

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 April 2024

Public Authority: Ministry of Defence

Address: Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant submitted a multipart request to the Ministry of Defence (MOD) seeking information about missions flown by Reaper and Typhoon aircraft during the period January 2023 and March 2023. The MOD initially refused all parts of the request on the basis of sections 23(1) (security bodies) and 24(1) (national security) of FOIA. The complainant challenged the application of such exemptions to parts 1a and 5 of his request. At the internal review stage the MOD concluded that the information sought by these parts of the request was not exempt from disclosure and it provided this information to the complainant.
2. The Commissioner's decision is that the MOD breached section 17(1) of FOIA as it failed to issue its refusal notice within 20 working days of the request and furthermore also breached section 10(1) of FOIA as it failed to disclose information, which it ultimately concluded was not exempt, within 20 working days of the request.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the MOD on 3 May 2023:
 - "1) For each month between January 2023 and March 2023 and broken down between i) Reaper and ii) Typhoon
 - a) the total number of missions undertaken by these aircraft on Operation Shader;
 - b) the number of those missions entering Syria; c) the number of those missions entering Iraq?
 - 2) For each month between January 2023 and March 2023, the number of sorties with weapons released by a) Reaper and b) Typhoon broken down between Iraq and Syria?
 - 3) For each month between January 2023 and March 2023, the number and type of weapons released by a) Reapers and b) Typhoons broken down between Iraq and Syria?
 - 4) The number of UK weapon release events in a) Iraq and b) Syria per month from January 2023 and March 2023 broken down between Reaper and Typhoon?
 - 5) Please can you tell me, for each month between January 2023 and March 2023, how many hours have UK a) Reaper and b) Typhoon flown on Operation Shader?
 - 6) Please can you confirm if RAF Reapers operated outside of Operation Shader between January 2023 and March 2023."
5. Having failed to receive a response to his request the complainant contacted the MOD on 29 June 2023.
6. Again, having received no response, the complainant contacted the Commissioner about this matter on 3 July 2023. The Commissioner contacted the MOD on 7 July 2023 and instructed it to respond to this request. The MOD informed the Commissioner that it had in fact issued a response to the complainant on 5 July 2023. That response explained that all of the information falling within the scope of the request was considered to be exempt from disclosure on the basis of the exemptions contained at sections 23(1) (security bodies) and 24 (national security) of FOIA.

7. The complainant contacted the MOD on 4 August 2023 and asked it to conduct an internal review of this response. He explained that although he disagreed with the refusal of parts 1b to 4 of his request, as similar questions were already the subject of a separate complaint he had made to the Commissioner he was content to leave these out of his internal review. However, he explained that on 9 February 2023, in response to an information request he had submitted on 3 January 2023 (MOD ref: FOI2023/00064), it provided for a different time period the total number of missions undertaken by Reaper and Typhoon, per month, on Operation Shader and the number of hours flown by month by those aircraft on Operation Shader. The complainant noted that no argument was made at that stage that disclosing such information was prejudicial. He therefore asked the MOD to review its position in respect of parts 1a and 5 of his request and release the information or explain why its position had changed since February 2023.
8. Having received no response to his request for an internal review, the complainant contacted the MOD on 10 October 2023 in order to chase the outstanding internal review.
9. Again, having received no response from the MOD the complainant contacted the Commissioner again about this matter on 19 October 2023.
10. During the course of the Commissioner's subsequent investigation, the MOD completed the internal review response and provided this to the complainant on 15 March 2024. The internal review concluded that the information sought by parts 1a and 5 of the request was not exempt from disclosure and it provided this to the complainant. The internal review also explained that the complainant should have been advised that when his request was initially processed consideration was being given to the application of the public interest test and that additional time, beyond 20 working days, was being taken to do so but that he was not informed of this. The MOD noted the Commissioner's position is that a public authority should take no more than an extra 20 working days to consider the public interest, which means the total time spent dealing with the request should not exceed 40 working days, which in any event was exceeded in this case. The MOD also apologised for the extended delay in providing the internal review and the inconvenience caused.

Scope of the case

11. As noted above the complainant initially contacted the Commissioner on 3 July 2023 and subsequently on 19 October 2023 in relation to this matter. Following the completion of the internal review the complainant

confirmed that he wished a decision notice to be issued regarding the MOD's delays in processing this request.

Reasons for decision

12. Under section 1(1) of FOIA a public authority must (a) confirm whether it holds information that has been requested and (b) communicate the information to the applicant if it is held and is not exempt information.
13. Under section 10(1) a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
14. Under section 17(1) a public authority must issue a refusal notice in respect of any exempt information within the same timescale.
15. Section 10(3) of FOIA allows a public authority to claim an extension to the statutory 20 working day limit, if necessary, but only to consider the balance of the public interest test. FOIA does not set a specific limit on the amount of extra time you can take to consider the public interest test. It simply states that the notice communicating the final decision must be provided within 'such time as is reasonable in the circumstances'. As noted above, the Commissioner's position is that a public authority should take no more than an extra 20 working days to consider the public interest, which means the total time spent dealing with the request should not exceed 40 working days.
16. Under section 17(2) public authorities are still obliged to issue an initial refusal notice, within those first 20 working days, explaining why the exemption applies and giving the date they expect to complete the consideration of the public interest test.
17. With regard to the MOD's initial response to the request, it failed to issue its refusal notice within 20 working days and it therefore breached section 17(1) of FOIA. The Commissioner notes from the internal review that the MOD intended to take longer than this period in order to consider the balance of the public interest in respect of section 24(1), but did not inform the complainant of this. It therefore did not follow the requirements of section 17(2). In any event, again as stated in the internal review, the Commissioner notes that the substantive response of 5 July 2023 was not provided within 40 working days of the request.
18. With regard to the MOD's internal review findings, as it was concluded that the information sought by parts 1a and 5 of the request was not exempt from disclosure, such information should have been provided to

the complainant within 20 working days of his request. The fact that it was not constitutes a breach of section 10(1) of FOIA.

Other matters

19. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe.¹ The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated requests, reviews should be completed within a total of 40 working days.²
20. In this case, as noted above, the MOD failed to meet these timescales and took significantly longer to complete the review, namely over seven months. In any case such a delay would cause understandable frustration for a requester. The Commissioner appreciates that this is particularly the case in the circumstances of this request given that the complainant was seeking information which was very similar to that previously released to him in early 2023, and given that he had already needed to raise a concern with the Commissioner about the MOD's initial response to his request being delayed.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

Right of appeal

21. 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

22. 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.
23. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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