

Ministry of Defence Access to Information

Guidance Note

Version 6

June 2009

Guidance on Statistical Data

1. This Guidance Note provides advice on dealing with requests for a wide variety of statistics. It is important to be aware that statistical information can have an impact and needs to be presented in context. The FOI Act allows access to recorded information held when a request is made, but where it is necessary we are permitted to provide an explanation to assist the applicant in understanding the information disclosed.

What is “confidential” or “statistical” information?

2. For government statistical purposes, “confidential information” is defined as information that allows for the direct or indirect identification of individual data subjects, whether survey and census respondents or those in administrative records. “Statistical information” is that which is not likely to directly or indirectly identify individual data subjects and includes analyses, projections and meta-data, as well as the statistics themselves. Numerical data may simply be a sum total or take the form of a table or graph. Statistics must be derived from a recorded or repeatable methodology. Commentary on this methodology is also statistical information.

Exempted information

3. **Confidential data** used for statistics and research is covered by the exemptions listed below. Any proposal to release confidential statistical information under FOI must be referred via DASA to the Ministry of Justice Clearing House who, in turn will consult the Office for National Statistics. This is particularly important in the case of data used to produce Defence National Statistics, because MOD Ministers have undertaken to comply with the National Statistics Code of Practice.

- **S.35** (Formulation or development of government policy etc): The Act specifies that once a decision about government policy has been taken, statistical information used to provide a background to that decision taking will no longer be regarded as being related to either the formulation or development of government policy or ministerial communications. Therefore, after policy decisions are made, in requests for information which relate to policy formulation or ministerial communications, statistical information is not exempt under s.35 and should be disclosed. *See Guidance Note E3: Qualified exemptions most relevant to the MOD for general information about this exemption.*
- **S.36** (Prejudice to effective conduct of public affairs): Under s.36 (4) when the information requested is statistical, the “reasonable opinion of the qualified person” does not apply. Instead the public authority must clearly show how disclosure would have prejudicial effects. The sensitivity of information is likely to diminish over time, and the age of the information, or the timing of the request may be relevant in determining whether to apply the exemption or the outcome of the application of the public interest test. In addition, s.63 (1) relating to historical records, specifies that s.36 does not apply beyond 30 years. *See Guidance Note E3: Qualified exemptions most relevant to the MOD for general information about this exemption.*
- **S.40** (Breach of data protection principles): Statistical data relating to personnel, whether Service or civilian, should ordinarily be rounded to a multiple of 10 to prevent the inadvertent disclosure of personal information either now or in the future (when it might be combined with other information as yet unreleased). DASA should be consulted on the appropriate process to use so that data are not issued that conflict with previously published numbers. The Information Commissioner has agreed that this is a proportionate and permissible process. Thus the FOI Act cannot be used to obtain the unrounded versions of published rounded data. *(See Guidance Note E2: Absolute exemptions most relevant to the MOD for general information about this exemption).* Exceptionally, where small numbers are involved, rounding to multiples of 5 may be allowed, but DASA should be consulted in each case.

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- **S.41** (Confidential information). Most statistical surveys contain an undertaking to keep the data provided confidential (whether relating to individuals or enterprises) and thus *prima facie* fall within the scope of this exemption. *See Guidance Note E2: Absolute exemptions most relevant to the MOD for general information about this exemption.*
- **S.43** (Commercial Interests). Information which would prejudice the commercial interests of the MOD or other organisations/individuals is exempt under the terms of the Act. This should be taken under consideration when publishing statistics on defence contracts; particularly if they relate to named contractors. Requests for complex statistical methodologies or models developed by the MOD may also fall within the scope of this exemption, as it could be against the commercial interests of the department to publish them in the public domain.

3.1 In contrast, statistical information (i.e. non-confidential) should be made readily available to the public under equality of access. This means among other things that Defence National Statistics are released only on pre-announced dates – the FOI Act cannot be used to gain early access to as yet unpublished statistics (s.22 applies).

