



Ministry
of Defence

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██████████
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29 September 2015

Dear ██████████

Thank you for your email of 13 September 2015 requesting the following information:

“In what cases is the CO or delegate allowed to refuse granting custody for a serviceman after an offence has been established by service police?”

Assuming that the criteria for arrest has been met and custody was lawful, why would the CO or delegate be allowed to refuse granting custody of a serviceman?

If a service policeman believed that custody was necessary but has been refused by a CO, what actions could be taken?

I understand I have asked multiple questions but I believe they are all strongly linked, the underlying question is why would a CO or delegate refuse custody even if criteria was met as stated in SPCOP - JSP 830?”

I am treating your correspondence as a request for information under the Freedom of Information Act 2000 (FOIA).

I will answer each part of your request in the order presented.

When an accused is arrested and kept in Service custody without charge, this must be reported to the Commanding Officer (CO) as soon as practicable.

The CO or delegate must consider that there are reasonable grounds for believing that the following two conditions have been met in order to authorise the retention of a person subject to service discipline in pre-charge custody:

- a. The keeping of the person in pre-charge custody without being charged is reasonable to:
 - i. Secure or preserve evidence relating to the offence for which they are under arrest; or
 - ii. Obtain such evidence by questioning them; and
- b. The investigation is being conducted diligently and expeditiously.

This is a requirement of s99(4) of the Armed Forces Act 2006.

If the CO or delegate does not have reasonable grounds to believe that each of these conditions are satisfied they must not authorise the retention of the person in pre-charge custody and the person must be charged or released. .

Turning to question two S99(2) of the Armed Forces Act 2006 allows a person subject to service discipline to be kept in custody if the person who made the arrest has reasonable grounds for believing that keeping the person in custody without being charged is necessary:

- a. To secure evidence relating to the service offence for which the suspect is under arrest; or
- b. To obtain such evidence by questioning the suspect (in accordance with the Service Police Codes of Practice)

The decision as to whether either of these conditions exists lies with the arresting officer, who must complete a Record of Arrest.

S99(1) of the Armed Forces Act 2006, states that once the arresting officer has decided that keeping the person in custody is necessary they must report the matter of the arrest and the grounds on which the person is being kept in custody to the CO as soon as is practicable. It is then the responsibility of the CO (or delegate) to determine whether the grounds for continued Service custody without charge exist.

The CO or delegate would refuse authority for continued Service custody without charge if they considered that any of the conditions detailed in the answer to question one were not met.

Lastly in response to your third question, after the arrest and grounds for keeping the suspect in Service custody without charge have been reported to the CO, responsibility for determining whether the necessary grounds upon which continued custody can be authorised exist, passes to the CO.

The conditions that a CO must be satisfied are met in order to authorise keeping a suspect in custody without charge are detailed in the response to question one above . If the CO or delegate is not satisfied that any of the conditions are met, the suspect must be released or charged with the offence. There is no means of appeal by the Service Police in respect of the CO's (or delegate's) decision.

It is important to note that whilst the suspect is initially held in Service Police custody, on reporting the matter to the CO, it is the CO who decides whether to authorise the custody. That is, if authorised, the suspect will then be held in CO's custody without charge. The arrest report submitted to the CO is not a custody application, but is the manner in which the CO is informed of the circumstances of the arrest and investigation in order to decide whether the conditions for keeping that suspect in custody are met.

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,

Defence People Secretariat