

**Ministry of Defence  
Access to Information**

**Guidance Note D3: The duty to provide advice and assistance**

## **1 The duty to provide advice and assistance**

1.1 Section 16 of the FOI Act places a duty on public authorities to provide **reasonable** advice and assistance to actual and potential applicants for information. The MOD will be taken to have complied with this duty in any particular case if it has conformed to the MOJ's Code of Practice issued under s.45. This duty is enforceable by the Information Commissioner who may issue a decision notice or an enforcement notice if he considers a public authority to have failed in its statutory duty. See Guidance Note *A4: Formal powers of the Information Commissioner*.

The Code of practice on s.45 is at <http://www.justice.gov.uk/guidance/foi-guidance-codes-practice.htm>.

The ICO Guidance Note 23 on the duty to advise and assist is at <http://www.ico.gov.uk>

1.2 This duty applies to the entire access to information processes: from helping an applicant to determine what they want to advising them of the appeals process. Remember that other Acts of Parliament may also be relevant to the way in which we provide advice and assistance e.g. the Disability Discrimination Act 1995 and the Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000).

## **2 The request is not legible**

2.1 The FOI Act requires a request to be in legible, permanent form and to make clear what is sought. If the request is not legible then it is not a valid FOI request. However it may be that the illegibility is due to a mental or physical disability. The MOD is viewed as a service provider under the Disability Discrimination Act. Extra help must be provided to a person with a disability who wishes to make a request for information. Where applicants have difficulty, appropriate assistance must be given to enable them to make a valid request. If you are not clear what is reasonable and appropriate assistance in a particular case you should consult your FOI Focal Point.

2.2 If it is possible to discern a name and address, reply explaining that the request is unclear and suggesting that they seek help from a friend, carer or agency able to assist them with the application, or make the application on their behalf. If their difficulty is only with writing then remember that in exceptional circumstances, you have the discretion to offer to take a note of the request over the telephone and write to the applicant for confirmation. The applicant may be asked to tick a box to confirm whether or not the understanding of their request is correct. The clock starts when written confirmation is received. If no name or address is decipherable then you should keep the letter for a reasonable period in case subsequent correspondence which offers clarification appears.

## **3 The request is unclear or very wide in scope, or the applicant is unsure how to define their request**

3.1 A request for information must adequately specify and describe the information sought by the applicant. If it is not clear what information the applicant wants, either because the request is not clearly expressed or is too general, the Act allows you to ask for the applicant for more detail to enable you to identify and locate the information sought. Equally the applicant is entitled to be provided with help in defining their request, or narrowing its scope if appropriate.

3.2 Contact the applicant, preferably by telephone or e-mail, to establish what information it is that they want to know. This may involve:

- providing an outline of the different kinds of information which might meet the terms of the request;
- providing access to detailed catalogues and indexes, where these are available, to help the applicant ascertain the nature and extent of the information held by the authority;
- providing details of where to find information already published on the subject (e.g. PQs since 1988 on <http://www.parliament.uk/hansard/hansard.cfm> and the MOD Publication Scheme at <http://www.foi.mod.uk>)
- providing a general response to the request setting out options for further information which could be provided on request
- The 20 days response clock starts when a written understanding is reached. This may often be by a fresh request. Where agreement is reached by telephone always send a note of your understanding to the applicant for confirmation. The clock starts when written confirmation is received.

#### **4 The applicant has difficulty making the request in written English because of visual, literacy or language difficulties**

4.1 Advise the applicant that another person or agency (such as a Citizens Advice Bureau) may be able to assist them with the application, or make the application on their behalf. Remember that environmental requests may be made verbally, and the department has discretion, if wished, to accept verbal requests on other subjects where this is reasonable and practical.

4.2 There is no statutory requirement to accept, or answer, requests in Braille or sign language. Nor, **apart from welsh**, is there any requirement for the MOD to answer requests which are not in English. For requests in all languages other than English or Welsh the letter should be returned asking for it to be resubmitted in English. See Guidance Note *D5: Requests received other than in written English*

#### **5 The applicant indicates that he or she is not prepared to pay the fee**

5.1 Where this is a response to any fees notice given to the applicant, consider whether there is any information that may be of interest to the applicant that is available free of charge. While the MOD is not obliged to comply with a request for information where the cost of complying would exceed the "appropriate limit" (i.e. cost threshold), you should consider providing an indication of what, if any, information could be provided within the cost ceiling. You should also advise the applicant where by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee, and offer to provide advise in doing this. See Guidance note *D9 Charging*

5.2 If the cost of effort will exceed £600 but there are considered to be good reasons for the information to be in the public domain, then consider releasing the information proactively through the Publications Scheme. See Guidance Note *C1 Publications scheme*

#### **6 Remember that**

- It is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail
- In seeking to clarify what is sought, bear in mind that applicants cannot reasonably be expected to possess identifiers such as a file reference number, or a description of a particular record.
- The aim of providing assistance is to clarify the nature of the information sought, **not** to determine the aims or motivation of the applicant. Take care to explain to the applicant why

you are asking for more information, explain that the applicant is **not** obliged to disclose the nature of his or her interest as a precondition to exercising the rights of access and will be treated no differently whether he or she does or does not and point out that sharing the purpose underlying the request enables us to be as helpful as possible in responding. For example, two requesters, one seeking historical background for a novel and the other seeking statistics for an academic paper, might submit similarly phrased requests. Knowing their purpose, we could select information which would satisfy their requirements without showering them with things they did not want or wasting public money in identifying and copying them. Against that background, invite the applicant to consider letting us know why they want this information, so that we can best help to meet their need.

## 7 Limits to advice and assistance

7.1 If, following the provision of assistance, the applicant still fails to describe the information requested in a way which would enable the MOD to identify and locate it, we are not expected to seek further clarification. You should disclose any information relating to the application which has been successfully identified and found for which it does not propose to claim an exemption. In your response explain to the applicant why you cannot take the request any further and provide details of the MOD's complaints procedure and the applicant's rights. See Guidance Note *F1 Complaints and Appeals*

7.2 We are not expected to provide assistance to applicants whose requests are vexatious. See Guidance Note *D6: Valid invalid and Vexatious requests*.

7.3 The FOI Act imposes no need to produce information especially to answer a request. Other than assisting in clarifying a request there is no requirement to undertake research or analysis for an applicant. However, depending on the nature of the request and the information available, it may be convenient to answer in the form of a summary of the information.