

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 November 2013

Public Authority: Ministry of Defence
Address: Main Building
Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant complained that correspondence he had with the public authority was not a 'new information request' rather it was clarification of a previous request and that it should not have been dealt with as such. The Commissioner finds that the correspondence was correctly dealt with as a 'new information request'. The Commissioner does not require the public authority to take any steps.

Background

2. The request can be followed on the "What do they know" ("WDTK") website¹. It is lengthy, originating on 4 August 2012.

¹https://www.whatdotheyknow.com/request/use_of_directed_energy_device_s_i

Request and response

3. On 3 February 2013, the complainant wrote to the public authority and requested information in the following terms:

"...The following text pertains to the emails you have provided on 21st December which were generated at the Internal Review stage. I am looking for clarification on a number of matters.

Due to ongoing problems with selective responses from the MOD, I am going to employ an alphabet based list approach so that any problems not responded to can be quickly and easily identified.

PREVIOUS CONTACT

A. As referenced above, SECEC-Land3 stated on page 2 that a less than lethal effect weapons system had been tested on "people in the UK". I am still waiting for clarification on this.

MISSING INFORMATION OR ATTACHMENTS

Given that this is digital information which I requested, I do not understand why so much of it is grainy or beyond visibility. It is almost as if some sort of image editing has been applied to it.

B. On page 22 beneath (or within) the response from DCDC-Coord SO2 on 22nd November there is a whole paragraph of the page which is unreadable. Can I please have the original copy with the information which is missing there?

C. On Pages 25 (lower e-mail) and 27 the relevant departments seem to have been redacted along with the personal info. This is unlike all the other emails provided which display departments. Could you please provide the content with the relevant department specified or clarify why this was omitted?

D. On page 28 the top e-mail dated 14th November specifies that there are e-mail attachments. Can you please provide the content or clarify why it was omitted?

E. On page 30 the top e-mail dated 13th November specifies an attachment which has not been provided. Can you please provide the content or clarify why it was omitted?

F. The top right of page 30 says that it is page 1 of 2, however there is no page 2. Can you please provide it or clarify why it was omitted?

RECIPIENTS AND RESPONDENTS

Guidance from respondents:

G. On page 5 LF-SEC & GROUP responds that he/she "can not comment on any special projects that may or may not be in use by special forces." For an answer on that the question would need to be asked of "CAP Special projects (SP) or Director Special Forces (DSF)." Can you confirm or deny whether or not either of these sections were contacted and if so please confirm which e-mails were from them?

H. On page 22 the respondent (seems to be Development Concepts and Doctrine Centre) mentioned that it would be best to contact CAP DTA. Can you clarify whether he/she/they were contacted and responded, and if so which e-mail response is from them?

I. On page 8 the PJHQ response guides to branches dealing with CT for an appropriate response. Can you clarify whether they were contacted and whether they responded. If they did can you specify which email response came from them?

J. It states in a telling e-mail on page 18 from ACP-CH-IHL (Sec Pol Ops Du BM2) that the 'practitioners' should be contacted not the 'guardians of policy'.

After providing a quote from an MOD document the e-mail specified that "This is the information we have in ACP; it informs doctrine and developments in science and technology, and training by practitioners. You need to find the practitioners, not the guardians of policy to answer the questions"

Essentially the person claiming to represent the department which governs policy (seems to be Arms Control Unit(Arms control and counter proliferation policy)) is there stating that the policy makers do not know how the people they are responsible for are using such devices. I would like to note that this appears to be an extremely significant and telling response.

Can you clarify whether you know which practitioners they were referring to and whether they were contacted and responded? If so could you please specify which response came from them?

K. On Page 25 DSTL responded "To date I have received nil returns from the departments" This indicates that some departments had not responded. Can you please clarify which departments of DSTL had responded to that sender?

L. Below I have listed the departments you disclosed which emails were sent to and the ones which responded.

Outgoing e-mails:

*SecEC-Land3 (Smart Approvals Guidance-Smart Approvals)
Cap CI-BM4
SecEC-AirtTL
SecEC-Land&OpsTL
SecEC-Land1
SecEC-Land2
SecEC-Land3
SecEC-Ops1
SecEC-ISTL
SEC EC IS2
SecEC-Hd
SecEC-MarTL
LF-Eqpt-COS
LF-Sec-MS&E1-SO1
LF Eqpt-Progres-DCC-SO2
LF-Sec-&Group
PJHQ-J8-FOI-Group
DEC SEC-PolSec LE-JSC-WPNS (multiuser)
DES SEC-PolSecShips and Subs
DES Sec-FOI
ACP-CH-IHL
DGFin
DGStrat BusmanPol-1
DST-Strategy SEC 1
Sec Pol Ops-FOI
CLS-Sec 1
DCDC-Coord SO2
DSTL*

