

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 6th December 2005

Name of Public Authority: Ministry of Defence

**Address of Public Authority: 6th Floor, Zone F, Desk 51
Main Building
Whitehall
London SW1A 2HB**

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint which states that on 14 January 2005 the following information was requested from the Ministry of Defence ("the MoD") under section 1 of the Freedom of Information Act 2000 (the "Act"):

The complainant requested a copy of the evidence on which the MoD based the following statement made in a letter which they sent to the complainant in May 2003:

"The fact that you did not complete basic training does not mean that you did not qualify as a soldier"

The MoD provided the complainant with quotes from what they believed to be the relevant legislation and an explanation of their interpretation of that legislation, which formed the basis of their May 2003 statement. The complainant was not satisfied with this response and sought an internal review. In addition, he requested that the MoD seek a legal opinion on the matter. Upon review, the MoD confirmed that they did not hold recorded evidence upon which the May 2003 statement was based and that their response, to date, had been an explanation of applicable legislation as they saw it. They added that they were not obliged under the Act to seek new legal advice on the matter raised.

It is alleged that:

The MoD did not comply with its obligations under Section 1(1) of the Act because it failed to provide the requested information. It is also alleged that the MoD were obliged to provide a legal opinion, as requested and that in failing to do so, they did not comply with their obligations under Section 16(1) of the Act, which requires a public authority to provide advice and assistance "as far as it would be reasonable to expect the authority to do so".

The Commissioner's Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner's decision is as follows:

The MoD has complied with its obligations under Section 1(1) and Section 16(1) of the Act in respect of the complainant's request, dated 14 January 2005.

Section 1(1) states:

"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."

The Commissioner is satisfied that the MoD does not hold recorded evidence upon which the May 2003 statement was based and that the May 2003 statement was based on the author's interpretation of what he believed to be applicable legislation.

Section 16(1) states that

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it."

The Commissioner is satisfied that the MoD have provided the complainant with advice and assistance, so far as it would be reasonable for them to do so. They have quoted from the legislation upon which the May 2003 statement was based and have reiterated their understanding of that legislation. The Commissioner is further satisfied that the MoD is not obliged under Section 16(1) to provide the complainant with a new legal opinion on the matter raised.

Action Required

In view of these matters, the Commissioner hereby gives notice that, in exercise of his powers under section 50 of the Act, he does not require any remedial steps to be taken by the MoD.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 6th day of December 2005

Signed:

Graham Smith
Deputy Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF