

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 November 2023

Public Authority: Ministry of Defence
Address: 6th Floor Main Building
Whitehall Horse
Guards Avenue
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant requested information from the Ministry of Defence (the public authority). By the date of this notice the public authority had not issued a substantive response to this request.
2. The Commissioner's decision is that the public authority has failed to complete its deliberations on the balance of the public interest within a reasonable time and has therefore breached section 17(3) of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Either issue a refusal notice, that cites an appropriate exemption from the duty to confirm or deny that the information is held; or
 - confirm or deny that it holds information within the scope of the request; and
 - If the public authority is able to confirm that some information is held, either disclose that information or issue a refusal notice, that cites an appropriate exemption from the duty to communicate information.¹
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

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

5. On 20 June 2023, the complainant made the following request for information to the public authority:

“How much has the UK government spent in total for the Ukraine war, including all military assistance (e.g. weapons, tanks and armoured vehicles), and the costs of supporting Ukrainians who have moved here under the government-funded scheme?

How many Army, Navy, Air Force and other personnel from the UK (including volunteers who left the UK to go to Ukraine to fight willingly) are supporting the war in Ukraine, and how many UK service people have died on the battlefield and elsewhere by assisting Ukraine?

Does the UK government have a tracking system for the weapons sent to Ukraine, and if so, how does it ensure that they are not sold on the black market or elsewhere, or sent outside of Ukraine?

Is there any evidence that President Zelensky or any of his associates have profited from the war financially?

How many Storm Shadow cruise missiles and air defence missiles has the UK supplied to Ukraine, and what are their specifications and capabilities?

How many UK personnel are involved in training Ukrainian pilots, and what is the duration and cost of this programme?

What is the UK’s assessment of the humanitarian situation and the number of casualties in the Ukraine war, and what is the UK’s contribution to the relief efforts?

What is the UK’s position on President Zelensky’s request for F-16 fighter jets from NATO, and what are the challenges and risks of providing them?

How does the UK coordinate its diplomatic and military support for Ukraine with its European allies, and what are the main goals and challenges of this cooperation?

¹ The Commissioner expects the public authority to take appropriate precautions to protect any personal data when disclosing information in a spreadsheet or similar format; [Information Commissioner’s Office - Advisory note to public authorities | ICO](#)

Please provide me with the information in electronic format within 20 working days, as required by the Act.”

6. On 19 July 2023, the public authority wrote to the complainant to explain that it “held” information relevant to the complainant’s request, but that it would need to extend the time taken to complete its public interest test considerations in respect of exemptions under sections 23(5), 24(2), 26(3) and 27(4) of FOIA.

Reasons for decision

7. Section 1(1) of FOIA states 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.”

8. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.
9. Section 17(3) of FOIA states that where a public authority is relying on a qualified exemption, it can have a “reasonable” extension of time to consider the public interest in maintaining the exemption or disclosing the information.
10. FOIA does not define how long a reasonable time is. The section 45 Code of Practice on request handling states that “it is best practice for an extension to be for no more than a further 20 working days”.² This means that the total time spent responding to a request should not exceed 40 working days unless there are exceptional circumstances.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

11. On 11 October 2023 the Commissioner wrote to the public authority, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days. To date, a substantive response has still not been provided.
12. In this case, the total time taken by the public authority has exceeded 40 working days. The Commissioner does not consider there to be any exceptional circumstances and finds that, by failing to complete its deliberations on the public interest within a reasonable time frame, the public authority has not complied with section 17(3).
13. The Commissioner notes that the public authority's letter of 19 July 2023 stated that it did hold information, but that the sub-sections of the exemptions that it wished to consider were all sub-sections that would allow it to refuse to confirm or deny that any information was held. He has therefore taken a cautious approach and issued this decision notice on the basis that the public authority has not yet confirmed that it holds any information.
14. The extent to which any information is held and the extent to which the public authority must confirm (or deny) that it is held is a matter that should be dealt with unambiguously in the fresh response the public authority is now being ordered to provide.
15. The public authority is now required to finalise its public interest considerations under section 17(3) of FOIA and respond to the complainant.

Right of appeal

16. 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-regulatorychamber

17. 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.
18. 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

Roger Cawthorne
Team Manager
Information Commissioner's Office
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Water Lane
Wilmslow
Cheshire
SK9 5AF