

From: Mrs S Gardiner



Ministry of Defence
Main Building (Ground Floor, Zone D)
Whitehall
London SW1A 2HB
United Kingdom

Telephone: +44 (0)20 721 89000
Email: CIO-FOI-IR@mod.gov.uk

Head - Information Rights Team

FOI2018/15985

12th March 2019

Mr Peter Beswick
request-539751-b4eff39c@whatdotheyknow.com

Dear Mr Beswick

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email of 16 January 2019 requesting an internal review of the processing of your request for information under the Freedom of Information Act 2000 (the Act). The purpose of this review is to consider whether the requirements of the Act have been fulfilled. Its scope is defined by Part 5 of the Code of Practice¹ under Section 45 of the Act.

Handling

2. In conducting my review of the handling of your request, I have focussed 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; and

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722165/FOI-Code-of-Practice-July-2018.pdf

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.

3. Your request for information received by the Department on 16 December 2018 was worded as follows:

1. *Please could you tell me where the forensic sample came from (object / biological feature) and;*
2. *geographical location in Salisbury that led to the identification of Novichok as the substance involved in the attack on the Skripals;*
3. *Also please inform me when it was collected;*
4. *and when the discovery of the type of Novichok became known."*

4. Section 10(1) of the Act requires that you receive a response within 20 working days, and therefore by 17 January 2019. The Department's substantive response of 16 January was within this timescale and advised you that MOD held some information in scope of your request but that it was fully exempt under section 21 (information reasonably accessible to the requester by other means). You were provided with links to information in the public domain. You were correctly advised of your right to appeal, in the first instance to the MOD for an internal review, and then if still not content, to the Information Commissioner in accordance with section 50(1) of the Act.

5. In summary, your request was handled in accordance with the timeliness requirements of the Act.

Substance

6. I have reviewed your request and the application of section 21 from first principles, noting the four distinct parts of your request.

Use of Section 21 (information reasonably accessible by other means)

7. Section 21 of the Act provides an exemption for information reasonably accessible to the applicant by other means. It is an absolute exemption and is not subject to a public interest test.

8. As noted in paragraph 4 above the Department in response to your request provided you with links to publicly released statements regarding MOD's involvement in the investigation of the incident at Salisbury. In your request for a review, you have stated that you were unable to locate the information to answer your request at the links provided. I have therefore reviewed the material available via these links and also find that the information in scope of your request cannot be found. I apologise for this error.

9. I have asked the subject matter experts (SMEs) to carry out a further search of their holdings to confirm whether there is information held in recorded format which would meet the description of your request, in fulfilment of the obligation placed upon us at section 1 of the Act. Further searches confirm that information that would meet the description of all parts of your request is held.

Parts 1 and 2 – Origin of Samples

10. Information in scope of part 1 of your request is held by the MOD in the form of an approved High Court judgement² for the application of the Organisation for the Prohibition of Chemical Weapons (OPCW) to collect and test fresh samples from Mr and Ms Skripal. While the information is reasonably accessible to the public, and could be withheld using the exemption at section 21, I have extracted the following statement from this document:

i) CC: Porton Down Chemical and Biological Analyst

“Blood samples from Sergei Skripal and Yulia Skripal were analysed and the findings indicated exposure to a nerve agent or related compound. The samples tested positive for the presence of a Novichok class nerve agent or closely related agent.”

11. The following information, extracted from the witness statement of a Porton Down Scientist, which is not publicly available, contains additional detail about the samples and their collection:

“Clotted blood samples ... were collected from Yulia SKRIPAL (PTN/18/0010) and Sergei SKRIPAL (PTN/18/0012) following their admission into Salisbury District Hospital on the 4th March 2018.”

Part 3 – When the Samples were Collected

12. Our searches have failed to locate any information that provides the exact time that the samples were collected. However, we do hold information that provides a time range during which the samples were taken. A timeline of events within an internal briefing document indicates that the police were called to the incident at approximately 1615 hrs on 4 March 2018. The Skripals were then admitted to hospital where, as evidenced in the information provided above, the samples were taken. The timeline lists the blood samples arriving at the main Porton Down site at approximately 1845hrs on Monday 5 March 2018.

13. The information held by MOD therefore indicates that the samples were collected at some point between 1615 on 4 March 2018 and 1845 on 5 March 2018.

Part 4 – Confirmation of Novichok Type

14. The timeline of events slide records the confirmation of the type of Novichok at 0800 on 6 March 2018.

15. I therefore conclude that although section 21 of the Act does apply to a small part of your request, it was applied to the wrong information and the Department failed in its obligation under section 16 to provide you with sufficient guidance to enable you to locate the information in scope of your request.

Conclusion

16. In summary, I find that:


- Your request was handled in accordance with the statutory timeframe set by section 10(1) of the Act;

² Available at: <https://www.judiciary.uk/wp-content/uploads/2018/03/sshd-v-skripal-and-another-20180322.pdf>

- Section 21(1) (information reasonably accessible by other means) was incorrectly applied to information that did not answer the scope of your request, resulting in a failure under section 16 of the Act to provide you with links to the correct information in the public domain;
- A link has been provided to information that answers the scope of part 1 of your request, which although technically section 21 of the Act applies, has been extracted and released to you;
- The MOD holds some information which falls within the description of the remaining parts of your request which was not publicly available. This has been extracted from the relevant documents and released to you as part of this review.

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 her website at: <https://ico.org.uk>. The address is: Information Commissioner's Office, Wycliffe house, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,



Mrs S Gardiner