

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 5 July 2011

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

Summary

The complainant requested information from the Ministry of Defence (MoD) about the withdrawal from service of the Harrier aircraft. The MoD provided some information within the scope of the request, withheld some information and confirmed that some of the information was not held. The complainant asked the Commissioner to investigate the MoD's response to that part of his request that concerned the cost of maintaining the Harrier in storage. The Commissioner has investigated and finds the MoD in breach of section 16 for failing to provide the complainant with advice and assistance. He requires the public authority to contact the complainant with a view to clarifying this element of his request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The Harrier GR9 is a single seat, multi-role combat aircraft that is capable of operating in extreme environments.
3. The Harrier aircraft retired from service with the Royal Navy and the Royal Air Force on 15 December 2010.

The Request

4. The complainant wrote to the Ministry of Defence on 13 December 2010 with the following request:
 1. How many Harrier GR9 aircraft will be withdrawn from service in 2011?
 2. How many Harrier GR9 aircraft will be left in service at the end of 2011?
 3. How many Harrier of all types will be left in service at the end of 2011?
 4. How many aircraft will be sold to India?
 5. What is the likely price of each Harrier sold to India?
 6. Which other countries have expressed an interest in buying the UK's surplus Harrier aircraft?
 7. If not sold, what will happen to surplus Harrier?
 8. What will be the cost of storing each aircraft?
 9. How many aircraft have been slated for storage?
 10. How many have been slated for disposal, by scrapping?
 11. How much will it cost to scrap each aircraft?
5. The MoD responded on 21 December 2010. It provided information in answer to questions 1-3 and withheld some information relating to questions 4-6 citing the exemption in sections 27(1) (international relations) and 43(2) (commercial interests). With respect to questions 7-11, it told the complainant that the aircraft would initially be stored pending a decision on their disposal. It told him it could not provide the cost of scrapping the aircraft as this had not been considered. Nor could it provide the cost of storing the aircraft as it was not known how long they would be in storage.
6. On 25 December 2010, the complainant asked a further question about GR9s being withdrawn from service. He also asked the MoD for an internal review of its decision:
 - *"Please could I ask for an internal review of your decision not to answer fully question 3*

- *Please could I ask for an internal review of your decision not to reveal how much it costs to maintain GR9s in storage”.*
7. The MoD responded on 26 January 2011, having conducted a review of the handling of his entire request, not just the elements with which the complainant had expressed dissatisfaction.
 8. With respect to those elements of the request that relate to the costs of storage, questions 7-11 according to the numbering above, the MoD told the complainant that it had not withheld the information. It confirmed that the information was not held. It referred him to its earlier response, sent on 21 December 2010, in which it had explained why it could not provide him with the cost of storing the aircraft.

The Investigation

Scope of the case

9. The complainant contacted the Commissioner on 27 January 2011 to complain about the way his request for information had been handled. The Commissioner wrote to the complainant on 24 March 2011 to tell him that he was starting his investigation. The individual parts of the request are referenced in various ways throughout the correspondence the Commissioner has had sight of, not always numerically. He therefore sought clarification of the exact nature of the complaint.
10. In response, the complainant confirmed on 24 March 2011 that his complaint was only in relation to the question “*What will be the cost of storing each aircraft?*”. The Commissioner has therefore only considered the MoD’s handling of this element of the request.

Chronology

11. The Commissioner wrote to the MoD on 10 March 2011 advising that he had received a complaint about its handling of this request for information. He referred the MoD to the points raised by the complainant in his request for internal review.
12. The MoD responded on 11 March 2011. It told the Commissioner that, with respect to those elements of the request raised in the request for an internal review, the information had not been withheld. It referred the Commissioner to a written answer in Hansard on 27 January 2011 which it considered relevant. The written answer was in response to questions to the Secretary of State for Defence about plans for GR9 Harrier aircraft to be retained in reserve after their withdrawal from

service. These included a question about what estimate has been made in respect of "mothballing" the aircraft.

13. The Commissioner wrote to the MoD on 30 March 2011, confirming the scope of his investigation. He asked the MoD if it wished to submit any further evidence in support of its interpretation and handling of the request.
14. The MoD responded on 30 March 2011 confirming that, given the timing of the request, the information was not held.

Analysis

Procedural Requirements

Section 1 General right of access

Section 16 Duty to provide advice and assistance

15. Section 1(1)(a) of the Act states that any person making a request for information to a public authority is entitled to be informed in writing by that public authority whether it holds any information of the description specified in the request.
16. Section 16(1) provides an obligation for a public authority to provide assistance to a person making a request, so far as it is reasonable to do so.
17. Believing this response satisfied his request, the MoD initially told the complainant:

"We cannot provide the cost of storing and maintaining the aircraft as it is not yet known how long it will be in storage and how much maintenance will be required".
18. When requesting an internal review, the complainant asked the MoD:

"Please could I ask for an internal review of your decision not to reveal how much it costs to maintain GR9s in storage".
19. In response, the MoD confirmed that it did not hold the requested information.
20. In correspondence with the Commissioner, the MoD referred him to an entry in Hansard for 27 January 2011 which said:

"The Harrier fleet is currently in storage and is receiving minimum maintenance including anti-deterioration measures to keep the aircraft in an airworthy condition for possible sale. It is too early to say what the final disposal arrangements will be and any associated storage costs will be considered as part of that process".

21. On this basis, the MoD told the Commissioner:

"It is my understanding, therefore, that until a decision is made about the aircraft's disposal, the total storage costs cannot be calculated".

22. In the Commissioner's view, the MoD's responses suggest that it interpreted the complainant's request as meaning the ultimate, total, costs of storage.
23. The Commissioner acknowledges that the complainant made his request for information two days before the Harrier fleet was retired from service. He therefore accepts the MoD's argument that, at the time of the request, the total cost of storage was not held as the length of time the aircraft would spend in storage was not known.
24. However, in light of the wording of the complainant's request for an internal review, in particular the tense he used, the Commissioner considers it reasonable to conclude that the requester may not have been seeking information purely about final storage costs.
25. The Commissioner's view is that in cases where there is apparent ambiguity between a public authority's interpretation of a request and an applicant's intention, the authority should seek clarification under section 1(3) of the Act. In line with the requirements of section 16, the public authority should also look to provide assistance to the applicant in providing this clarification.
26. The Commissioner considers it likely that the MoD may hold other information relevant to the request, for example estimated monthly or annual figures for the cost of storage. He therefore takes the view that the MoD could have provided the complainant with advice and guidance with respect to this aspect of his request.
27. The Commissioner considers that the MoD failed, in this case, to provide advice that would have enabled the applicant to describe more clearly the information requested and therefore did not conform with the provisions of the section 45 Code of Practice. For example he considers the MoD could have provided guidance about any information it does hold which might meet the terms of the request. As a consequence, the Commissioner has determined that the MoD breached section 16(1) of the Act.

The Decision

28. The Commissioner's decision is that the public authority breached section 16(1) by failing to provide advice and assistance in relation to point 8 of the request.

Steps Required

29. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- provide advice and assistance in accordance with the provisions of the section 45 Code of Practice, to assist the complainant in clarifying the information requested at point 8 of his request.

30. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

31. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

32. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

33. 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.
34. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 5th day of July 2011

Signed

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

Legal Annex

General Right of Access

Section 1(1) provides 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."

Duty to provide Advice and Assistance

Section 16(1) provides 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."

Section 16(2) provides that –

"Any public authority which, in relation to the provision of advice and assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case."