

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 January 2012

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

#### Decision (including any steps ordered)

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1. The complainant requested information about a Ministry of Defence (MOD) procurement project for fleet management services, including information about the winning bid. The MOD responded, saying that it would exceed the cost limit to comply with the request.
2. The Information Commissioner's decision is that the MOD was not entitled to refuse to provide the requested information under section 12.
3. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - comply with section 1(1) of FOIA (by disclosing the requested information) or issue a refusal notice compliant with section 17.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

#### Request and response

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5. The complainant wrote to the MOD on 25 July 2011 and requested information about a procurement project conducted by the MOD for fleet management services for MOD white fleet, including information about the winning bid.

6. The term "white fleet" refers to the non-combat specific vehicles of armed forces. It is used in the UK with reference to fleet management of the MOD's vehicles such as minibuses, touring recruitment vehicles and staff cars.
7. In summary, the request in this case was for:
  - (i) full details of the response made by the winning supplier to specific questions in the Invitation to Quote
  - (ii) with respect to (i), the relative score for each of two suppliers
  - (iii) financial information about one of the companies who bid
  - (iv) information illustrating the scoring assessment
  - (v) information about a request for further information from a supplier in relation to the bid
  - (vi) information about the past performance of the winning supplier
  - (vii) information confirming that delays in the bid process were not material or favourable to the winning bid.
8. The complainant wrote to the MOD again on 25 July 2011, with an additional request for information in relation to the same bid. In summary, that request was for:
  - (i) full details of the Minister or signatory responsible for the formal contract award
  - (ii) confirmation that the MOD's decision did not change during the evaluation process from initial Project Team recommendation to subsequent sign off
  - (iii) information confirming the date when the MOD was advised that an award could be made for the contract.
9. Full details of both sets of requests are in the annex to this decision notice.
10. The MOD responded on 19 August 2011. It stated that it had merged the two sets of requests to provide a single response. It refused the requests, citing the costs exemption (section 12), explaining that it estimated that the cost of complying with the combined requests would exceed the cost limit. The MOD advised the complainant that he might

wish to refine his request, and provided advice as to how to narrow the scope.

11. The complainant wrote to the MOD on 19 August 2011 and again on 23 August 2011, disputing the MOD's view that the requested information could not be provided within the costs limit. Rather than narrow the scope of the requests, in order to assist the MOD with its search the complainant provided details of how and where he considered it held the information.
12. Following an internal review, the MOD wrote to the complainant on 12 October 2011. It stated that the refusal of the request under section 12(1) was upheld. It also reiterated its advice that it was open to the complainant to submit a refined request.

### Scope of the case

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13. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled.
14. He told the Information Commissioner that the public interest had not been served in refusing the requests and that:

*"the grounds for refusal were arbitrary and presented no objective analysis of the actual time it would take to prepare the response. .... However, we do believe we have just cause in seeking to understand why the MOD affirms that the RFI [request for information] takes as long as it does to compile. We believe that there is simply no justification for this and believe it to be part of a concerted attempt to deny us information which is vital to address a series of concerns that have arisen throughout the management of the tender process."*

In addition:

*"We simply do not accept that it takes this long to prepare the information and in the absence of any insight from the MOD as to why it takes this long, we feel there are forces at work to use this as a smokescreen to deny us the information we seek".*

15. The Information Commissioner notes that in this case the complainant made more than one request within his two items of correspondence. Section 12(4) of FOIA provides that, in certain circumstances set out in the Statutory Instrument 2004 No. 3244 "The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004" ("the fees regulations"), requests can be aggregated so that the

estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them. Regulation 5 of the Fees Regulations sets out the relevant condition in this case and provides that multiple requests can be aggregated in circumstances where two or more requests relate, to any extent, to the same or similar information.

16. In his correspondence with the Information Commissioner, the complainant has not commented on the MOD's aggregation of his requests. For the avoidance of doubt, however, the Information Commissioner is satisfied that the requests do relate to the same or similar information, and were made by the same complainant within a 60-day period, and can therefore be aggregated.
17. The Information Commissioner considers that the scope of his investigation is to determine whether the MOD's estimate of the cost of complying with the complainant's requests was reasonable and therefore whether the MOD was correct to refuse the requests on the grounds of cost.

## Reasons for decision

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18. Section 12 of the FOIA provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the appropriate limit.
19. This limit is set at £600 for central government departments in the fees regulations. The fees regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 24 hours.
20. In estimating whether complying with a request would exceed the appropriate limit, Regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in:
  - determining whether it holds the information;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
21. The four activities are sequential, covering the retrieval process of the information from the public authority's information store.
22. The MOD told the complainant:

*"The information you have requested could only be obtained by exceeding the appropriate cost limit".*

23. The complainant told the Information Commissioner:

*"We challenged this by undertaking our own objective analysis of key timelines to prepare the information based on certain key actions".*

24. In the complainant's view it should be easy to find the information within the scope of his request. The MOD, however, told the Information Commissioner that the complainant's advice about where it was likely to find the information *"was only speculative"*.

