

From Mr Paul Daly



Ministry of Defence

Head - Information Rights Team

Our reference:
FOI2023/05600

Mr Chris Cole
Via email: chris@dronewars.net

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

15th March 2024

Dear Mr Cole

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email received by MOD on 4 August 2023 in which you requested an internal review of the handling of your requests 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 extended delay in providing this 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;
- d. Section 17(1) that requires a public authority which is relying on an exemption(s) in the Act to state that fact, to specify the exemption(s) and to state, (if not otherwise apparent) why that exemption applies;

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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

e. 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; 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 was received by the Department on 3 May 2023, and was worded as follows:

"1) For each month between January 2023 and March 2023 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 January 2023 and March 2023, the number of sorties with weapons released by a) Reaper and b) Typhoon broken down between Iraq and Syria?

3) For each month between January 2023 and March 2023, the number and type of weapons released by a) Reapers and b) Typhoons broken down between Iraq and Syria?

4) The number of UK weapon release events in a) Iraq and b) Syria per month from January 2023 and March 2023 broken down between Reaper and Typhoon?

5) Please can you tell me, for each month between January 2023 and March 2023, how many hours have UK a) Reaper and b) Typhoon flown on Operation Shader?

6) Please can you confirm if RAF Reapers operated outside of Operation Shader between January 2023 and March 2023."

4. Section 10(1) of the Act requires that you receive a response by no later than the twentieth working day following date of receipt (2 June 2023), the substantive response issued to you on the 5 July 2023 did not meet this requirement for which I apologise.

5. Under section 1(1) of the Act you were advised that the information in scope of your request was withheld under the absolute exemption at section 23 (Security Bodies) of the Act and under the qualified exemption at section 24 (National Security), meaning that the information requested could only be withheld if the public interest in doing so outweighed the public interest in disclosure. The substantive response advised you that a PIT was carried out and that following the consideration of the PIT arguments, the balance of the public interest was found to lie in favour of withholding the information in its entirety. You were not provided with any arguments in favour of release for the application of section 24(1), for which I apologise.

6. In cases where a public authority is considering the application of exemptions subject to a PIT, the Act requires the authority to reach its decision 'within such time as is reasonable in the circumstances'. The Information Commissioner's Office (ICO), in its good practice guidance, considers that in cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but that, in their view, in no case should the total time required to complete the PIT exceed 40 working days, in this case by 28 June 2023.

7. In summary, your request was not handled in accordance with section 1(1) or 17(2) of the Act as you were not advised within the first 40 days that consideration was being given to the application of relevant exemptions. The response did not meet the section 10(1) statutory timeliness requirement of the Act. You were advised of your right to appeal.

Substance

8. Your request As part of this review, I have focussed on questions 1a and 5 as outlined in your appeal.

9. The response provided by the Department met the requirements of section 1 (1)(a) by stating that following a search of the Department it was confirmed that information was held that met the description of your request.

10. However, the response also advised that it was necessary to withhold the entire information under the exemption at sections 23 (Security Bodies) and 24 (National Security).

11. I have read your appeal and following consultation with the relevent Department within MOD I accept that the information requested was incorrectly withheld and therefore the exemptions at sections 23(1) and 24(1) are not engaged. I am therefore releasing the information to you as part of this internal review in Annex A to this letter.

12. Furthermore, I apologise for the extended delay and any inconvenience in providing this internal review. I will provide the ICO with a copy of this letter when I write to them today to explain the Department's position change in this matter.

Conclusion

13. In summary:

- a. Your request did not meet the sections, 10(1) and 17(2) sections of the Act.
- b. This review has advised you that the Departments position has changed and that sections 23 and 24 no longer apply to the information in scope and I have released the information in this internal review.
- c. I have apologised for the extended delay in providing the internal review and I have advised you I will write to the ICO and advise them of the change in the Departments position.

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/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,

Paul Daly

Part 1a - the total number of missions undertaken by these aircraft on Operation Shader

Total Missions on Operation Shader

Mission Count		Ac Type		
Year	Month	MQ9 (Reaper)	FGR4 (Typhoon)	Total
2023	Jan	31	82	113
	Feb	35	55	90
	Mar	47	102	149
Total		113	239	352

Part 5 - Please can you tell me, for each month between January 2023 and March 2023, how many hours have UK a) Reaper and b) Typhoon flown on Operation Shader?

Hours flown

Duration of flight		Ac Type		
Year	Month	MQ9 (Reaper)	FGR4 (Typhoon)	Total
2023	Jan	380	464	844
	Feb	457	325	782
	Mar	1006	569	1575
Total		1843	1358	3201

Please note: "As always the data contained in this ASWC statement is believed to be complete and correct at the time of issue. The ASWC operational activity databases are frequently reviewed and any errors and omissions are corrected. It is therefore possible that future statements might not match this statement exactly. Air Space Warfare Centre (ASWC) regrets any difficulty that this may cause but emphasises that our aim is to ensure that our records are as complete and correct as possible."