

[REDACTED]
Data Protection Officer's Team
Ministry of Defence (MoD)
Main Building (Ground Floor Zone D)
Whitehall
London SW1A 2HB

By email only to: [REDACTED]

27 July 2022

Dear [REDACTED]

ICO Case Reference Number: INV/0109/2022

I write to inform you that the ICO has now completed its investigation into the MoD's Subject Access Request (SAR) compliance.

This case has been considered under the United Kingdom General Data Protection Regulation (the UK GDPR) due to the nature of the processing involved.

Our consideration of this case

I have investigated whether the MoD has complied with the requirements of the data protection legislation.

In July 2020, the MoD provided the ICO with a copy of its first Covid-19 recovery plan for SARs. This plan explained that due to the circumstances created by the Covid-19 pandemic (the pandemic), a backlog of SARs had developed within business areas across the MoD. The plan detailed further measures which the MoD planned to take to improve efficiency and clear the backlog before 2022.

In March 2022, the MoD provided the ICO with a copy of its revised recovery plan. This plan explained that despite the measures detailed in the original recovery plan, the MoD had been unable to clear its backlog by 2022 and had a backlog of approximately 6600 SARs. Furthermore, inflow of new SARs was exceeding outflow making it clear that more resources were required to tackle both new SARs and the backlog.

However, despite the two recovery plans, as of June 2022 the MoD had still failed to address the resourcing issues. As a result, the MoD's backlog has continued to grow and at the end of April 2022, the MoD had a backlog of approximately 9000 SARs.

As you will be aware, organisations must comply with a SAR without undue delay, and at the latest within one month of receipt of the request or within one month of receipt of:

- any information requested to confirm the requester's identity.
- a fee (only in certain circumstances).

After careful consideration and based on the information provided, we have decided to issue the MoD with a reprimand in accordance with Article 58 of the UK GDPR. This is because we are not satisfied that the MoD has processed requests across the period July 2020 to April 2022 in such a way as to avoid undue delay, or in any event to deal with requests within one month of receipt (or within two months for more complex requests).

We note that the MoD's current backlog is as a result of the challenges faced by one specific business unit within MoD, the Army Personnel Centre (APC). Therefore, the MoD believes that once the resourcing issues within APC are addressed, the MoD's SAR performance will recover. On 1 July 2022, the MoD confirmed that it had now secured the funding for additional resources within APC. Specifically, funding for a short-term contract for external support from 40 contractors to clear the backlog. However, this contract is not expected to be in place until September 2022.

As explained at the conclusion of this reprimand, the ICO would like to continue to receive regular updates regarding the progress made within the APC until March 2023.

Details of reprimand

The reprimand has been issued in respect of the following processing operations that have infringed the UK GDPR:

- Article 12 (3) which states that –

"The controller shall provide information on action taken on a request under Articles 15 to 22 to the data subject without undue delay and in any event within one month of receipt of the request..."

- Article 15 which states that –

"(1) The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data..."

(2) Where personal data are transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to Article 46 relating to the transfer.

(3) The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.

(4) The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others."

Between 1 April 2021 and 10 May 2022, the MoD received a total of 36,064 SARs. The majority (22,562) of these SARs were allocated to the APC and during this time the APC only processed 26% (5,841) of these SARs within the statutory timescale of one month. This is opposed to all other business units within the MoD which have achieved between 75% to 100% compliance.

The SAR backlog within APC has continued to grow due to insufficient resources to simultaneously handle business as usual SARs and the backlog. Therefore, the backlog within APC is unlikely to be addressed until the additional resources are in place. It is noted that the MoD's current expected date for recovery is March 2023.

Further Action required

The Commissioner recommends that the MoD should take certain steps to improve its compliance with UK GDPR. In particular:

1. Take steps to ensure that all SARs are responded to within the statutory timescale of one month (or within two months for more complex requests).
2. Ensure that adequate staff resource is in place for the handling of SARs within all MoD business units.
3. It is advisable to keep Data Subjects updated on the progress of their requests and the MoD's expected response times.



Information Commissioner's Office

We ask that you please provide us with confirmation of when the short-term contract is in place. Further to this, we ask that you please provide us with regular updates regarding the MoD's SAR backlog. Please ensure that these updates are sent to myself on a monthly basis, from August 2022 until March 2023.

Please note that if further information relating to this subject comes to light, or if any further incidents or complaints are reported to us, we will revisit this matter and further formal regulatory action may be considered as a result.

Further information about compliance with the data protection legislation which is relevant to this case can be found at the following link:

<https://ico.org.uk/for-organisations/guide-to-data-protection/>

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Therefore, we may publish the outcome of this investigation to publicise our regulatory authority and new powers under the UK GDPR. We will publish information in accordance with our Communicating Regulatory and Enforcement Activity Policy, which is available online at the following link:

https://ico.org.uk/media/about-the-ico/policiesandprocedures/1890/ico_enforcement_communications_policy.pdf

Please let us know if you have any concerns about this.

Thank you for your co-operation and assistance during the course of our investigation.

We now consider the matter closed.

Yours sincerely,


Lead Case Officer - Civil Investigations
Regulatory Supervision Service
The Information Commissioner's Office
Tel: 



Information Commissioner's Office

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