25. In correspondence with the MOD, the complainant argued that:

*"..any reasonable and/or impartial observer would conclude, based on the analysis that we have provided that there are no grounds whatsoever to conclude that the information requested exceeds the time limit and costs set out in section 12 of the Act. If you dispute this, we request your time and motion analysis to see how it is you arrived at the conclusion that the information requested cannot be obtained within limits".*

### ***The MOD's estimate***

26. Section 12 makes it clear that a public authority does not have to make a precise calculation of the costs of complying with a request. Only an estimate is required.

27. To determine whether the MOD applied section 12 of the FOIA correctly the Information Commissioner has considered the submissions the MOD provided to the complainant as well as its submissions during his investigation. In the latter, as well as providing the Information Commissioner with details of how the information in scope of this request is stored and retrieved, the MOD also provided its detailed estimate of the work involved in complying with the request.

28. In considering the MOD's application of section 12 in this case, the Information Commissioner has taken into account all the relevant evidence, including the correspondence from the complainant in which he expressed surprise and dismay at the MOD's reliance on the costs exemption. He has also considered the way in which the public authority has investigated, assessed and calculated that the cost of the activities required in extracting the requested information would exceed the limit.

29. In response to the Information Commissioner's questions about the estimate, the MOD told him:

*"An expert read-through has been included in the section 12 calculation to ensure that all the relevant information is identified with reference to the 31 headings".*

30. Referring to the fact that the request asks for "full details of the response" to specific questions in the ITQ (invitation to quote), the MOD told the Information Commissioner:

*"We take this to mean that the information in scope of this request is the response to the question headings regardless of where that information occurs in the ITQ document. Hence there is a need to identify the relevant information in the whole document....A way of narrowing the scope of this part of his request would be to request the specific responses provided under the 31 headings as this would not entail wider scrutiny".*

31. The Information Commissioner does not accept this view. Whilst he accepts that the complainant's requests are numerous and detailed, the Information Commissioner considers that the terms in which the requests were framed were clear enough for the MOD to have been in a position to make the correct interpretation from the outset.
32. Furthermore, having considered the objections advanced by the complainant when he requested an internal review, the Information Commissioner considers that these provided clarification, if clarification were required, as to what information the complainant was expecting in response to his request.
33. For example, with respect to the information requested at (i) the complainant told the MOD:

*"This process requires no more than an email and the attachment of 31 PDF files".*

34. Having considered all the relevant evidence, the Information Commissioner is not satisfied that the MOD's estimate that it would take more than 24 hours work to answer the request is based only on a reasonable assessment of the activities that are allowed by Regulation 4(3) of the Fees Regulations. He therefore finds that the MOD has not applied section 12(1) correctly.

### ***Advice and guidance***

35. Section 16(1) of the FOIA requires that a public authority provide advice and assistance to any person making a request. When section 12(1) is cited, this should include advice as to how the request can be refined in order that it may be possible to comply with it without exceeding the cost limit.

36. In this case, although he has concluded that it cited section 12 incorrectly, the Information Commissioner acknowledges that the MOD offered clear advice about how the complainant might refine his request as well as suggesting another avenue open to him with respect to his obvious interest in the bid process and outcome.

37. During the course of his correspondence with the MOD, the complainant argued:

*"We believe there should be no limitations in providing the information requested; a position that is reinforced by the knowledge that the procurement process is now over and there are therefore no commercial advantages to us or any other organisation in making the information public".*

38. The Information Commissioner notes that, in an attempt to advise the complainant how to refine his request, the MOD told him that information about the successful bid for the contract would be published as part of the government's transparency agenda:

*"albeit not in the same quantity or level of detail that you have specified in your information request".*

39. Having reviewed some of the information now in the public domain as a result of that agenda, the Information Commissioner notes that that information contains redactions. In his view, that may indicate that, with respect to information about bids and contracts, the MOD considers it necessary to protect its own commercial interests as well as those of its commercial partners.

## **Other matters**

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40. Although the Act does not require a public authority to provide a costs breakdown when refusing a request under section 12, the Information Commissioner considers that it is good practice to do so.

41. When bringing this complainant to the Information Commissioner's attention, the complainant said:

*"We feel that we are justified in expecting a little more from the MOD than a refusal to provide based on their own calculation of times and costs to comply, without any evidence or test of whether this is reasonable".*

42. The Information Commissioner notes that in this case, when requesting an internal review, the complainant asked the MOD to demonstrate how

it had reached the decision that complying with the request would exceed the costs limit.

43. However, the public authority did not provide the complainant with any breakdown of the estimated costs of complying with the request. In the Information Commissioner's view, provision of the breakdown in its refusal notice, showing how the estimate was arrived at, could have avoided any interpretation issues surrounding the request.



## Right of appeal

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44. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

45. 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.
46. 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** .....

**Jon Manners**  
**Group Manager**  
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**Wycliffe House**  
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