

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 24 January 2023

**Public Authority:** Ministry of Defence

**Address:** Main Building  
Whitehall  
London  
SW1A 2HB

#### **Decision (including any steps ordered)**

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1. The complainant has requested a copy of JSP 900: the UK targeting policy from the Ministry of Defence ('the MOD'). The MOD refused the request on the basis that section 14 of FOIA applies (vexatious request).
2. The Commissioner's decision is that the MOD was not correct to apply section 14 to refuse the request. He has also decided that it did not comply with the requirements of section 17 of the Act in that it did not provide its response within 20 working days of the date of receipt of the request for information.
3. The Commissioner therefore requires the MOD to take the following step:
  - To respond to the request again, without relying upon section 14 of FOIA.
4. The MOD must take these steps 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 FOIA and may be dealt with as a contempt of court.

## **Request and response**

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5. On 13 January 2022 the complainant wrote to the MOD and requested information in the following terms:

"This a request for information under the Freedom of Information Act 2000

1. Please identify the edition number and date of the current edition of JSP 900.
  2. Please provide a copy of the current edition of JSP 900."
6. The MOD responded on 16 May 2022. It refused the request on the basis that section 14 of FOIA applied.
7. Following an internal review, the MOD wrote to the complainant on 16 May 2022. It upheld its initial decision.

## **Reasons for decision**

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8. The following section explains why the Commissioner has decided that the MOD was not correct to apply section 14 of FOIA in order to refuse to respond further to the request for information.
9. Section 14(1) of FOIA allows a public authority to refuse to comply with a request, as required by section 1, if the request is vexatious.
10. It is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress.
11. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority.
12. However, the Commissioner also accepts that there may be cases where a request could be considered to be vexatious because the amount of time required to review and prepare the information for disclosure would place a grossly oppressive burden on the public authority. This is the position adopted by the MOD in this case.

13. The Commissioner guidance states that there is a high threshold for refusing a request on such grounds<sup>1</sup>. It says that a public authority is most likely to have a viable case where:
- the requester has asked for a substantial volume of information and
  - the authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the Commissioner, and
  - any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.

#### The MOD's arguments

14. The MOD highlighted that there is currently an appeal before the First-tier Tribunal regarding redactions it made to JSP 900 when disclosing the second edition of this document in response to a different request. The First-tier Tribunal has not yet reached a decision on these redactions.
15. The Commissioner considered the redactions in that case, and in decision notice FS50838374 accepted that these were appropriate<sup>2</sup>. Redactions were made under the exemptions at sections 23 (information relating to or provided by a security body), 24 (national security), 26 (defence), 27 (international relations) and 40 (personal information) of the FOIA. The MOD said that an initial read-through of Edition 5 has identified that these exemptions are also likely to apply to some of its contents.
16. Following another previous complaint regarding a request for all editions of the JSP 900, the Commissioner's decision was that section 14 applied because of the burden that responding to the request would create<sup>3</sup>.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/how-do-we-deal-with-a-single-burdensome-request/>

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617321/fs50838374.pdf>

<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617328/fs50882580.pdf>

17. The complainant's request was for the current edition of JSP 900. The MOD has confirmed this is the fifth edition and this analysis relates to that edition.
18. The MOD highlighted that since it disclosed the redacted copy of the second edition, the document has been extensively rewritten, and that it has increased in size. It does not hold a list of the changes since the last sections from the second edition were released. It argues that a complete re-assessment would be needed, and that a sufficiently qualified and experienced officer would need to go through each line of the document in order to determine whether an exemption applies. It also argues that only a small cadre of suitably qualified and experienced individuals would be able to carry out the necessary work, but that this would divert resource from the other duties of this group, including supporting ongoing military operations.
19. It said that, based upon the time which it took to review the previous version of the documents, the estimated time required to conduct a line-by-line review, complete the required public interest tests for the relevant exemptions, and to prepare a redacted version of Edition 5 would likely be between 30-35 hours.
20. It argues that at a time of increased burden upon it, due to the current war in Ukraine, responding to the request further would create a significant burden. It therefore considers that the request is disproportionately burdensome, and therefore that it is vexatious.
21. It noted that the complainant argued that the MOD should not be able to claim that responding would create a significant burden on this basis, as it is able to allocate more resources in order to facilitate responding to the request. However, the MOD argue that the work involved in preparing a version of JSP 900 for release can only be completed by personnel with recent experience and knowledge of this specialist subject matter. It considers that it can therefore only be delegated to individuals who work within the small targeting community.

