant has been advised on a number of occasions that the purpose of FOIA was to place upon public bodies a duty to disclose recorded information. 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, the MOD suggested, it should simply state that it does not hold relevant information. The MOD argued that the complainant's correspondence showed an unrealistic expectation of what can reasonably be provided by the MOD. For example his comment on 29 August 2014 that:

*'Having dealt with the Ministry of Defence for many years whilst attempting to obtain answers to my FOI questions, it comes as no surprise that you are still in the process of formulating an answer to my straight forward questions (dated 29 September 2013) 'How many instruments were in the Bunker and what were they recording?'*

30. The MOD explained that it retained no corporate memory of the events to which the requests refer and all it can do when it receives a request for information on the Christmas Island tests is task the Atomic Weapons Establishment (AWE) to undertake a search of the archives it holds on behalf of the MOD to see whether it holds information that would meet the request.<sup>1</sup> The MOD noted that the task of searching and

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<sup>1</sup> AWE works under a contract to MOD through a government owned contractor operator arrangement.



retrieving relevant information is not always easy and sometimes, as in this case, technical assumptions have to be made by present day subject matters experts about the relevance of the historic documentation.

31. In terms of the searches themselves, the MOD explained that two AWE databases were searched: the Corporate Knowledge Base (CKB) which contains records from all of AWE's Corporate Memory's collection; and the Merlin database, which contains records relevant to nuclear test veterans' litigation. The MOD noted that there is a significant amount of overlap between the two as information relevant to the litigation was copied from CKB into Merlin. The MOD also explained that almost all of the records in the Merlin database are 'digitised', that is they have an attached PDF of the document itself. Thus the full text of many of the documents can be searched, however the illegibility of some of the original poor quality documents and the inclusion of copies of manuscript documents means that this method of searching is far from comprehensive. In comparison, the MOD explained that only approximately 4% of documents within the CKB have been digitised, but the full text of these documents cannot be searched without first opening each document individually.
32. As a first step the search term 'Grapple Z' was used and this returned 1,212 records on the Merlin database and 592 records on the CKB database. As the number of documents was too great to review individually, a search was re-executed using the following refined phrases:

| <b>Number of identified records for each search term used<br/>(the searches were for occurrences of the whole phrase)</b> |               |            |
|---|---------------|------------|
|   | <b>Merlin</b> | <b>CKB</b> |
| Steel cube  | 0             | 1          |
| Grapple Z<br>Measurement  | 26            | 27         |
| Grapple Z<br>Planning   | 38            | 14         |
| Grapple Z<br>Recording  | 8             | 11         |
| Grapple Z Report  | 37            | 49         |
| Grapple Z   | 13            | 6          |



|                   |    |    |
|-------------------|----|----|
| Equipment         |    |    |
| Steel Shelter     | 1  | 4  |
| Shelter           | 51 | 66 |
| Recording Shelter | 0  | 2  |

33. The MOD explained that having narrowed down the potential number of relevant documents AWE, on its behalf, then undertook the following three steps:
- Reviewed the lists of titles and excluded those very obviously not relevant, based on their titles and other metadata.
34. Of those that remained it the either:
- Opened and reviewed the attached scanned copies of these documents whether they exist within the information resources (ie the Merlin and CKB databases).
35. Or:
- Located, retrieved and reviewed the remaining potentially most likely to be relevant documents from boxes held in the Corporate Memory vaults.
36. The MOD explained that AWE did not record which of the documents identified in the search refinement were handled in which way and it did not ask to be informed of this level of detail about the searches. However, it was satisfied that all of the most likely documents were searched either online or in hard copy on its behalf.
37. The MOD also explained to the Commissioner that neither it nor the AWE is aware that 'meticulous records' of the trials were kept. Instead the MOD suggested that in general the records are those that were made at the time in variety of formats and styles that suited the circumstances. Many of those may have been handwritten and were considered to be of a temporary nature with the aim of transferring relevant data to permanent scientific reports at a later date. Once such reports had been compiled/published there would have been little requirement to preserve the original data and so much of it may have been legitimately disposed of as part of routine business at MOD and AWE with the passage of time. The MOD explained that it was not considered likely that considerations would have been given for the contemporary preservation of

'everything' with a view to events which might be considered 'important' some 60 years later.

38. The MOD noted that in some instances the gaps and shortfalls in the information were clear. For example, AWE did not hold a final Grapple Z report, just an Interim report. However, it explained that it was not possible to say whether a final report was written or not, simply that such a report is not held. In summary, the MOD explained that it considered the information held on nuclear tests to be an accumulation of documents, rather than a systematic collection, within which the survival of original data can vary greatly.
39. In light of submissions provided by the MOD the Commissioner is satisfied that on the balance of probabilities the MOD does not hold any information that could fall within the scope of either interpretation of request 2. He has reached this opinion because he considers the nature of searches undertaken for such information to be detailed, thorough and logical. Furthermore, he favours the MOD's description of the nature of the remaining records regarding the Christmas Islands tests – namely somewhat piecemeal in fashion – rather than containing a meticulous record of the trials given that they are after all, in a more informed position to make a judgment as to the overall nature of the collection. In any event, even if the records retained were meticulous in nature, the Commissioner is satisfied that the searches undertaken were sufficient to ensure that on the balance of probabilities any relevant data would have been located.

### **Request 1**

40. For the same reasons, the Commissioner is also satisfied that on the balance of probabilities the MOD does not hold any information falling within the scope of request 1.

## Right of appeal

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41. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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 .....**

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