



Ministry of Defence

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David Wray OBE
Director of Information (Exploitation)

D/DG Info/XXXXXX
26-09-2005-091240-001

Dr David Clarke
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31 August 2006.

Freedom of Information Act 2000-Internal Review

1. I am writing in response to your letter of 22 May 2006, in which you asked for an internal review under the Freedom of Information Act 2000 (the Act) of your request for information relating to the Unidentified Aerial Phenomenon (UAP) report. I have also considered the request in your e-mail of 25 July 2006 to review the decision to redact the identity of the author contracted to produce the UAP report.

2. This review constitutes a full and independent reconsideration of the treatment of your request with particular consideration of the points raised in your letter of 22 May 2006 and your e-mail of 25 July 2006. In carrying out the review, I have looked at the way in which your request was handled, the information of relevance to your enquiry held by the MOD, and the content of the substantive response sent to you by the Directorate of Air Staff (DAS). I am sorry to have overshot my target for the completion of internal reviews.

Scope of Review

3. You asked for a review of the use of the exemptions under s.26 (Defence) and s.27 (International Relations) of the Act in withholding information relevant to your enquiry. In your letter of 22 May 2006, you also asked for two specific points to be examined in the internal review:

- a. The decision to withhold “*the distribution list and number of copies [Executive Summary]*” of the report.
- b. The use of s.27 “*In volume 1, pg 1, par 2 [Main Report]*” where you believe “*The context in which the material has been removed appears makes it obvious that the redaction relates to the CIA*”.

4. In your e-mail of 25 July 2006 you state “*that it is of clear public interest that the identity of the contractor and the report’s author to be revealed*”.

Handling

5. Your request for information was received via e-mail by DAS FOI on 26 September 2005, which means that under s.10(1) of the Act an appropriate response was due by 24 October 2005. Your request was acknowledged via e-mail by DAS FOI on 26 September 2005. The Act does not require requests for information to be acknowledged but it is good practice to do so, and I commend DAS FOI for contacting you so promptly. DAS FOI informed you that your request had been sent to the Defence Intelligence Staff (DIS) as they were responsible for the information requested, and informed you that they hoped to be able to update you shortly.

6. On 29 October 2005 you e-mailed DAS FOI asking about progress on your request. This e-mail was answered on 23 November 2005, almost a month later than your request for an update and almost two months later than the acknowledgment sent to you in September. As a response under the Act, the letter of 23 November fulfilled the duty under s.1(1)(a) to confirm that the information requested was held. However, it was defective on the following counts:

- it was sent some 22 working days later than the deadline set by s.10(1) of the Act. The reason given for the delay was that it was necessary to consult with other branches. This is, however, not an acceptable reason under the Act.
- it said that there would be further delay. This could have been justified (under s.17(2)) by stating that the application of specified qualified exemptions was being considered, and giving an estimate of the time that would be taken: however, none of this information was provided.
- it did not advise you of your right to ask for an internal review, or of your subsequent right-if you remained unhappy- to complain to the Information Commissioner.

7. I apologise for these failings. I consider that, at least in part, they arose from DAS FOI’s attempt to handle a number of strands of correspondence with you in a single letter. Although this has attractions, it does not fit easily into the scheme of the Act, which is concerned with a single request. I have arranged for DAS FOI, and other FOI focal points in MOD, to be advised that it is preferable to deal with separate requests in individual letters, even if that means sending several letters to the same person on one day.

8. There followed a succession of exchanges between DAS FOI and you, with DAS FOI giving progressively later estimates of the date of release of the report. In

the strict terms of the Act, the DAS FOI contribution to this was defective to the extent that:

- when the previously estimated date was reached, you were not always proactively given a revised estimate;
- the exemptions being considered were not specified; and
- you were not advised of your appeal rights.

I apologise for these repeated failings.

9. The substantive response to your request was dated 28 April 2006, and covered redacted versions of the four volumes of the report you had requested. The relevant exemption was annotated against each redaction; the reason for applying the exemptions was explained; for the qualified exemptions the public interest test was explained; and your appeal rights were set out. The total time taken to respond was long, but in view of the volume and complexity of the material involved I find that this was reasonable. Altogether, the response fully met the requirements of the Act.

10. The quality of the final response does not, of course, excuse the absence of proper notices under s.17 in the interim, and I repeat my apology for that failing.

Review of Redactions

11. I reviewed every redaction in the reports with the appropriate subject-matter experts. I concluded that in the majority of cases the exemptions under s.26 and s.27 were correctly engaged, and that the balance of the public interest was, as set out in the letter of 28 April, in favour of maintaining the exemptions. However, I concluded that some additional material should be released. This was partly because further research showed that certain foreign interest in the topics under discussion had been publicly acknowledged; and partly because painstaking analysis showed that where whole paragraphs had been redacted it was sometimes possible to reduce the redaction to key words or phrases. The redactions removed include the two specifically mentioned in your letter of 22 May (see para 3 above).

12. I considered carefully the redaction of the name of the report's author. I concluded that the exemption at s.40 was properly engaged, because s.40(3)(a)(i) applies (that is, release of the name would breach any of the data protection principles). As DAS FOI explained in the letter of 28 April, s.40 is an absolute exemption not subject to a public interest test. I also concluded that release of the name was likely to infringe the author's rights under Article 8 (Right to Respect for Private and Family Life) of the European Convention on Human Rights, as incorporated in the Human Rights Act 1998. This engages s.44 (Prohibitions on disclosure) of the Act: this too is an absolute exemption. Your e-mail of 25 July suggested that there was a separate redaction of a contractor's name: that is not the case.

13. I enclose a schedule of the additional material released, together with revised pages. The additional material will be added to that available on the MOD publication scheme.

Conclusion

14. The findings of my review are:

- the initial and interim handling of the request was defective, because a valid notice under s.17 of the Act was not issued within the time allowed under s.10, and subsequent exchanges did not provide the missing information or deal effectively with successive extensions of time: I reiterate my apology for these failings;
- the final response was made in a reasonable time given the complexity of the material, and complied with the Act;
- the majority of the redactions made were justified, but I have decided that some additional material, as set out in the enclosure, should be released.

23. If any aspect of this review is unclear, I should be happy to explain it. If you are dissatisfied with the review, you may make a complaint to the Information Commissioner under the provisions of section 50 of the Act. Further details of the role and power's of the Commissioner can be found on his website at <http://informationcommissioner.gov.uk>. His address is:

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