Version 6   January 2009

Guidance Note A2: Governance within the Ministry of Defence
 Responsibilities of individuals within MOD

1.   Effective implementation of the FOI Act depends on many people across the MOD, who need a clear understanding of their own role and the roles of others. The main stakeholders are:

The **Secretary of State,** who is accountable to Parliament for the Department's FOI performance. The Act empowers him to issue a ministerial certificate as conclusive evidence that the requested information is exempt under s.23 bodies dealing with security matters; s.24 national security. Under s.53 the Secretary of State is the "accountable person" who may give the Information Commissioner a certificate invalidating an enforcement or decision notice on the MOD if in his "reasonable opinion" there is no failure to supply information or to confirm or deny that it is held.

The **Permanent Under Secretary** is the recipient of any Information Notice, Enforcement Notice or Decision Notice the Information Commissioner may issue against the Department.

The **2nd Permanent Under Secretary** is charged with promoting FOI in the Defence Management Board and across the Department.

The **Head of Corporate Information** is tasked with implementation of open government initiatives within the MOD. The Post is responsible for:

➢   Managing the MOD Publication Scheme.
➢   Establishing the lead on pan-MOD requests for information.
➢   Liaising with the MOJ Clearing House on pan-government requests.
➢   Eliciting clarification on any points of legal interpretation which cannot be resolved within MOD
➢   Considering initial appeals about the MOD's handling of, or response to, an applicant's request, and liaising with the Information Commissioner's Office on any subsequent appeals.
➢   Co-ordinating the MOD response to any Information, Decision, or Enforcement Notice issued by the Information Commissioner.
➢   Co-ordinating MOD appeals to the Information Tribunal, and the MOD's defence at the Information Tribunal where appeals have been raised against the Department.
➢   Monitoring Departmental performance on FOI/EIRs, maintaining statistics on the number of requests to MOD and performance in handling them.
➢   Maintaining and updating the MOD guidance on FOI/EIR and the Access to Information Toolkit (AIT).

1.1   **TLB Holders,** and Agency and Trading Fund Chief Executives are responsible, through their letters of delegation, for FOI compliance. They

➢   Ensure that all staff within their management area understand and comply with FOI policy and procedures.
➢   Nominate one or more officials of appropriate status and seniority to carry out the responsibilities of the FOI Focal Point.
➢   Provide the resources to establish and maintain the necessary local supporting infrastructure and processes.
➢   Commission an audit of information holdings.
➢   Ensure that the TLB's input into the Publication Scheme is maintained and extended as appropriate.

1.2   **TLB, Agency and Trading Fund FOI Focal Points** provide FOI expertise within the TLB and form the core of a network for efficient pan-MOD handling of requests for information. This includes

➢   Promoting awareness of FOI policy and procedures within their area of responsibility.
➢   Arranging local training.
➢   Ensuring that external requests for information (including any received by e-mail) are handled in accordance with FOI policy and procedures.
➢   Monitoring progress and, where necessary, reporting to Head of Corporate Information any instance where the requirements of the Act have not been, or look likely to not be, met.
➢   Arranging the prompt transfer, or receipt, of any request where, after consultation with the relevant Focal Point, it is agreed that policy responsibility should be reassigned.
➢   Ensuring ongoing compliance with MOD's Publication Scheme.
➢   Submitting any statistical returns required by CIO - Information Access.

1.3   **All staff** responding to a request for information have a responsibility to ensure that the MOD as a whole is able to meet its obligations under the FOI Act. This entails:

➢   Ensuring that the receipt of the request is registered promptly within the AIT.
➢   Handling the request with the priority necessitated by the statutory 20 working day deadline for response. In particular it will be necessary to:
  o   Determine the scope of the request as appropriate, consultation with the requester may be required to clarify a request.
  o   Establish whether the information requested is held, consulting other branches and management areas as necessary.
  o   Consider whether it would be prejudicial to confirm or deny that the information exists.
  o   Consider whether the information is/may be covered by an exemption and, if so, whether this is absolute or qualified (i.e. it needs to be subject to the public interest test).
  o   Inform the requester promptly if the information is subject to an exemption/s and is being public interest tested giving notice of the timescale within which a definitive reply will be provided. Note that in all but exceptional cases a further 20 working days should be sufficient extra time.
➢   In appropriate cases, arranging for information requests which are subject to a qualified exemption to be formally reviewed and determined, seeking the necessary 1 star authorisation to withhold information.
➢   Providing the FOI Focal Point with a copy of any information released in response to a request in order to facilitate inclusion in the AIT and MOD's Publication Scheme where appropriate.

See also Guidance Note C1 Publication Scheme

1.4   Prior to releasing information any person responding to a request must ensure that they have the necessary authority to do so. **It is MOD policy that the decision to apply exemptions and withhold information must be sanctioned at 1 star level.** Heads of department or establishments must ensure that there are appropriate arrangements within his or her command for authorising the release of information.

1.5   **All staff** have a responsibility to ensure that they:

➢   Know who their FOI Focal Point is so that requests are passed on and logged without delay.
➢   Understand local procedures on how a request for information differs from routine correspondence.
➢   Make arrangements for their mail and emails to be opened and dealt with during an absence to avoid delay should a request be received. For both FOI and EIR, the clock starts when the

request is received. Unless the correspondence is "Personal" (i.e. marked personal or staff or management in confidence) then the addressee is deemed to be the Department. Anyone planning an absence (training or leave etc) must arrange for their mail to be opened and dealt with as appropriate, whilst they are away. The same applies for emails and answer phones (for EIR queries). For an unplanned absence, the line manager must arrange for this cover, as part of normal business practice.

➢ Ensure that all information they hold is filed in accordance with local procedures and JSP 441 (Defence Records Management Manual) so that it can be swiftly identified and retrieved to answer a request for information.

See also the Code of Practice under section 46 of the FOI Act on the Management of Records.

2.   **Any originator of information needs to anticipate the possibility that the information could be the subject of a request or other obligation under the FOI Act**. This means:

➢ Where appropriate, preparing documents in accordance with relevant FOI Act policy guidance.
➢ Ensuring that the existence of information is recorded and that it is stored in a manner that will ensure that it can be readily located and retrieved in the event of a FOI Act request on the subject.
➢ Ensuring that any information identified as a 'class' within MOD's Publication Scheme is provided promptly for publication through their FOI Focal Point.
➢ Considering whether any other information should be proactively released.

2.1   Registries and Archive Holders (e.g. the main MOD Repository at Swadlincote) have an important part to play in locating and providing all appropriate information holdings in response to FOI Act requests. In particular they are responsible for:

➢ Providing prompt assistance to any member of staff who requires archived records in order to respond to an external request for information.
➢ Ensuring that effective and meaningful records maintained about the subject matter are contained in information sources held locally; that it is stored promptly; and that it is readily retrievable.
➢ When reviewing records (in particular files) for retention outside the management area: ensuring that sufficiently detailed records are maintained about their contents to facilitate easy identification of information relevant to any request and efficient retrieval.