#### The Commissioner's analysis

22. The Commissioner is mindful of his decisions in the two previous decision notices.
23. In applying the tests noted in paragraph 13 above, he has taken the following arguments into account:
  - The current JSP 900 document is larger than the previous editions. It is over 170 pages in length and 30% larger than Edition 2, which was the subject of a previous request.

- Based upon past estimates, the Commissioner accepts that the MOD's estimate of 30-35 hours for a suitably experienced and qualified officer to carry out the work necessary in order to identify exempt information and prepare the remaining information for disclosure is a reasonable estimate.
  - The Commissioner accepts the MOD's argument that the level of experience and qualifications necessary to properly establish whether an exemption is applicable would significantly reduce the number of MOD personnel who could carry out such a procedure.
  - The Commissioner notes that there is a high likelihood that the document contains information to which exemptions would apply. He has determined this by taking into account his previous decision notice regarding the second edition.
  - The Commissioner is satisfied, from his experience with the previous decision notice on the second edition of JSP 900, that the exemptions are likely to apply in a scattered manner throughout the document.
  - The Commissioner also accepts that the importance of the information in terms of its operational procedures and the political aspects of the issue would require that a close and forensic analysis would need to take place, by staff with the relevant experience and knowledge to fully understand the implications of a disclosure of the information in question.
  - The MOD noted that, even though this is a new edition, it was likely that the information which could be disclosed would add little further information beyond that already in the public domain disclosed from the second edition.
24. The Commissioner has considered the difference between the appropriate limit set by section 12, and the MOD's arguments as to the time it would take to respond to the request in this case. A public authority is unable to take into account the time taken to review the information and to redact sections which it considers to be exempt when considering the application of section 12. However, the act of reviewing the requested information in order to determine whether exemptions apply can, in itself, create a significant burden upon an authority in some cases, and this is the MOD's argument in this case.
25. The Commissioner therefore notes that where the information is voluminous or complex, it may be the case that authorities exceed the 24 hours in total to review, redact and disclose the information.

26. The Commissioner notes that the difference in time between that in the appropriate limit, of 24 hours, and that confirmed by the MOD of 30-35, including the time taken to review the information and redact exempt information, is not great. The Commissioner does not consider that this time period is grossly excessive in this case.
27. The Commissioner has also taken into account the controversial nature of the information concerned, and the public value in information of this sort being disclosed. The Commissioner has previously considered that some of the information in the second edition would be exempt, and accepts that that is likely in this case, however he also recognises that there is a strong public value in matters such as this being dealt with as transparently and accountably as possible.
28. The Commissioner's decision is therefore that a response time of 35 hours is not 'grossly oppressive' when considering the public value and importance of the requested information, and the fact that the previous partial disclosure was of edition two; a number of editions ago.
29. Therefore, the Commissioner requires the MOD to respond to the request again, without relying upon section 14.

### **Section 17 – Refusal of Request .**

30. Section 17(5) of FOIA provides that "A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact."
31. Section 10 of FOIA requires that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
32. The complainant made their request for information on 13 January 2022. The MOD provided the complainant with its response on 16 May 2022. This falls outside of the period of 20 working days required by section 10 of FOIA.
33. The Commissioner has therefore decided that the MOD did not comply with the requirements of section 17 in this instance.

## Right of appeal

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34. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

35. 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.
36. 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** .....

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**