

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 26 August 2010**

**Public Authority:** The Cabinet Office  
**Address:** 70 Whitehall  
London  
SW1A 2AS

### **Summary**

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The complainant requested information about how many letters the public authority had sent out where it stated that it was refusing to correspond with their recipient about a specific medal. The public authority applied section 14(1) to the request. It explained that in its view the request was vexatious. It maintained its position in its internal review. The Commissioner has considered this case carefully and has determined that a reasonable public authority could find the request for information vexatious. He therefore upholds the application of section 14(1) and dismisses the complaint. There were some procedural breaches of section 10(1) and 17(5) as a response was not issued to the request within twenty working days of its receipt, but the Commissioner requires no remedial steps to be taken.

### **The Commissioner's Role**

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### **Background**

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2. The case concerns the Pingat Jasa Malaysia medal. This medal was awarded to British Veterans and others who served in operations in Malaya and Borneo (now Malaysia and part of Indonesia) between 31 August 1957 and 12 August 1966.

3. The Foreign and Commonwealth Office (FCO) is responsible for administering the policy relating to the acceptance and wear of non-British awards by British Citizens. In 2005 the Malaysian Government approached the FCO to seek approval to present this new medal to the British Veterans.
4. This issue was then considered by the Committee on the Grant of Honours, Decorations and Medals. This is a non-political, pan-Departmental committee which makes recommendations to the Queen.
5. The deliberation of the committee resulted in the then Minister for Trade, Investment and Foreign Affairs, Mr Ian Pearson making a written statement to Parliament on 31 January 2006. It explained that the Queen was prepared to enable the Malaysian Government to present the medal. However, the Queen was not prepared to give permission to wear the medal. This was because there was a long standing Government policy that non-British medals will not be approved for events or service that took place more than 5 years before initial consideration or were awarded in connection with events that took place in the distant past (the 'five year' rule) and/or where the recipient had received a British award for the same service (the 'double medalling' rule). It did explain that it would be prepared to consider exceptions where specific circumstances require them and that each individual's case will be considered on a bespoke basis.
6. On 8 August 2007 the Queen granted permission for the medals to be worn during the independence celebrations in Malaysia between 15 August 2007 and 9 September 2007. However, the general rule about British Veterans not wearing the medal remains. This is in contrast with other Commonwealth Veterans who are allowed to wear the medal.
7. The complainant is a committee member of the PJM Veterans Association. The PJM Veterans' Association believes that those that have been awarded medals should be allowed to wear them. This Association began life as a campaign called "fight4thepjm" that wanted the same thing.
8. The Commissioner has received part of the 'Rules Governing the Acceptance and Wearing of Foreign Orders, Decorations and Medals by Citizens of the United Kingdom and her Overseas Territories' from the complainant. It contained the 'double medal' rule (paragraph 3) and the 'five year rule' (paragraph 9). There is some dispute as to when these rules came into force, and what preceded them.

9. The Commissioner has been informed by the public authority that there is no intention to change the policy about the wearing of the medals. However, Ministers may request a review of the policy at any time.

## **The Request**

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10. On 21 October 2009 the complainant requested the following information in accordance with section 1(1) of the Act:

*"How many letters since January 2005 to the present day have been sent out by the Cabinet Office refusing to discuss the Pingat Jasa Malaysia Medal anymore with the recipient".*

