



Ministry of Defence

Our Ref: FOI2015/06130

Ministry of Defence
Main Building
Whitehall
London SW1A 2HB
United Kingdom

Telephone [MOD]: 020 7218 4848
E-mail: CIO-FOI@mod.uk

20 Jul 2015

Dear [REDACTED]

Thank you for your letter dated 14 Jun 2015 requesting the following information:

"Would it be possible for you to send me the complaints procedure for the MOD in regards to its releasing of information/files"

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.

There are a number of formal, legal regimes under which the MOD releases information to the public, and each have their own complaints procedure including:

- Freedom of Information Act –Annex A
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/418441/2014_0731-MOD_FOI_EIR_Complaints_and_Appeals_Procedures.pdf
- Data Protection Act – Annex B
<https://www.gov.uk/government/organisations/ministry-of-defence/about/complaints-procedure>
- Public Records Act – If a document is held (retained) by MOD and a member of the public would like it to be made public, they should make an FOI request to the Department. If the requestor is not happy with the response to this request, they can complain using the FOI complaints and procedures policy.

Under Section 16 of the Act (Advice and Assistance) you may find it helpful to note members of the public can complain when they feel that MOD files available through The National Archives (TNA) should not be on public view. Guidance on how to complain to TNA is included in their Takedown and Reclosure Policy. More information on this policy can be found on The National Archives website : <http://www.nationalarchives.gov.uk/legal/takedown-policy.htm>

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, 1st Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please note that any request for an internal review must

be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.org.uk>

Yours sincerely,

Information Rights Team.

D/ISS/3/1/6
31 July 2014

MOD FOI AND EIR COMPLAINTS AND APPEALS PROCEDURES

1. This document gives an overview of the MOD procedures for the handling of appeals under the Freedom of Information Act 2000 (FOI Act) and the Environmental Information Regulations 2004 (EIRs). The FOI Act and EIRs provides requestors with a right to appeal if they consider that MOD is not complying with its publication scheme, that a request for information has not been handled properly, or if they are otherwise dissatisfied with the response to a request. In general, the appeal process for the EIRs is the same as for the FOI Act.

ADVICE AND INFORMAL RESOLUTION

1. All responses to requests for information (RFIs) should include the MOD standard appeals paragraph which advises requestors that if they are dissatisfied with the response they have received or wish to complain about the handling of their request they should contact the official replying, in the first instance. This period of informal resolution is to be encouraged in an attempt to clarify outstanding points or resolve any misunderstandings at an early stage rather than proceeding direct to a formal review. All MOD officials handling RFIs have a duty to provide advice and assistance to the requestor as far as is it reasonably practicable to do so.

Whilst informal resolution should be attempted where appropriate, a requestor has a right at any stage to apply for an independent internal review by contacting the MOD Information Rights team, 1st Floor, Zone N, Main Building, Whitehall, London, SW1A 2HB. Requests for internal reviews received by branches must be redirected to this address.

MOD INDEPENDENT INTERNAL REVIEW

4. The internal review, which will be undertaken by an experienced reviewing officer, shall examine the handling of the case as well as the substance of the response and reconsider any decisions taken to withhold, either partially or fully, the requested information. The review shall be conducted fairly and impartially, ensuring that the MOD's position in relation to the RFI can be fully justified when assessed against the Department's statutory obligations under the relevant regulations.

5. The internal review process is as follows:

- a. On receipt of a request for an internal review, the Information Rights Compliance Team acknowledges receipt and informs the complainant of the target date by which they aims to respond. (The target date from 1 April 2010 set by the Department is 20 working days but some reviews, depending on their complexity, will take longer to complete.)
- b. The Information Rights Compliance team shall request all the key documents relating to the case from the lead branch that responded to the original request, including the recorded information in scope of the request. The relevant documents are to arrive with the Information Rights Compliance team within 3 working days.
- c. The Information Rights Compliance team shall advise the complainant of any alteration to the estimated date for completion of the internal review where it becomes apparent that the review will take longer than intended.
- d. The Information Rights Compliance team shall seek advice and assistance from appropriate MOD and external sources in order to provide them with all the advice necessary to complete their formal internal review.
- e.

Any proposed disclosure of previously withheld information (or other further action) shall only be undertaken with the agreement of the relevant lead branch with the involvement of the 1-Star official who authorised the original response, should it be necessary. Any cases which cannot be resolved by mutual agreement will be referred to Permanent Under Secretary (PUS).

f.

There are two main outcomes from the review:

(1)

The original decision is upheld, or

(2)

The original decision is overturned (in full or part)

Occasionally, a third type of review is carried out at the request of complainants that involves examination of the Department's handling of the case only (i.e. it does not examine the decisions made about the release of information).

g.

At the end of all independent internal reviews the Information Rights Compliance team will remind the complainant that they have a right to complain further to the Information Commissioner if they remain dissatisfied and provide details of his postal and electronic address.

COMPLAINTS TO THE INFORMATION COMMISSIONER

6.

The Information Commissioner's Office (ICO) is an independent statutory regulator which polices the operation of the FOI Act and the EIRs with the duty to decide whether a RFI made to a public authority has been dealt with in accordance with the requirements of either the Act or the EIRs. The ICO recognises that it is important for the complainant to use the MOD's internal complaints procedure in the first instance as many complaints can be satisfactorily resolved without the necessity of referral to the ICO.

7.

Where complaints against the MOD are accepted by the ICO for investigation, the process is as follows:

a.

The ICO will write to MOD stating that a complaint has been received and stating the intended course of action. **The Information Rights team is responsible for all liaison with the ICO on behalf of MOD.** All correspondence from the Office of the Commissioner to MOD should therefore be forwarded to the Information Rights Compliance team for reply.

b.

If further information is required a member of the Information Rights Compliance team will contact the lead branch as and when necessary.

c.

Should the case progress to Tribunal (see below) the lead branch may be required to provide a 1* witness for the hearing.

d.

In some cases the Commissioner will reach an informal decision with the involvement of the complainant and the MOD. In all other cases he will issue a formal decision notice. Any rulings made by the Commissioner will need to be carefully considered by the Deputy Chief Information Officer on behalf of MOD.

Where the complainant is dissatisfied because the Department has exceeded the statutory timescale for responding to a request for information and the complainant is still awaiting a reply, the complaint may be referred to the ICO without further delay.

APPEALS TO AN INFORMATION TRIBUNAL

1.

The final stage of the process is an appeal to an Information Tribunal. This involves either the appellant or the MOD appealing against the decision of the Information Commissioner. PUS will be consulted about all cases that proceed to this level. Points of law arising from Tribunal decisions can be appealed in the High Court but any High Court judgement would be referred back to the Information Tribunal for reconsideration of the case in the light of the ruling.

[Ministry of Defence homepage](#)

Complaints under the Data Protection Act 1998

Details of the complaints procedure relating to the processing of personal data held by MOD are contained in the replies to each subject access request. Complaints to the Departmental Data Protection Officer should be addressed to:

MOD Information Rights team
1st floor, Zone N
Main Building
Whitehall
London SW1A 2HB

Email: CIO-FOI@mod.uk