Incoming e-mails:

*SecEC-Land3 (Smart Approvals Guidance-Smart Approvals)
Cap CI-BM4 (& on behalf of Sec EC IS)
SecEC ISTL
SecEC-AirtTL*

*PJHQ-J8-FOI-Group
SEC EC IS2
(LF-Sec-MS&E1-SO1) LF-EQPT-ProgRes-DCC-SO2
ACP-CH-IHL
DCDC-Coord SO2
DSTL*

Although some respondents indicate that they are vouching for others under them, the number of people who responded still seems vastly less than those who were sent e-mails. Can you clear up which depts failed to respond?

M. Last but certainly not least, there are certain key groups which I believe are especially relevant to the request. I would like to know whether they were contacted and which responses would pertain to them if they were. If they did not respond I would like clarification as to why. These are:

- 1. Targeting and Information Operations (TIO) (Old War Office Building, Whitehall, London)*
- 2. Actual Information Operations in the UK*
- 3. Electronic Warfare Operational Support (EWOS), RAF Waddington (or any of it's 11 other centres throughout the UK)*
- 4. the Cyber and Influence section of DSTL*

I realize this will take a little time to respond to but I hope for a full reply in due course as well as to the other requests mentioned above".

4. The public authority responded on 3 February 2013. It provided further information in respect of parts A to F of the above request. In respect of the remainder is explained:

"Your questions in G-M have been regarded by the Department as a fresh request and have been logged as such (reference: 04-02-2013-125955-004). This is because these questions can only be answered with information which is out of scope of your original request (which was for emails about the handing of your original request between the internal review team and the wider Department – all of which were provided). It should also be noted that the Act does not give a right to receive answers to questions unless these are in the form of recorded information held at the time of the request".

5. On 6 March 2013, the public authority provided a response to parts G to M of the request. It advised that it had found these to be 'vexatious' under section 14(1) of the FOIA.

6. On 8 March 2013 the complainant asked for an internal review. This was provided on 9 April 2013, maintaining the same position.

Scope of the case

7. The complainant contacted the Commissioner on 2 July 2013 to complain about the way his request for information had been handled. Following further correspondence with the complainant, it was agreed that the scope of his complaint was that parts G to M of his request were not 'new requests' rather they were 'clarification' of other points and that they could not therefore be considered to be 'vexatious' on their own merit. To explain his position the complainant advised the Commissioner:

"They could have saved themselves time and effort if they had just refused to answer the clarification".

8. The Commissioner will therefore consider whether points G to M were properly dealt with as 'new requests'. He will not consider whether or not they are 'vexatious' as this is not part of the complaint.

Reasons for decision

Sections 1 and 8 – valid requests for information

9. Section 1 of FOIA states that:

"(1) 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.*

...

- (3) Where a public authority—*
 - (a) reasonably requires further information in order to identify and locate the information requested, and*
 - (b) has informed the applicant of that requirement, the authority is not obliged to comply with subsection (1) unless it is supplied with that further information."*

10. Section 8 provides that:

- (1) *In this Act any reference to a "request for information" is a reference to such a request which -*
 - (a) *is in writing,*
 - (b) *states the name of the applicant and an address for correspondence, and*
 - (c) *describes the information requested.*
- (2) *For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request -*
 - (d) *is transmitted by electronic means,*
 - (e) *is received in legible form, and*
 - (f) *is capable of being used for subsequent reference.*

11. Therefore, under section 1(3), where a public authority reasonably requires further clarification from a requester then it is entitled to ask for this. However, although the complainant states that he is not making requests rather that he is trying to clarify earlier requests, it is important to note that he is not required to provide clarification unless the public authority asks for this; it did not do so.
12. On reading the correspondence, it is clear to the Commissioner that the complainant is seeking additional information to that which has already been provided to him, ie this information has not been asked for previously. Therefore, in the Commissioner's view, the public authority has correctly read the complainant's correspondence and clearly identified that he is asking for something new. The request meets the requirements of section 8 above and, as required by section 1, the public authority correctly advises the complainant that it is treating his correspondence as a new request under the terms of the FOIA and it responds accordingly. Indeed, were it not to do so it could leave itself open to further complaint in that the complainant could advise the Commissioner that his request had been ignored.
13. The Commissioner therefore finds that the public authority dealt properly with the correspondence as a new information request.

Right of appeal

14. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

15. 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.
16. 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

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF