

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 January 2022

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

Decision (including any steps ordered)

1. The complainant requested from the Ministry of Defence (MOD) information relating to a specific individual. By the date of this notice the MOD had not issued a substantive response to this request.
2. The Commissioner's decision is that the MOD has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the MOD to take the following step to ensure compliance with the legislation.
 - The MOD must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. The MOD must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 1 September 2021, the complainant wrote to the MOD and requested information in the following terms:

"This is a request for information under the Freedom of Information Act. I would like to request the following information:

(1) Please provide all internal correspondence and communications held by the defence secretary Ben Wallace which mentions, or refers to, [name redacted].

(2) Please provide all external correspondence and communications held by the defence secretary Ben Wallace which mentions, or refers to, [name redacted]. I would expect this to include any correspondence and communications between Mr Wallace and [name redacted].

(3) Please provide all internal correspondence and communications held by [name redacted], special adviser to the defence secretary, which mentions, or refers to, [name redacted].

(4) Please provide all external correspondence and communications held by [name redacted]. I would expect this to include any correspondence and communication between the special adviser and [name redacted].

As for a timeframe, please search your records from 1st August 2021 to the day this request is processed.

I would like to receive this information in an electronic format. If you feel that a substantive response to this request is not possible within a reasonable time frame, I would be grateful if you could contact me and provide assistance as to how I can refine the request. If you need any clarification, please contact me. I look forward to receiving a response in 20 working days. Many thanks."

6. The MOD wrote to the complainant on 2 September 2021 to acknowledge the request. By the date of this notice, the complainant had not received a substantive response to her request.

Scope of the case

7. The complainant contacted the Commissioner on 9 December 2021 to complain about the MOD's failure to respond to their request.
8. The Commissioner has considered whether the MOD has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

9. Section 1(1) of the FOIA states that:

"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."

10. Section 10(1) of the 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"*.
11. On 14 December 2021 the Commissioner wrote to the MOD, reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request by 4 January 2022.
12. Despite this intervention, the MOD has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that the MOD did not deal with the request for information in accordance with the FOIA. The Commissioner finds that the MOD has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

14. 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

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

15. 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.
16. 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

Michael Lea
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