

From Mrs S Gardiner



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of Defence

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Our reference:

FOI2020/00018

Mr C Cole

Via email: chris@dronewars.net

15th April 2020

Dear Mr Cole

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email of 18 February 2020 in which you asked for an internal review into the handling of your request for information under the Freedom of Information Act 2000 (the Act). The purpose of this review is to consider whether the requirements of the Act have been fulfilled. Its scope is defined by Part 5 of the Code of Practice¹ under section 45 of the Act. I apologise for the delay in providing this formal response.

Handling

2. In conducting my review of the handling of your request, I have focussed on the following requirements of the Act:

- a. Section 1(1)(a) which, subject to certain exclusions, gives any person making a request for information to a public authority, the entitlement to be informed in writing by the public authority whether it holds information of the description specified in the request;
- b. Section 1(1)(a) which, subject to certain exclusions, gives any person making a request for information to a public authority, the entitlement to be informed in writing by the public authority whether it holds information of the description specified in the request;
- c. Section 1(1)(b) which, subject to certain exemptions, creates an entitlement to receive the information held by the public authority;
- d. Section 10(1) which states that, subject to certain provisions allowing extensions of time, the public authority must comply with the requirements of section 1(1) promptly, and in any event not later than the twentieth working day following the date of receipt;

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722165/FOI-Code-of-Practice-July-2018.pdf

e. Section 17(1) which states that, where it claims that information is exempt information, the public authority must, within the time for complying with section 1(1), give the applicant a notice which states the fact, specifies the exemption(s) in question and states why the exemption applies;

f. Section 17(3)(b) which states that, where the public interest in maintaining the exemption outweighs the public interest in disclosing the information, the public authority must state the reasons for claiming this; and

g. Section 17(7) which states that a notice under subsection (1), (3) or (5) must (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and (b) contain particulars of the right conferred by section 50.

3. Your information request of 2 January 2020 was worded as follows:

'1) For each month between October 2019 and December 2019, and broken down between i) Reaper and ii) Typhoon a) the total number of missions undertaken by these aircraft on Operation Shader; b) the number of those missions entering Syria; c) the number of those missions entering Iraq?

2) For each month between October 2019 and December 2019, the number of sorties with weapons released by a) Reaper and b) Typhoon and broken down between Iraq and Syria?

3) For each month between October 2019 and December 2019, the number and type of weapons released by a) Reapers, and b) Typhoon, broken down between Iraq and Syria?

4) The number of UK weapon release events in a) Iraq and b) Syria per month from October 2019 to December 2019, broken down between Reaper and Typhoon?

5) Please can you tell me, for each month between October 2019 and December 2019, how many hours have UK a) Reaper and b) Typhoon flown on Operation Shader?

6) Please can you detail how many sorties have RAF Reaper aircraft flown outside of Operation Shader during 2019 and, if any, where these sorties occurred?'

4. Section 10(1) of the Act requires that you receive a response within 20 working days of receipt, and MOD's response of 30 January 2020 was provided within this timescale. In it you were advised that the information was held but some of it fell within the scope of the qualified exemption at section 26 (defence). As such it was necessary to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosure. It was estimated that it would take an additional 6 working days to reach a final decision, with a substantive response to be issued by 7 February. I note that, at this stage, you were not advised of your right to appeal, as is required under section 17(7) of the Act.

5. On 7 February, a further email was sent to you which explained that there was a delay and that the aim was to respond by no later than 14 February. Although the substantive response of 17 February 2020 was not provided within the timescales outlined to you, it was sent within the 40 working days timeframe which the ICO's 'Time limits for compliance (Section 10)' guidance² suggests is reasonable in such circumstances.

² <https://ico.org.uk/media/for-organisations/documents/1165/time-for-compliance-foia-guidance.pdf>

6. As required under section 1, the response stated that the information concerning the first five parts of your request was held and this was provided in an Annex. However, the information in scope of part 6 of your request, the location and number sorties flown outside of Operation SHADER, was withheld under the qualified exemptions at section 26 (defence) and section 27 (international relations). The information requested can only be withheld if the public interest in doing so outweighs the public interest in disclosure and the response provided the outcome of the public interest tests (PIT). You were correctly advised of the right of appeal.