11. On 27 November 2009 the public authority issued a response. It explained that section 14(1) does not oblige it to answer requests for information that are vexatious and it believed this request is vexatious. It explained that the reason for this approach was the frequent correspondence from him about the medal both in the form of information requests and general correspondence. It explained that it has received over thirty pieces of correspondence from the complainant about the medal over a period of three years.
12. It also explained that it wrote to the complainant on 16 October 2009 to try to bring the general correspondence to an end. It explained that it understood the complainant's views and they did not change its policy which has been told to the complainant repeatedly in both private correspondence and public statements. It stated that the continuation of correspondence was a disproportionate use of public resources and it would not communicate further about the medal. It concluded that it had come to the same decision about this information request.
13. It had come to this decision after consulting the Commissioner's guidance on section 14(1). It stated that it had considered all the circumstances of the case. It confirmed that it believed the request was vexatious because of the high volumes and frequency of correspondence and that this request represented a clear desire to reopen issues that have already been considered and reviewed. It explained that it believed that this request formed part of the wider fight4thepjm campaign. It explained that the requests made by the complainant and others within the campaign often overlap and it could not justify the use of public resources to answer the same requests. It explained that it fully appreciated that the complainant disagreed with the policy and wished for it to be changed. It confirmed that the

request itself was not vexatious in isolation, but was within its context and it appeared to be a continuation of a pattern of behaviour that distracted the office from its core functions. Finally it said that it would continue to consider each and every case on its own merits, but that any request about the medal may also be considered to engage section 14(1).

14. On 12 January 2010 the complainant requested an internal review as he did not accept that his request was vexatious. He explained that he knew of a number of Veterans with whom the public authority refuses to correspond and wanted to know the extent of this 'undemocratic' action. He said that he did not believe that the policy on medals was the Government's policy, rather it was a decision made by unelected Civil Servants. He explained that the Ministerial Statement (summarised in paragraph 5 above) was made after he was provided misinformation from the Civil Service advisors and that the individual minister now supports the wearing of the medal. He clarified that the fight4thePJM group had changed to the PJM Veterans Association and that he required this information for its members. He also stated that he was prepared to be invited to a meeting to discuss this issue face to face.
15. On 15 January 2010 the public authority communicated the results of its internal review. It explained that it had conducted a full review of the correspondence and maintained its position. It stated that while the request was for different information, in its context relating to the medal the decision was right. It expressed sympathy for the complainant's feelings but stated that there was nothing further to be added to the Government's position and that it had answered his queries openly and truthfully. It explained that it also believed that it had provided appropriate advice and assistance in this case. It provided the Commissioner's details as a right of appeal.

## **The Investigation**

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### **Scope of the case**

16. On 17 January 2010 the complainant exercised his right of appeal. He wrote to the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- That he is a committee member of the PJM Veterans Association and requires the information on behalf of its members and their families.
  - That he does not believe his request was vexatious because he is unable to undertake his duties without the public authority answering his reasonable questions.
  - That he understands that the same instruction has been issued to other Veterans and this was the reason for this request.
  - That he believes that the public authority's refusal to correspond with him (and other Veterans) was against the Civil Service Code.
17. On 18 March 2010 the Commissioner wrote to the complainant to explain that the scope of his investigation would be to determine:
- *Whether section 14(1) was applied correctly to [the] request dated 21 October 2009, or whether this information should be provided to the public.*
18. On 6 April 2010 the complainant appeared to be content that this was the scope of this case.
19. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. The Commissioner wants it to be clear that he does not have any jurisdiction to decide whether the ending of correspondence was against the Civil Service Code. He can only decide whether the Act was applied correctly and in this case whether the request for information was refused correctly.
20. He does not decide whether a complainant is vexatious. Instead he must decide whether the particular request for information dated 21 October 2009 was vexatious in its context. His determination concerns this request for information and does not concern future requests for information each of which must be considered on its own merits.

## **Chronology**

21. On 28 January 2010 the Commissioner wrote to the public authority. He confirmed that he has received this complaint and asked for the public authority to support its position with further arguments.
22. On 1 March 2010 the Commissioner received a response from the public authority. Its response contained the reasons for the position it

was maintaining. It also presented a schedule of previous interactions and explained why these presented a burden.

