

From Mrs S Gardiner



Ministry of Defence

Head - Information Rights Team

Our reference:
FOI2022/02472

Ministry of Defence
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Email: CIO-FOI-IR@mod.gov.uk

Mr Chris Cole
Via email: chris@dronewars.net

17th June 2022

Dear Mr ,

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email of 28 March 2022 in which you requested an internal review of the handling of your request 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 the review.

Handling

2. In conducting my review of the handling of your request, I have focussed on the following provisions in 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)(b) which, subject to certain exemptions, creates an entitlement to receive the information held by the public authority;
- c. 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;

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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

- d. Section 16(1) where it is 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, request for information to it.
- 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 in question and states why the exemption applies; and
- 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.

3. Your request for information, received by the MOD on 24 February 2022, was worded as follows:

“1) How many RAF personnel were assigned to 216 Squadron on 1st February 2022? What rank do these personnel hold, and what role are they assigned to?”

2) Which UAVs by type have 216 Squadron tested since being reactivated on 1st April 2020?

3) What is the current UAV inventory of 216 Squadron.”

4. In accordance with section 10(1) of the Act, the substantive response to your request was due no later than 25 March 2022. The substantive response of this date stated that the information in scope of your request was held. Air Secretariat provided the information requested for part 1. However, you were advised that the information for parts 2 and 3 of your request was exempt from disclosure under the qualified exemption at section 43(2) (commercial interests) of the Act. The balance of the public interest test (PIT) was provided and you were informed that there was a strong public interest in withholding the information. You were correctly informed of your right to appeal.

5. In summary, your request was fully handled in accordance with the Act.

Substance

6. I note that Air Command Secretariat’s response dated 25 March provided the information held for part 1 of your request and therefore this review has focussed on the application of exemptions to withhold the information in scope of parts 2 and 3.

Information in scope

7. During my investigation I have determined that 216 Squadron has not conducted any UAV tests since it was reactivated on 1 April 2020. As they have not conducted any tests, I must advise that the Department does not hold information in scope of the second part of your request.

8. I have also determined that there were no UAVs listed on the inventory of 216 Squadron at the time of your request. This means that the answer to the third part of your request was 'zero'.

9. In the circumstances of this case, I find that the Department was wrong to apply the exemption at section 43 of the Act to withhold the specific information requested.

Section 16 (advice and assistance)

10. Section 16(1) of the Act places an obligation on public authorities such as MOD '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'.

11. I can advise that 216 Squadron has yet to start formally testing and evaluating UAVs. However, I can confirm that the RAF Rapid Capability Office has led on understanding the benefits of Swarming UAVs and conducted tests with a wide range of platforms. The Defence Science and Technology Laboratory has also conducted tests on swarming UAVs, and further information relating to this can be found at:

<https://www.gov.uk/government/news/swarming-drones-concept-flies-closer-to-reality>

Conclusion

12. In summary:

- a. Your request was not handled in accordance with the Act.
- b. Section 43 (commercial interests) was incorrectly applied as 216 Squadron have not yet opened a contract opportunity for potential suppliers.
- c. There is no information held in scope of parts 2 or 3 of your request.

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 by following this link - <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>. 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



Ministry of Defence

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HP14 4UE

Ref: FOI2022/02472

Chris Cole
Chris@dronewars.net

8 June 2022

Dear Mr Cole,

Thank you for your email of 25 May 2022, in response to my letter of 25 March 2022, in relation to your request for the following information:

“1) How many RAF personnel were assigned to 216 Squadron on 1st February 2022? What rank do these personnel hold, and what role are they assigned to?”

I can confirm that the information previously provided was for 1 February 2021 and I apologise that the amended request you made was not actioned.

I am treating your correspondence as a request for information under the Freedom of Information Act 2000 (FOIA). A search for the information has now been completed within the Ministry of Defence, and I can confirm that information in scope of your request is held.

The number of RAF personnel assigned to 216 Squadron (Sqn) on 1 February 2022 is as follows: one Sqn Leader, Officer Commanding; one Flight Lieutenant, Trials Management Officer; two Flying Officers whose roles are a Communications Engineering Officer and a Squadron Operations Officer.

Under Section 16 of the Act (Advice and Assistance) you may find it helpful to note that 216 Sqn also make use of Reservist personnel, assigned to 616 Sqn, as required.

If you have any queries regarding the content of this letter, please contact this office in the first instance.

If you wish to complain about the handling of your request, or the content of this response, you can request an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.gov.uk). Please note that any request for an internal review should be made within 40 working days of the date of this response.

If you remain dissatisfied following an internal review, you may raise your complaint directly to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not normally investigate your case until the MOD internal review process has been completed. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website at <https://ico.org.uk/>.

Yours sincerely

L.Bannister
HQ Air Command Secretariat



Ministry of Defence

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Ref: FOI2022/02472

Chris Cole
chris@dronewars.net

25 March 2022

Dear Mr Cole,

Thank you for your email of 24 February 2022 requesting the following information:

- “1) How many RAF personnel were assigned to 216 Squadron on 1st February 2021? What rank do these personnel hold, and what role are they assigned to?*
- 2) Which UAVs by type have 216 Squadron tested since being reactivated on 1st April 2020?*
- 3) What is the current UAV inventory of 216 Squadron?”*

I am treating your correspondence as a request for information under the Freedom of Information Act 2000 (FOIA).

A search for the information has now been completed within the Ministry of Defence (MOD), and I can confirm that information in scope of your request is held. However, some of the information you have requested falls within the scope of the qualified exemption at Section 43 (Commercial Interests) of the FOIA.

The number of RAF personnel assigned to 216 Squadron (Sqn) on 1 February 2021 were one Wing Commander, Officer Commanding; one Flying Officer, Communications Engineering Officer and one Flight Lieutenant, Trials Management Officer.

Under Section 16 of the Act (Advice and Assistance) you may find it helpful to note that there was also an Army Major assigned to 216 Sqn on 1 February 2021 as an Executive Officer. Also, 216 Sqn do make use of Reservist personnel, assigned to 616 Sqn, as required.

Section 43 of the FOIA is a qualified exemption and, as such, it has been necessary to decide whether, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

A Public Interest Test has been conducted and there is a strong public interest in withholding the UAVs by type that 216 Sqn have tested and what the current inventory is of 216 Sqn. Releasing such information would promote public awareness of the commercial activity of the RAF however, releasing such information could prejudice the commercial interests of the MOD and any other parties.

If you have any queries regarding the content of this letter, please contact this office in the first instance.

If you wish to complain about the handling of your request, or the content of this response, you can request an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.gov.uk).

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Yours sincerely

L.Bannister
HQ Air Command Secretariat