7. In summary, the substantive response was provided within the recommended timescales and in accordance with the ICO's guidance. However, there was a breach of sections 17(1) and 17(7) as the Department did not cite all of the exemptions it believed applicable to your request at the outset, and the initial response did not state the appeals procedure. I apologise for these errors.

Substance

8. In your email of 18 February, you stated that you were satisfied with the response to parts 1 to 5 of your request and that you would like a review of the response to part 6. My review has therefore focussed on this element of your request.

9. The response confirmed that it was appropriate to withhold the information for the final part of your request in its entirety under the exemptions at section 26 (defence) and 27 (international relations) of the Act. I can confirm that a PIT has been conducted for both qualified exemptions.

Use of Section 26 (defence)

10. The specific limb that applies is section 26(1)(b) of the Act which provides that information is exempt if its disclosure would, or would be likely to, (b) the capability, effectiveness or security of any relevant forces.

11. Release of information regarding *'how many sorties have RAF Reaper aircraft flown outside of Operation Shader during 2019 and, if any, where these sorties occurred'* would increase public understanding of the operations of RAF Reaper, increase public confidence and trust in overseas operations. It would also promote openness and transparency about such matters.

12. However, in this case, the public interest in release is strongly outweighed by the arguments against disclosure because of the risk to the lives of sensitive and protected individuals that could arise from disclosure. If released, this information would provide an adversary the information required to make a detailed assessment of the effectiveness of UK tactics and operational capabilities which would increase the security threat to UK personnel.

13. Taking all these factors into consideration, I am satisfied that the balance of the public interest lies in withholding the information under section 26(1)(b) in this case.

Use of Section 27 (International Relations)

14. I also agree that, in addition to section 26(1), the information is also exempt from release by virtue of section 27(1), particularly sub-sections 27(1)(a) (information if disclosed would, or would be likely to, prejudice relations between the United Kingdom and any other state) and 27(1)(c) the interests of the UK abroad. The factors for release are similar to those outlined under section 26 above. You were also advised that release of the information would provide insight into global military activity and relationships between the UK and other states, however diplomatic relationships could be undermined, putting UK interests abroad at risk if the information was released.

15. However, against release, it is considered that established relationships with other states would be prejudiced. The confidence lost in the UK would undermine diplomatic efforts and damage international and strategic level communication pathways formed by trust. Ultimately, release would make UK interests abroad vulnerable.

16. Therefore, the balance of the public interest lies in withholding this information under sections 27(1)(a) and (c) of the Act because disclosure of the withheld information would be likely to prejudice the UK's relations with other States.

17. As part of this review, I can confirm that the level of prejudice for the exemptions is engaged at the higher level of 'would' prejudice rather than 'would be likely to'.

18. Finally, I would also like to advise you that, in the circumstances of this case and under section 16 of the Act, MOD is not obliged to provide information to you by providing indicative numbers (noting that MOD considers zero to be a number) or broad geographical areas as suggested in your email of 18 February 2020.

Conclusion

19. In summary, I find that:

- a. The initial response did not state the appeals procedure as required under section 17(7) of the Act. It also did not, as required under section 17(1), cite all of the exemptions that applied within the time for compliance.
- b. The substantive response of 17 February was provided within the prescribed timescales and in accordance with the ICO's guidance.
- c. Taking all of the factors into consideration in this case, the balance of the public interest favours maintaining the exemptions at sections 26(1)(b) (defence) and 27(1)(a) and (c) (international relations) of the Act. The information in scope of part 6 of your request, therefore, remains withheld from disclosure.

If you remain dissatisfied with the review, you may make a complaint to the Information Commissioner under the provisions of section 50 of the Act. Further details of the role and powers of the Commissioner can be found on the following website: <https://ico.org.uk>. The address is: Information Commissioner's Office, Wycliffe House, Water Lane, WILMSLOW, Cheshire, SK9 5AF.

Yours sincerely,



Sandra Gardiner