23. On 18 March 2010 the Commissioner emailed the complainant. He explained both his remit and his preliminary verdict in this matter. He used the opportunity to explain the Commissioner's view of what constitutes a vexatious request. He asked the complainant whether he wished for the investigation to continue, and if so, for him to confirm the scope and provide further arguments about why this particular request was not vexatious. He received an acknowledgement of his email on the same day.
24. On 6 April 2010 the complainant provided a full response. He explained that he wished for the investigation to continue and appeared to be content with the scope of the investigation. He also provided other submissions about why this request was not vexatious:
  1. That the public authority was responsible for generating the burden itself as it failed to provide complete answers which led to other requests. He provided an example of where the public authority had provided a well redacted copy of a policy, when another public authority had provided him with a complete version of the same policy. He explained that had the public authority answered his questions properly its workload would have been reduced by around 75%.
  2. That all of his correspondence to the public authority had been courteous and polite.
  3. That he believed that the public authority had been obstructive by providing incomplete information and always taking the maximum amount of time to respond to previous questions.
  4. That he and his MP were happy to meet with the public authority at its convenience to sort out the differences and any meeting would mean that it would receive no further questions from him.
25. On 8 April 2010 the Commissioner acknowledged the receipt of the complainant's letter. He also used the opportunity to reiterate some of the contents of the letter dated 18 March 2010 to explain exactly what the Commissioner would look at in this investigation.

## Findings of fact

26. The public authority has provided a schedule of requests preceding the one that the Commissioner was considering about the PJM medal. There were fourteen such requests and a brief summary of them in chronological order is below:

- 13 November 2006 – whether there is a document held that was signed by the Queen in respect to the PJM, and if so, whether it can be viewed by the public.
- 30 November 2006 – a request for details of correspondence between the Queen, the Foreign and Commonwealth Office and the Cabinet Office about the PJM.
- 15 June 2007 – a request about a file in respect to the London Gazette and commemorative medals.
- 29 June 2007 – a request about the London Gazette and the PJM.
- 27 July 2007 – a request about how many times the five year rule was put aside or ignored (treated as vexatious).
- 23 September 2007 – how many times since January 2005 had the five year rule being put aside or ignored (treated as vexatious).
- 25 February 2008 – since 28/07/04 how many information requests have been received about the PJM.
- 2 June 2008 – whether the Cabinet Office have a document or piece of paper bearing the Queen's signature in reference to the PJM.
- 22 July 2008 – what date was file H31 opened and closed.
- 19 August 2008 – second request for the dates H31 was opened and closed.
- 30 October 2008 – the number of complaints made against the FOI department of the Cabinet Office since January 2005.
- 5 December 2008 – a request about the Antiguan and Barbadian medal presented to Lord Janvrin.

- 8 January 2009 – a request about whether the rules on foreign awards does not apply to commemorative medals.
  - 10 July 2009 – a request about whether war correspondents attached to British forces during combat operations were classed as Civil Servants.
27. In between the requests there was also a considerable quantity of correspondence between the two parties. This focussed generally on the PJM and why the policy is what it is. The Commissioner was informed that it had received at least 45 other items and a number of them requested other information along with answers to the enquiries.
28. The volume of correspondence has led to the complainant receiving two letters himself from the public authority refusing to correspond to him further about the PJM Medal. One of them was an interdepartmental letter that was signed by senior staff of the Cabinet Office, the Foreign and Commonwealth Office and the Ministry of Defence.

## Analysis

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### Exclusion - Section 14(1)

29. Section 14(1) is an exclusion that provides that –
- "Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".*
30. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the 'Tribunal') decision in *Ahilathirunayagam v Information Commissioner's Office* (EA/2006/0070) (paragraph 32); that it must be given its ordinary meaning so would be likely to cause distress or irritation. The enquiry is based on objective standards. This has been reaffirmed by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* (EA/2007/0114) (paragraph 27). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has developed from these general principles and these guide him in applying his test.
31. The Commissioner also endorses the Tribunal's consideration of this point in *Mr J Welsh v the Information Commissioner* (EA/ 2007/0088) (paragraph 21) where it stated:



*'In most cases, the vexatious nature of a request will only emerge after considering the request in its context and background. As part of that context, the identity of the requester and past dealings with the public authority can be taken into account. When considering section 14, the general principles of FOIA that the identity of the requester is irrelevant, and that FOIA is purpose blind, cannot apply. Identity and purpose can be very relevant in determining whether a request is vexatious. It follows that it is possible for a request to be valid if made by one person, but vexatious if made by another; valid if made to one person, vexatious if made to another.'*

32. The Commissioner has taken into account the complainant's previous interaction with the public authority when determining whether the request can be correctly characterised as vexatious. This means that even if the request appears reasonable in isolation, it may be vexatious when considered in context. The public authority has acknowledged that in this case the request by itself would not be vexatious, but argues that it is vexatious within its context.
33. The Commissioner has issued Awareness Guidance 22 as a tool to assist in the consideration of what constitutes a vexatious request. This guidance explains that for a request to be deemed vexatious the Commissioner will consider the context and history of the request as well as the strengths and weaknesses of both parties' arguments in relation to some or all of the following five factors to reach a reasoned conclusion as to whether a reasonable public authority could refuse to comply with the request on the grounds that it is vexatious:
  - (1) whether compliance would create a significant burden in terms of expense and distraction;
  - (2) whether the request is designed to cause disruption or annoyance;
  - (3) whether the request has the effect of harassing the public authority or its staff;
  - (4) whether the request can otherwise fairly be characterised as obsessive; and
  - (5) whether the request has any serious purpose or value.
34. When considering the public authority's reliance upon section 14(1), the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh v the Information Commissioner* (EA/

2007/0088)(at paragraph 26). In that case, the Tribunal spoke of the consequences of determining a request vexatious. It pointed out that these are not as serious as those of finding vexatious conduct in other contexts and therefore the threshold for vexatious requests need not be set too high.

35. The public authority has indicated in its arguments to the Commissioner that it believes that all the factors may be relevant in this request and this led it to the conclusion that this request was vexatious. The Commissioner has looked at each of these factors in turn.

*Does the request constitute a significant burden in terms of expense and distraction?*

36. When considering this element of his test the Commissioner endorses the Tribunal's approach in *Welsh* (in paragraph 27). It stated that whether a request constitutes a significant burden is

*"...not just a question of financial resources but also includes issues of diversion and distraction from other work..."*

37. The Commissioner therefore expects a public authority to show that complying with the request would cause a significant burden both in terms of costs and also diverting staff away from their core functions.

38. The Tribunal in the case of *Gowers v the Information & London Borough of Camden* (EA/2007/0114) emphasised that previous requests received may be a relevant factor:

*'...that in considering whether a request is vexatious, the number of previous requests and the demands they place on the public authority's time and resources may be a relevant factor'*  
(paragraph 70 of its decision).

39. It is also necessary for the Commissioner to take into account the complainant's previous interaction with the public authority when making a determination of whether the request represents a significant burden to a public authority as noted above. This means that even if the request does not impose a significant burden when considered in isolation, it may do so when considered in context.
40. The public authority asked for the Commissioner to take into account the following arguments about the request's context, which the Commissioner considers to be relevant to the burden of the request:

- It had responded to over thirty items of correspondence about the PJM medal over a period of around three years.
  - This included 14 other requests under the Act.
  - Its policy had been explained to the public and the complainant many times and while the complainant does not agree with the policy, the policy has not changed and its responses had been accurate and truthful.
  - It believed that there was nothing more it could add in relation to its policy on PJM medals.
  - The burden was experienced not just by itself but by other central government departments – the Ministry of Defence and the Foreign and Common Office (which led to the letter referred to in paragraph 28 above).
  - That it had also received further correspondence from groups associated to the complainant. These requests overlap and that it was difficult to justify the use of public resources to respond repeatedly to the same questions.
41. The complainant argued that the burden had been exacerbated by the public authority. In particular he argued that the requests were the result of delays and inadequate responses from the public authority. He explained that in his view 75% of the requests could have been avoided through better service. He explained that a meeting would also work to assuage his concerns and prevent further requests.
42. When considering the facts the Commissioner is satisfied that a great deal of the public authority's time has already been spent dealing with previous requests and with complainant's associated correspondence. He finds that the substantive issue is the policy about the wearing of the PJM and that while the public authority has been slow in some cases, he does not believe that it has led to this particular request and believes that the context provides a significant burden. The request dated 22 October 2009, taken in the context of the hours spent dealing with the previous requests and the resulting distraction from the public authority's core purposes, would impose a significant burden in terms of both expense and distraction.
43. The Commissioner has considered the reasoning in the Tribunal decision of *Coggins v Information Commissioner* [EA/2007/0130] about what constitutes 'a significant administrative burden' and is satisfied that the requests in this case if dealt with without utilising section

14(1) would have contributed to a '*significant distraction from its core functions*' (paragraph 27 of its decision).

44. The Commissioner has also considered in this determination the approach of the Information Tribunal in *Betts v The Information Commissioner* (EA/2007/0109), where the Tribunal indicated that it would be reasonable for the public authority to consider its past dealings with the complainant, particularly in relation to its experience of answering one request which would likely lead to still further requests. This had the effect of perpetuating the requests and adding to the burden placed on the authority's resources. The Tribunal said:

*'...it may have been a simple matter to send the information requested in January 2007, experience showed that this was extremely likely to lead to further correspondence, further requests and in all likelihood complaints against individual officers. It was a reasonable conclusion for the Council to reach that compliance with this request would most likely entail a significant burden in terms of resources.'*

45. The Commissioner has examined the pattern of the requests and is also satisfied that this was what was happening in this case. He believes that the public authority has demonstrated that the complainant when unhappy with any response received from a public authority will continue to correspond in an effort to sway the public authority to respond in a manner more to his liking. It must therefore be accepted that although the public authority 'may' be able to provide a response to the complainant on this one issue, it would seem reasonable for the public authority to consider that compliance would lead to further correspondence, thereby imposing a significant burden.
46. Assessing all the circumstances of the case the Commissioner has found that the particular request in its context would impose a significant burden in terms of expense and distraction for the reasons outlined above. He therefore finds in favour of the public authority on this factor. The Commissioner finds that this is a significant factor in favour of applying section 14(1).

*Was the request designed to cause annoyance and disruption?*

47. The public authority confirmed that it did not doubt that the complainant's motive about changing the policy was genuine. However, it explained that the particular request appeared to it to be made with the intent to cause it annoyance and disruption. It explained that the complainant knew full well that he had received two such letters and that this request was meant to annoy it.

48. The Commissioner has considered the evidence that has been presented and is not convinced by the public authority's arguments in respect to this factor. The Commissioner believes that the complainant's genuine intent is to prove how many people have been restricted from corresponding with the public authority. He wants this information to come to an informed decision about the public authority's compliance or otherwise with the Civil Service Code and to consider how this affects the membership of the PJM Veterans Association.
49. The Commissioner therefore believes that this factor does not support the application of section 14(1) in this case.

*Did the request have the effect of harassing the public authority or its staff?*

50. The complainant contends that there is no evidence of any of his requests harassing the public authority or its staff. The Commissioner agrees that the tone of the correspondence remains cordial in all instances.
51. The public authority claimed that the volume of previous correspondence and its nature led to its staff being harassed unnecessarily.
52. The Commissioner appreciates that to harass is a strong verb and emphasises that it is the effect of the request and not the requester that must be considered. He has considered the definition in the Shorter Oxford English Dictionary and believes that the following alternative reflects what his guidance means:

