

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

### **Decision notice**

**Date:** 13 October 2022

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

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

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1. The complainant requested information from the Ministry of Defence ("the MOD") about any communications exchanged between the MOD and named parties within a specified time period and relating to issues listed in the request. The MOD confirmed no information in scope of the request was held.
2. The Commissioner's decision is that the MOD breached section 10(1) of FOIA by failing to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner has also decided that, on the balance of probabilities, the MOD does not hold the requested information.
4. The Commissioner does not require the MOD to take any steps as a result of this decision notice.

### **Request and response**

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5. On 2 February 2022, the complainant wrote to the MOD and requested information in the following terms:

"I would like to request the following information via the Freedom of Information Act and the Environmental Information Regulations, (EIRs) and I would be grateful if you could forward this request onto the most appropriate person within the department.

Please note that I am only interested in information generated between 1 May 2021 and the present day.

Please note that the Duke and Duchess have now agreed not to use their HRH titles. They also do not carry out any official duties on behalf of the royal family and or the British government. It therefore follows that disclosure cannot have any toxic or detrimental effect on any public or diplomatic work.

Please note that the reference to the Duke and or Duchess of Sussex in the questions below should include either and or both those individuals. It should also include any legal representative writing and or communicating on behalf of the Duke and or Duchess. It should also include any press and publicity representative writing and or communicating on behalf of the Duke and or Duchess. It should also include any member of the Duke and or Duchess's private office writing and or communicating on behalf of the Duke and or Duchess. It should also include any representative and or employee of the couple's Archewell Foundation writing and or communicating on behalf of either the Duke and or Duchess of Sussex.

Please note that the reference to correspondence and communications in the questions below should include all traditional forms of correspondence such as letters and or faxes and or memos. It should also include all emails irrespective of whether they were sent and or received via official and or private accounts. It should also include all Gmail messages. It should also include all telephone text messages. It should also include all messages sent through encrypted messaging services including but not limited to WhatsApp. It should include all communications sent through diplomatic channels.

Please note that I would like to request actual copies of the correspondence and communication rather than just excerpts from that correspondence and communication. In the case of any letters can you provide a copy of the letter complete with any letterheads, other design features and signatures. If you feel information should be redacted, can you redact it where it appears in the letter. That way I will be able to judge the location and extent of the redaction.

Please note that the reference to the Secretary of State in the questions below should include the Secretary of State and or anyone in his/her private office able to correspond and communicate on their behalf

Please redact the names of any serving military personnel from the documentation provided.

Please redact any material which could compromise the security of the UK and its allies.

Please note that I am interested in all correspondence and communication irrespective of the title and or form of address used by the Duke and or Duchess of Sussex. eg. The Duke may refer to himself as Prince Harry. Alternatively, he may adopt a military title/rank.

I have confined my request to a particular time frame to try and ensure it remains within the time and cost constraints laid down by the relevant access regimes. But can you let me know if you hold relevant information outside this time frame. I will then submit another request for that.

1...During the aforementioned period have the Duke and or Duchess of Sussex written to and or communicated with the Secretary of State about any and or all of the issues listed below. I am interested in all correspondence and communication which either mentions any and or all of the following AND OR which in any way relates to any and or all of the following.

(i)....Prince Harry's existing and or former military titles and ranks including any honorary titles and or ranks.

(ii)....The continued and or future and or previous use of the aforementioned titles and or ranks by Prince Harry.

(iii)...Prince Harry's existing and or previous and or future links to individual regiments of the British Army and or the British Army.

(iv)...Prince Harry's wearing of military uniforms and or medals and or other military symbols at public occasions including but not limited to acts of remembrance at both home and abroad.

(v)...The Prince's planned autobiography/memoir and how that autobiography/memoir may cover the Prince's time in the British Army and or his military service overseas and or any of the issues highlighted and mentioned above.

(vi)..The Invictus Games

2...If the answer to question one is yes can you please provide copies of this correspondence and communication.

3...During the aforementioned period did the Secretary of State write to and or communicate with the Duke and or Duchess of Sussex about any and or all of the issues and matters listed in question one (i) to (vi).

4...If the answer to question three is yes can you please provide copies of this correspondence and communication.

- 5...If information relevant to this request has been destroyed can you state what has been destroyed. eg. Was it a letter and or an email and or a Gmail message? In the case of each piece of destroyed documentation can you identify the author (s) and the recipient (s). Can you state when the material was destroyed and why. If destroyed information continues to be held in another form, can you, please provide that information.”
6. The MOD responded to the request for information on 15 June 2022. It stated that a search had been completed but that no information in scope of the request was held.
7. Following an internal review request, the MOD wrote to the complainant on 25 July 2022. It acknowledged that the response was provided late and apologised. It also stated that it upheld its original position that the requested information was not held.

### **Scope of the case**

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8. The complainant wrote to the Commissioner by post on 27 July 2022, to complain about the way their request for information had been handled. The complainant asked the Commissioner to consider their concerns about the length of time taken by the MOD to process the request; that no information was provided in response to the request and also that “in its original response the department totally ignored the environmental aspects of the request”.
9. The Commissioner considers the scope of the investigation is to consider whether the MOD has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA and also to determine if, on the balance of probabilities, the MOD holds the requested information and whether it has complied with section 1(1) of FOIA.

### **Reasons for decision**

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10. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled, under subsection (a), to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
11. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.

12. From the evidence provided to the Commissioner in this case, he finds that the MOD has breached section 10(1) by failing to respond to the request within 20 working days.
13. The Commissioner has also sought to determine whether, on the balance of probabilities, the MOD holds the requested information.
14. From the information provided, the Commissioner can see that the MOD has explained in both the original response to the complainant and in the internal review, that it does not hold information in scope of the request. The internal review outcome provided the complainant with details of the search terms used to try to locate information and confirmed that the MOD did not locate any information in scope of the request and that "there is no record of any deletion or destruction of any information that meets the description of your request".
15. The MOD further confirmed that searches are "not based on which regime is relevant to the request. If relevant information is found, then it is for MOD to consider whether it would fall under FOI or the EIR".
16. The complainant has not provided any evidence to suggest that the MOD does hold information within scope of the request.
17. The Commissioner is satisfied that the MOD has made appropriate reasonable searches for information within the scope of the request. The Commissioner determines that, on the balance of probabilities, information is not held by the MOD and, therefore, it cannot be provided, under either FOIA or the Environmental Information Regulations.
18. From the evidence provided to the Commissioner in this case, he finds that the MOD has complied with its obligations under section 1(1) of FOIA in this case.

## Right of appeal

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19. 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: 0203 936 8963

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)

20. 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.
21. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**