



# Ministry of Defence

FOI2014/04536

Ministry of Defence  
Main Building (01/N/12)  
Whitehall  
London SW1A 2HB  
United Kingdom

Telephone [MOD]: +44 (0)20 7218 9000

Facsimile [MOD]: +44 (0)20 7218 5471

E-mail: [CIO-FOI@mod.uk](mailto:CIO-FOI@mod.uk)

E-mail: [REDACTED]

28 August 2014

Thank you for your e-mail of 22 August 2014 requesting the following information:

*"How many Subject Access requests were placed requesting Service details in the period 2013-14?"*

*"What was the average cost involved in archive retrieval for each request?"*

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.

In financial year 2013-14 MOD processed 23,297 Subject Access Requests (SAR)s under the provisions of the Data Protection Act 1998.

With regard to the average cost involved in archive retrieval for each request, MOD's archive holdings are managed by TNT Ltd under the terms of a Pan-Government Records Management Contract (PGRMC). There is a tariff charged to MOD by TNT, as per the contract, for the retrieval of a file from the Archive but it is necessary to apply the exemption at section 43 (commercial interests) of the Act in order to protect this figure. This is because the information is classified as "commercial in confidence". Specifically, section 43(2) provides that information is exempt information if its disclosure under the Act "would, or would be likely to, prejudice the commercial interests of any person (including the public authority) holding it." I assess the correct level of harm in release in this case to be the latter rather than the former.

Section 43 is a 'qualified' exemption meaning that the information requested can only be withheld if the public interest in doing so outweighs the public interest in disclosure; a simple assertion by a commercial company that there would be prejudice to its interests if the information was released

is not sufficient justification for its use. I have therefore conducted a public interest test in which I have balanced the strong general argument for disclosing commercial information in the interests of public accountability and openness against the protection of the commercial interests of both the Department and its private contractor. In particular, the Department's bargaining position in future contractual negotiations may be adversely affected if potential contractors had a loss of confidence in MOD in its handling of information that is commercially sensitive to its contract partner. If companies were reluctant to bid for Government contracts because they regarded business relationships with MOD as 'harmful' this would result in a less effective spend of public money in the future. In addition, disclosure of the commercial tariff rate would be likely to prejudice the commercial interests of TNT Ltd because the information could be used by competitors to gain a commercial advantage in future bidding situations with both MOD and the Other Government Departments that utilise the PGRMC contract.

Taking all these factors into consideration, I find that the balance of the public interest is in not releasing the information in order to protect the commercial position of both the Department and TNT Ltd for the reasons I have explained and for which the exemption at section 43(2) is appropriate.

Under Section 16 of the Act (advice and assistance) please note that the retrieval cost that has been withheld in this response covers only the cost to remove the record from the MOD archive. It does not cover the full cost of obtaining and returning a record to the archive and meeting all the internal costs associated with processing a SAR some elements of which, such as the cost in time spent by the official staffing the SAR application on behalf of Department, will not be recorded against the specific task and any further searches in the archive, where necessary, entail further commercial costs to the Department. Conversely, not all SARs require retrieval of records from the MOD archive; some data record sets are held locally and these may be all that is required. It all depends on the nature of the data requested.

I hope this information is of interest.

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, 1<sup>st</sup> Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail [CIO-FOI-IR@mod.uk](mailto: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.gov.uk>.

Yours sincerely,

*MOD Information Rights Team*