

From: Mrs S Gardiner



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Head - Information Rights Team

Mr Chris Cole
Via email: chris@dronewars.net

6th December 2022

Dear Mr Cole

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email of 12 August 2022 requesting an internal review of the processing 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 am sorry for the delay in responding to you.

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)(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;
- 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(s) in question and states why the exemption applies;

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

- f. Section 17(2) which states that the notice under section 17(1) must, if applicable, state that a decision has not yet been made whether the public interest in maintaining an exemption outweighs the public interest in disclosing the information and give an estimate of the date that the authority expects such a decision will be made;
- g. 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 complaint relates to your request, received on 24 June 2022, which was worded as follows:

"1. The number of RAF Reaper Pilots and Sensor Operators currently assigned to i) 13 Squadron; ii) 39 Squadron, (iii) embedded with the USAF, iv) embedded or serving with any other national force?

2. Please can you tell me the total number of personnel who have qualified as a RAF Reaper Pilot or Sensor Operator since 1st January 2018?

3. How many RAF personnel have to date qualified to operate on SkyGuardian / Protector?

4. How many RAF personnel are expected to be qualified to operate Protector as pilot, sensor operator and mission intelligence co-ordinator at Initial Operating Capability and when this expected to be?"

4. In accordance with best practice, your request was acknowledged on 5 July 2022. Section 10(1) of the Act requires that you receive a response within 20 working days, which in this case was by 25 July 2022. On 2 August, an apology was issued because you had not received a response by the specified date. It was explained that this had been caused by a number of administrative factors and you were promised a substantive response by no later than 8 August. On that date, HQ Air Command advised you that it was still not in a position to provide a reply and that a substantive response would be provided no later than 12 August.

5. The final response, issued on 12 August, provided the information in relation to parts 1 and 2 of your request. However, you were advised that the information sought under parts 3 and 4 was withheld as it was considered that it fell within the scope of the qualified exemptions provided at sections 26 (defence) and 24 (national security) of the Act, and that, in the circumstances of this case, the public interest in maintaining the exemption had been found to outweigh that in disclosure. The public interest factors were explained, although I note that separate PIT outcome arguments were not provided for the use of the different exemptions. The response also advised that the level of prejudice to release in relation to the use of section 26 had been set at the lower "would be likely to", rather than the higher "would".

6. It is the view of the Information Commissioner in good practice guidance that no response should exceed 40 working days, even where the public interest considerations are exceptionally complex. This request took 33 days which was within the Commissioner's definition of reasonable processing time. However, by not advising you of the application of exemptions within the first 20 days of processing, MOD failed to meet the requirements of section 17(1). You were correctly advised of your right to.

7. In summary, your request was not handled fully in accordance with the Act, for which I apologise.

Substance

8. I have considered parts 3 and 4 of your request again from first principles and my findings are below.

9. For part 3, you were previously advised that there was a degree of sensitivity about *'the number of personnel who have to date qualified to operate SkyGuardian/Protector'* as this might reflect in some way upon the future capability of the planned for Protector Force. As you noted in your appeal, MOD has previously released the number of pilot/sensor operator numbers for Reaper UAVs without the application of sections 24 or 26. You have, therefore, questioned the assessed harm arising from the release of the current number of those trained to operate SkyGuardian/Protector (the successor to Reaper). In the interests of consistency as well as transparency, I can confirm that, at the time of your request, the number of RAF personnel qualified to operate Protector was three.

10. However, turning to Part 4 of your request, I can confirm that the number of RAF personnel expected to be qualified to operate Protector at the point Initial Operating Capability (IOC) is achieved and the predicted IOC date is information that falls within the scope of the exemptions at sections 26 (defence) and 24 (national security). The substantive response stated that there were sensitivities surrounding this information: the number of aircrew at IOC could be correlated with the available level of operational output, and conclusions made about the RAF's resilience when it comes to supporting an operational task. Likewise, the planned date for IOC also relates directly to operation capability and is sensitive information in its own right.

Application of section 26 (defence)

11. Section 26(1) states that information is exempt if its disclosure under the Act would, or would be likely to, prejudice (a) the defence of the British Islands or of any colony, or (b) the capability, effectiveness or security of any relevant forces. Section 26 is a qualified exemption and therefore it is necessary to conduct a PIT to determine whether the public interest in maintaining the exemption outweighed the public interest in disclosure.

12. MOD accepts that there is a general public interest release in openness and transparency in relation to UK military capabilities. It would increase the public's understanding of the IOC phase of the SkyGuardian/Protector Force and how far advanced it is to becoming part of the RAF's operational capability. However, as already stated, releasing the information about the planned number of trained operators would give an indication of the expected capability of the Protector Force at a given point in time, which would, in turn, provide insight into the RAF's resilience when it comes to supporting an operational task when compared with the known level operational tasking. Similarly, to provide the date when that operational capability will initially become available could provide those with hostile intent valuable intelligence as to when and how the RAF's capability is expected to increase, with implications for the security of UK military operations and personnel both before and after the event.

13. Taking all these factors into consideration, I am satisfied that the wider public interest is best served by enabling IOC to be completed without the additional concern of possible threats to wider air capability from hostile forces as a consequence.

14. I judge the level of prejudice in relation to the release of this information to be set at the level of 'would be likely to' prejudice the capability, effectiveness or security of any relevant forces.

15. Additionally, I find that it was reasonable to consider section 24 (national security) of the Act to be engaged in relation to part 4 of your request. However, I have not gone on to look at this in detail as the information is already withheld under the exemption at section 26 as explained above.

Conclusion

16. In summary, I find that:

- a. Your request was not handled fully in accordance with the Act.
- b. The information in scope of parts 1 and 2 of your request was provided within 33 days of your requesting it.
- c. The information in scope of part 3 has been provided as part of this review.
- d. The exemption at section 26(1)(a) and (b) of the Act has been applied to withhold the information in scope of the fourth part of your request, as explained in this review.

If you remain dissatisfied with the review, you may make a complaint to the Information Commissioner by following this link - <https://ico.org.uk/make-a-complaint/foi-and-eir-complaints/>. 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,



Mrs S Gardiner