3.2 Statistical information that is not published because it is unfit for purpose, and is not otherwise exempt, *does* have to be released if requested, but must be accompanied by appropriate information about its quality, reliability, fitness for purpose etc. Examples would include an estimate from a sample survey that is based on such a small sample as to be wholly unreliable, or all results from a survey later found to be badly flawed in its methodology. DASA should be consulted on the wording to be used.

Answering requests

4. When you receive a request for statistical data you should:

- Check whether the information requested has already been published. DASA produce UK Defence Statistics annually in September, which is available both in hard copy and on the MOD Publication Scheme. Several other publications and reports can be viewed on the DASA web site www.dasa.mod.uk. If all the info requested can be found there, or is shortly to be published, the request can be refused under s.21 (Information accessible to the applicant by other means - *See Guidance Note E2: Absolute exemptions most relevant to the MOD* and also s.22 of the Act: (information intended for future publication.)
- If the requested information is unpublished, you should send the request to DASA xxxxxxxxxxxxxxxxxxxxxxxxxxxx (DASA-CSD WDS_Business Manager, xxxxxxxxxxxxxxxxxxxx BT (xxxxxxxxxxxxx) as well as the relevant policy branch(es). If DASA does not hold the relevant data, it will advise you accordingly. You will need to consider whether any exemptions should be applied to the information (see paragraph 3.1 above)
- When responding to a request for information, check if any of the information concerns another individual's personal data as this information may be exempt under FOI s40. *See Guidance Note D8: Processes for handling Requests for Information.*

The Information Commissioner's Decision Notice FS50107607 found that MOD did not comply with the section 16 duty to advise and assist to enable an applicant to receive statistical information requested. This requires a new perspective on 'information held' for the purposes of the Act. A distinction should be drawn between information 'held' and raw data from which information could be created by manipulating or interrogating that data. Section 12 may apply, a factor that can be included in calculating the cost is contracting expert resource (eg IT specialists) whose costs should be recorded as a total (and not hourly rate). If information can be provided to answer a request by creation of a new report program to search a data base this may have to be provided, if it can be done within the appropriate cost limit. Consideration should be given to the degree of skill and judgement required to create information:

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- I. Where information can be created through simple manipulation of statistics or basic administration, and is otherwise consistent with routine business, departments should consider disclosure in line with s.11(2) and (4)
- II. Where a high degree of skill and judgement is required to create the information, providing that information should be considered unreasonable and therefore not held for the purposes of s.1 (1)
- III. Requests which require the expertise of particular individuals or teams to provide requested information based on raw data amounts to the creation of information through research

If the information is not held in the form requested, and a simple report will not produce it, under the duty to advise and assist at s.16 of the Act consideration should be given to providing any available data that would allow the applicant to make their own calculations. (However, you should not provide any data that would be in breach of DPA98, and any data provided should be appropriately rounded.) Informing the requestor what info could be provided may allow the request to be answered. In cases where the information is not held in the form requested, it is important that an effort is made to contact the individual and discuss what could be provided. The full Decision Notice can be read on the ICO website:

http://www.ico.gov.uk/upload/documents/decisionnotices/2008/fs_50107607.pdf

4.1 Tabulations, even if only created for internal purposes, and held at the time the request is received should be released unless covered by one or more of the exemptions. If it is decided voluntarily to create information for an applicant, this does **not** mean that similar information **must** subsequently be compiled for this or other applicants.

4.2 The Code of Practice for Official Statistics is available at

<http://www.statisticsauthority.gov.uk/assessment/code-of-practice/index.html>

The key points to note in the use of official statistics are:

- When preparing any publication containing statistics, including those drawn from administrative or management information, you must involve statistical professionals at the earliest opportunity;
- You must not use unpublished statistics without the advice of a statistical professional;
- You must not selectively quote favourable data from any unpublished dataset;
- Decisions taken by statistical professionals are final;
- Any publication containing official statistics must provide information relating to their quality, reliability and usability;
- Pre-release access to official statistics is a privilege. You must not disclose any information, nor seek to alter it in any way;
- Ignoring any of the above may constitute a breach of the Code and result in an investigation by the UK Statistics Authority and a published report to Parliament.