*'To tire out, exhaust.'*

53. The Commissioner accepts it was not the intention of the complainant to cause distress in this case.
54. However, the Commissioner is satisfied that the request in its context did have the effect of harassing the public authority. The Commissioner has considered the Tribunal decision in *Ahilathirunayagam v Information Commissioner's Office and London Metropolitan University* (EA/2006/0070) and its view of what made a request have the effect of harassing the public authority (at paragraph 32):

*'(iv)The background history between the Appellant and the [public authority] ...and the fact that the request, viewed as a whole, appeared to us to be intended simply to reopen issues which had been disputed several times before.'*

55. The Commissioner believes that taking into consideration the context of the request and the fact the policy has been explained numerous times and is unlikely to change, that the request implies he is attempting to reopen issues that have already been dealt with in the appropriate channels and therefore this has the effect of harassing the authority. The Commissioner therefore believes that this factor also supports the application of section 14(1) in this case. However he has not placed much weight on this factor in his analysis.

*Can the request be characterised as obsessive?*

56. The complainant contends that his request for information is not obsessive. He has explained that he is doing his job as a Committee member of the PJM Veterans Association and he cannot do his job without answers to reasonable questions.
57. The public authority indicated that given the volume, frequency and nature of the requests and correspondence that it believed that this request was obsessive. The public authority indicated that it felt that the requests followed a similar theme, mainly concerning the wearing of the PJM medal and it had carefully communicated its view on this matter. In this case the request concerned how it has dealt with a series of requests that are part of a campaign in which the complainant was engaged. It did not ask for additional information that would inform the complainant's view of the PJM policy and merely reflected tangential administrative matters. It had also already answered other administrative questions that had been asked previously too. It explained that this request seemed to attempt to reopen previous matters.
58. The Commissioner has carefully considered where the balance lies in this case. He notes that the principal issue is the policy about the non-wearing of medals by war veterans. He believes that there is considerable importance that the contribution of veterans is acknowledged. However, against this he also considers that it is important that public authorities are able to use their resources effectively to promote the public good. Protection should therefore be provided where a sequence of requests that have already been dealt with becomes a continuous burden on the public authority's resources.
59. The Commissioner accepts that at times there is a thin line between obsession and persistence and each case should be determined on its own facts. In this case, the Commissioner considers that the nature of the request falls within the definition of obsession, as there is evidence that the substantive issue has been discussed numerous times and further information may be provided in response to a new request

where it would be illuminative to the central issue and in the public interest.

60. He therefore believes the public authority was correct in characterising this request as obsessive and finds in favour of the public authority on this factor.

*Did the request have value and/or a serious purpose?*

61. The Information Tribunal in *Coggins v Information Commissioner* [EA/2007/0130] (at paragraph 20) stated that it:

*"could imagine circumstances in which a request might be said to create a significant burden and indeed have the effect of harassing the public authority and yet, given its serious and proper purpose ought not to be deemed as vexatious . For instance, one could imagine a requester seeking to uncover bias in a series of decisions by a public authority, covering many years and involving extensive detail, each of fairly minor importance in themselves but representing a major issue when taken together. This might indeed be experienced as harassing but given the issue behind the requests, a warranted course of action."*

62. In light of this the Commissioner has considered whether the request in this case has a serious purpose and/or value, and if so, whether it would be inappropriate to deem it vexatious even when taking into account the factors outlined above which he is satisfied are met.
63. The complainant argued his request has value and a serious purpose since the answer will enable him to understand how many Veterans have been forbidden from corresponding with the public authority and therefore enable him to know the scope of what he believes is a contravention of the Civil Service Code. In addition, he believes he requires the information to represent his members as a Committee member of PJM Veterans Association.
64. The public authority responded that it accepts that the complainant is genuinely concerned about its policy on the wearing of the PJM Medal and that it has been as open as possible in its previous communications about the policy, explaining its nature and that it was not going to change it. It acknowledges that the complainant has strongly held views that the policy was wrong. However, the current request does not relate to the central issue. Instead it asks for only the number of those from the campaign whom it will not correspond with anymore. This request it argues has very limited value as it will not

extend the debate about the policy at all. It also believes that it does not have a serious purpose on the facts of this case.

