

# Memorandum

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ASSOCIATES

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To: **Gareth Rowlands** DE&S Policy Secretariat (Submarines) M3185-A42

From: **John H Large** 23 February 2010

Cc: Kim Graham Naval Service FoI Coordination Cell  
Claire Draper Freedom of Information Operations Manager  
David Hoadley SCANS

Subject: **SOTONSAFE – FOI REQUESTS – REQUEST FOR AN INTERNAL REVIEW**

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Thank you for your letter of 23 February 2010 (your Ref No 191131-994 & 142852-001) notifying me that a further period of 20 working days is required for you to proceed towards a substantive response to my requests.

If you provide me with a substantive response by 22 March 2010 then my first request would have by then been outstanding about 100 workings days. I consider this to be an unacceptable and unjustifiable delay in the handling of my request and, since we have been unable to satisfactorily resolve this matter informally, I now apply for an independent internal review to be undertaken.

The basis of my complaint, inter alia, is as follows:

- 1) That even in account of engagement of the public interest test, the proposed time period required to receive a substantive response to a request originally lodged on 29 October 2009 being about 100 workings days is unacceptable, inasmuch:
  - a) that this time period is greatly in excess of the Information Commissioner's Office (ICO) *Good Practice Guidance N° 4* which clearly states “. . . our [ICO]view is that public authorities should aim to respond fully to all requests within 20 working days . . .”;
  - b) even if you considered the request to be overly complex, which I dispute because the request precisely identifies the title and authorship of the document sought, the ICO *Good Practice Guidance N° 4* goes on, stating “. . . In cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but, in our view, in no case should the total time exceed 40 working days.”; and that
  - c) the projected time delay (of almost five months) to produce a (promised) substantive response is in breach of *Section 17(3)* of the *Freedom of Information Act 2000* (FoI), as endorsed by the recent ICO *Decision Notice FS50194621* against the Ministry of Defence which found “. . . that the public authority [MoD] breached section 17(3) of the Act by failing to provide the complainant with its public interest determination within such time as is reasonable.”.

Moreover, I do not accept that the internal transfer from Navy Command to you (DE&S) qualifies for any additional time (ie restarting the 20 working day initial period) and, even if this did apply, the equivalently shortened 100 working day projection would still be beyond the maximum period that the ICO considers to be reasonable.

- 2) That it is incorrect for you to claim that a valid reason for the ongoing delay derives from your consideration of whether the *Section 36* exemption applies before it is put to the *Qualified Person*, ie the Minister of State. Since you, the officials of the public authority, have already determined that S.36(2)(b)(i) is a candidate exemption, then there should be no further delay to this being

submitted to the qualified person for his/her opinion at which point in time the exemption may or may not be engaged.

- 3) So far as I can determine from Navy Command and your own correspondence, the S.26 qualified exemption public interest test was underway at the latest by 20 November and continued until at least 23 December 2009 but abandoned sometime before your most recent letter of 23 February 2010. Again from your correspondence, you do not seem to have identified the S.36 exemption candidacy until some point in time after 23 December 2009 and at least by 21 January 2010. In this way you seemed to have sequentially worked through the list of exemptions, that is delaying consideration of S.36 until you had public interest tested S.26.

I consider that your practice serves to introduce further and unjustified time delays in providing a substantive response to the request which is quite contrary to the IOC's view that the timing of the public interest test and/or candidacy of the exemption should be at the date of receipt of the request or at least by the time for compliance of S.10. That is, the S.36 exemption candidacy should have been identified at least within the initial 20 working day period and not, as you have done, nominated after at least 40 working days had elapsed from receipt of the request.

- 4) I find your serving of a '*refusal notice*' within the 20 working days time period specified under S.17 to have been unreliable, going beyond your own specified target date by several working days and, only then, following when I have written to you or your colleagues noting your failure.

Finally, I refer to the e-mail of 14 January 2010 from Claire Draper stating that an internal review could not be undertaken until I had received a response and that, moreover, that I should expect a full response by 22 January 2010 which is now delayed, by your own admission, until at least 22 March 2010. I cannot accept this 'catch-22' situation wherein you, who I consider to be the defaulting party, continue to determine the time scales over which my quite proper requests carry on to be subject to what I consider to be quite unsubstantiated delays on your part.