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11 February 2016

FREEDOM OF INFORMATION ACT 2000 - INTERNAL REVIEW

1. I am writing in response to your email of 18 December 2015 asking for an independent internal review under the Freedom of Information Act 2000 (the Act) of the Department's handling of your request for information dated 9 September 2015. The purpose of the internal review is to consider whether the requirements of the relevant Information Rights legislation have been fulfilled. The scope of the review is defined by Part VI of the Code of Practice under Section 45 of the Freedom of Information Act 2000 (referred to hereafter as 'the Act'), which can be found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/003_3.pdf. This is my formal response following the review.

Handling

2. In conducting my review of the handling of your request, I have focussed in particular on the following requirements of the Act:

- a. Section 1(1)(a) which, subject to certain exclusions, gives any person making a request for information to a public authority the entitlement to be informed in writing by the public authority whether it holds information of the description specified in the request.
- b. Section 1(1)(b) which, subject to certain exemptions, creates an entitlement to receive the information held by the public authority.
- c. Section 10(1) which states that, subject to certain provisions allowing extensions of time, the public authority must comply with the requirements of Section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

- d. Section 16(1) where it is the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, request for information to it;
- e. Section 17(1) which states that, where it claims that information is exempt, the public authority must, within the time for complying with Section 1(1), give the applicant a notice which states the fact, specifies the exemption(s) in question and states why the exemption applies;
- f. Section 17(2) which states that the notice under Section 17(1) must, if applicable, state that a decision has not yet been made whether the public interest in maintaining an exemption outweighs the public interest in disclosing the information and give an estimate of the date that the authority expects such a decision will be made;
- g. Section 17(3)(b) which states that, where the public interest in maintaining the exemption outweighs the public interest in disclosing the information, the public authority must state the reasons for claiming this.

3. Your request for information was received by the Department on 9 September 2015. Section 10(1) of the Act requires that you receive a response within 20 working days, ie in this case, no later than 7 October 2015. On 7 October 2015, the Department wrote to you and advised that it held information in relation to your request but a Public Interest Test (PIT) was being conducted to determine whether it should be released into the public domain.

4. The Act requires public authorities to comply with requests for information within 20 working days following receipt. In cases where a public authority is considering the application of exemptions subject to a Public Interest Test (PIT), the Act requires the authority to specify the exemptions and reach its decision "within such time as is reasonable in the circumstances". However, the Information Commissioner in his good practice guidance, considers that in cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but that, in his view, in no case should the total time exceed 40 working days, in this case no later than 6 November 2015.

5. You received a substantive response on 19 November 2015. This advised that information in scope of your request was held, however it fell entirely within the scope of the qualified exemption at Section 27 (International Relations) of the Act and was being withheld from release. Although a requirement of section 17 of the Act, the response provided no explanation of why the exemption was considered to apply to the information, or any reason for concluding that the balance of the public interest lay in maintaining the exemption. You were correctly advised of your right to appeal, in the first instance to MOD and then if still not content following an internal review, to the Information Commissioner in accordance with Section 50(1) of the Act.

6. I find that your request was not correctly handled in accordance with the Act. I apologise for this.

Substance

7. Your request for information was received by the Department on 9 September 2015 was worded as follows:

1. *The UK USA MOU AFRICOM Exchange Officers dated 26.9.14 and*

2. The USAF and RAF personnel conducting combined launch and recovery element operations and performing mission control element operations in the USCENTCOM AOR on MQ-9 Reapers dated 17 July 2015

As part of this review, I have looked at the application of the exemption at Section 27(International relations) from first principles.

8. Section 27(1)(a) of the Act provides that information is exempt if its disclosure would, or would be likely to prejudice relations between the United Kingdom and any other State. Although not obliged to do so, in order to assess the implications on bilateral relations of publicly releasing the information, MOD sought the US authorities' views on its disclosure. I have looked at their response and I am satisfied that they do not have any foreign policy or defence concerns over release of the information, indeed the US authorities advised us that would have no grounds to withhold the information if it was requested under their FOI law. I therefore conclude that whilst you were initially advised that release of the information "has the potential to adversely affect relations with the United States" further analysis during this review has showed this not to be the case. I therefore find that the section 27 (international relations) exemption does not apply.

9. The two MOU's are therefore released in full and have been provided with this internal review.

Conclusion

10. In summary I find:

- Your request for information was not handled in accordance with the Section 1 and Section 17 of the Act.
- The exemption at Section 27 is not engaged in respect of the information in scope of your request.
- The information in scope of your request has been provided with this review.

If any aspect of this review is unclear, I would be happy to explain it. If you are dissatisfied with the review, you may wish to make a complaint to the Information Commissioner under the provisions of Section 50 of the Act. Further details of the role and powers of the Commissioner can be found on his website at: www.ico.org.uk. His address is: Information Commissioner's Office, Wycliffe house, Water Lane, WILMSLOW, Cheshire, SK9 5AF. Fax 01625 524510.