65. The Commissioner believes that the complainant had a serious purpose in this case. He accepts that the question of the public authority's compliance or otherwise with the Civil Service Code could be important. The Commissioner also recognises that there is an assumption built into the Act that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to the activities of public authorities. He therefore finds that this factor does not favour the application of section 14(1).
66. However the Commissioner accepts that it must be right for a public authority to draw a line under correspondence where there is nothing further to be achieved by it. He believes that the significance of the value of the request must be considered together with other circumstances in this case. In this instance he is not persuaded that sufficient weight can be placed on the serious value identified to make it inappropriate to deem the request vexatious in this case. This is in view of the information that has already been made available to the complainant, the overall context of these particular requests and his conclusions above about other aspects of his case.

*Could a reasonable public authority refuse to comply with the request on the grounds that it is vexatious?*

67. The Commissioner recognises that there is a fine balance between protecting a public authority from vexatious applications and the promotion of the transparency in the workings of an authority.
68. The Commissioner has considered all the evidence presented, including the history and context of the request. The Commissioner accepts that the complainant had genuine concerns about the policy on wearing PJM medals. However, on the basis of the circumstances of this case, the Commissioner finds that a reasonable public authority would find the complainant's request of 21 October 2009 vexatious.
69. In arriving at this decision, the Commissioner has had regard to the Information Tribunal's decision in *Mr J Welsh v the Information Commissioner* [EA/ 2007/0088], where the Tribunal commented that the threshold for vexatious requests need not be set too high. He notes that it is not necessary for every factor to be made out from his guidance. In this case he has found four factors are satisfied in this case. The Commissioner's decision in this case therefore rests on the



complainant's request causing a significant burden, whilst having the effect of harassing the public authority and being obsessive.

70. The public authority has confirmed that it will treat each new request on its own merits. It explained that it was prepared to answer new requests which were new genuine requests for information that it is able to answer. It evidenced its approach by explaining that it had received a later request for information from the complainant for the 1969 Regulations concerning the wearing of medals and was prepared to respond to it. The Commissioner believes that this approach is correct. It is essential that it does not treat the requester, rather than the request, as being vexatious.

## **Procedural Requirements**

### *Section 10(1)*

71. Section 10(1) of the Act (full wording in the legal annex) provides that the public authority must comply with sections 1(1)(a) and 1(1)(b) within twenty working days. In this case the public authority took more than twenty working days in this case and therefore breached section 10(1) twice.

### *Section 17(5)*

72. Section 17(5) of the Act (contained in the legal annex) provides that when a public authority is relying on section 14 it should provide a refusal notice stating that fact within twenty working days. As it failed to issue a notice within twenty working days of receiving the request for information, it breached section 17(5).

## **The Decision**

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73. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- It applied section 14(1) correctly to the request for information dated 21 October 2009.
74. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- It breached section 10(1) twice as it failed to issue a refusal notice applying section 14(1) within twenty working days of receiving the request. This meant it had not complied with both section 1(1)(a) and section 1(1)(b) in the statutory timescales and both constitute individual breaches of section 10(1).
- It breached section 17(5) because it failed to specify that it was relying on section 14(1) within twenty working days of receiving the request.

### **Steps Required**

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75. The Commissioner requires no steps to be taken.

## Right of Appeal

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76. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 26<sup>th</sup> day of August 2010**

**Signed .....**

**Graham Smith  
Deputy Commissioner  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Legal Annex**

### **Section 1**

#### General right of access to information held by public authorities

Section 1 of the Act provides that:

(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

### **Section 10 - Time for compliance with request**

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this

subsection does not affect the time by which any notice under section 17(1) must be given.

## **Section 14 – Vexatious or repeated requests**

Section 14 of the Act provides that:

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

## **Section 17 - Refusal of request**

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.