

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 6 November 2019

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

#### **Decision (including any steps ordered)**

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1. The complainant submitted a request to the Ministry of Defence (MOD) seeking information about the 'Maximum Authorised Number' of officers for a particular transfer selection board and a particular promotion selection board for the years 2007 to 2015. The MOD provided some of the data for the date range requested but explained that data for some years was not held. The complainant disputed this arguing that the MOD would hold the data and furthermore that there were discrepancies in the data that had been released which led him to believe that the information provided to him was not accurate.
2. During the course of the Commissioner's investigation of this complaint, the MOD undertook a verification exercise, as a result of which it located all of the information falling within the date range requested and provided this to the complainant. It was also able to confirm that such data should be considered to be the definitive version. The complainant accepts this but is dissatisfied with the length of time it took the MOD to provide him with the information he had requested.
3. The Commissioner's decision is that the MOD breached section 10(1) of FOIA by failing to provide the complainant with the information it held falling within the scope of his request within 20 working days.
4. The Commissioner does not require any steps to be taken.

## Request and response

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5. The complainant submitted the following request to the MOD on 12 March 2018:

*'For the Royal Navy branch of Engineer (Training Management) E(TM)), the Maximum Authorised Number of officers set for each of the annual Initial Commission to Career Commission Transfer Selection Boards that convened in the years 2007 to 2015 inclusive.*

*For the Royal Navy branch of Engineer (Training Management) E(TM)), the Maximum Authorised Number of officers set for each of the annual Lieutenant Commander Promotion Selection Board that convened in the years 2007 to 2015 inclusive.*

*The data are held by the NAVY PCAP-PPLAN organisation, for which I provide the following multi-user email addresses...'*

6. The MOD responded on 5 April 2018. With regard to the first part of the request, it provided the complainant with the figures for years 2012 to 2018, noting that data for years prior to 2012 was not held. With regard to the second part of the request, the MOD provided the complainant with the figures for years 2010 to 2018, noting that data for the years prior to 2010 was not held.
7. The complainant contacted the MOD on 24 May 2018 and explained that as recently as February 2017 he had received information relevant to his request from the NAVY PCAP-PPLAN organisation dating back as far as 2008. He therefore disputed the MOD's position that the earlier data was not available.
8. The MOD contacted him on 1 June 2018 and explained that it had located additional information and would disclose this to him as an addendum.
9. This addendum was provided to the complainant on 1 August 2018. This stated that:
- 'Further searches have now been completed within the Department and information in scope of your request has been found for all years specified in both parts of your request...as a result of manipulating additional databases, some of the figures have slightly altered from those which were provided to you in the original response.'*
10. The complainant contacted the MOD on 16 August 2018 and explained that the figures disclosed to him in the addendum differed from the

figures previously provided to him on 5 April 2018. In light of these discrepancies he asked the MOD to conduct an internal review and provide the original datasets, unadulterated by any manipulation of additional databases.

11. The MOD informed the complainant of the outcome of the internal review on 28 February 2019. It explained that the discrepancy in the numbers can be accounted for because they are recorded differently, depending on the source consulted within Navy Command. The MOD suggested that the wording used in the letter of 1 August 2018 was poorly chosen and there was no actual 'manipulation' of databases between April and August 2018 as a result of his enquiries. The MOD explained that the Maximum Authorised Number (MAuN) figures provided in the August addendum response were located in PCAP-Promotions and the figures provided in April were provided from the PCAP-PPLAN sources. The MOD argued that for the purposes of section 1 of FOIA, it was not obliged to state which the accurate figures were. Rather, it was only obliged to state that all of the recorded information, held by the department, that met the description of the request had been identified.

## Scope of the case

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12. The complainant contacted the Commissioner on 2 April 2019 in order to complain about the way his request for information had been handled. He asked the Commissioner to consider the following grounds of complaint:
  - He argued that the MOD had failed to provide him with the historical data sought by the first part of his request, ie the MAuN concerning annual Initial Commission (ICS) to Career Commission (CCS). This is because the MOD had provided him with two different datasets, from two different sources, and there were discrepancies between the data. The complainant argued that as the MOD had failed to state which one is accurate, and thus which one is the dataset he requested, it had failed to fulfil his request.
  - Furthermore, the complainant argued that the MOD had failed in its duty to provide him with advice and assistance in line with its obligations under section 16 of FOIA to allow him to determine which dataset is the accurate one.
  - The complainant argued that the PCAP-PPLAN part of the MOD was likely to hold data concerning the MAuN for ICS to CCS (ie the first part of his request) for the period 2008 to 2011 and was likely to hold the MAuN for Lieutenant to Lieutenant Commander for 2008

and 2009 (ie the second part of his request) but such information has not been provided to him.

- The complainant was dissatisfied with the amount of time it had taken the MOD to process this request, both to respond to the request and to complete the internal review.
13. In response to the Commissioner's enquires regarding this complaint the MOD contacted the complainant again on 16 September 2019 and explained that it had undertaken a verification exercise of the statistics held in tabulated form by Navy Command. The MOD further explained that this involved comparing the figures which had been provided to him previously with the underlying historical data, which in this case was the archived packs for the boards for each of the years in the scope of his request. The MOD provided the complainant with a complete table containing the verified information for the years in the scope of his request. The MOD noted that the figures provided from the table maintained by PCAP-PPLANS were historically correct albeit incomplete for some years.
  14. The MOD provided the Commissioner with further details regarding this verification exercise and its processing of this request. It explained that this exercise involved calling back the packs from the archives of all the boards for the period and extracting the information from the top sheets that contain the MAuN figures. The MOD explained that these are the sheets provided to Board members either the day before, or on the day of the Board itself and the figures they contain can be considered definitive.
  15. The MOD explained that it was unable to explain the discrepancies shown in the original data between the PCAP-PPLANS and PCAP-Promotions, although it noted that the process of determining the MAuN forecast is subject to adjustment and the two teams record the same information at different stages in the formulation of the final figures presented to the boards.
  16. The MOD acknowledged that it was unfortunate that this verification exercise was not undertaken at an earlier stage, but it explained that it did not usually recreate information from the underlying building blocks where tabulated statistics that provide the answer to the question are readily available. The MOD explained that providing tabulated statistics which have been compiled from historical data enables it to respond to FOI requests quickly and within the cost limit. (Section 12 of FOIA allows public authorities to refuse to comply with a request if it would cost more than £600 to do so, the equivalent of 24 hours work).

17. In light of these developments, the Commissioner informed the complainant that she was satisfied that the figures for both datasets which had now been provided to him following the verification exercise can, and should, be considered to be the definitive and accurate figures.
18. The complainant has accepted the Commissioner's conclusion in this regard but wishes a decision notice to be issued record the MOD's handling of this request, and in particular the time it has taken the MOD to provide him with the information falling within the scope of his request.

## Reasons for decision

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### Section 10 – Time for compliance

19. Section 1(1) of FOIA provides that any person making a request for information to a public authority is entitled, subject to the application of any exemptions,  
  
*'(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.'*
20. Section 10(1) of FOIA provides 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.
21. As is clear from the above, the MOD did not provide the complainant with all of the information falling within the scope of his request within 20 working days; the request was submitted on 12 March 2018 and it was not until 16 September 2019 that the MOD provided him with all of the information it held falling within the scope of his request. This therefore constitutes a breach of section 10(1) of FOIA.
22. The Commissioner notes the MOD's acknowledgment that it was unfortunate that the verification exercise was not undertaken at an earlier stage. In her view whilst the practice of using tabulated statistics to answer FOI requests is an appropriate one, given the particular circumstances of this case the MOD should have considered sooner what (if any) underlying data it could have used in order to fulfil all parts of this request, and moreover provide greater confidence to the complainant that the information that was being disclosed was indeed the information he had requested.

## Other matters

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23. FOIA does not contain a time limit within which public authorities have to complete internal reviews. However, the Commissioner's guidance explains that in most cases an internal review should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. In this case the MOD took 137 working days to complete its internal review which the Commissioner does not consider to be an acceptable period of time.

## Right of appeal

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24. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

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

25. 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.
26. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**