

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 September 2017

**Public Authority:** The Ministry of Defence

**Address:** Whitehall  
London  
SW1A 2HB

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from the Ministry of Defence (MOD) regarding a grievance he had brought against the MOD.
2. The Commissioner has established that the MOD did not reply to the complainant's request on the grounds that it is vexatious and subject to the MOD's application of section 17(6) of the FOIA.
3. The Commissioner's decision is that the MOD is entitled to rely on section 17(6) of the FOIA and is therefore not obliged to reply to the complainant's request.
4. The Commissioner does not require the public authority to take any further steps.

## Request and response

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5. On 26 October 2016, the complainant wrote to the MOD and requested information in the following terms:

*"1. Is there any information held at the MoD in the form of a Regulation that would authorised [sic] OC Admin in 1993 not to action and cancel my right to see the AOC as per QR52(8), and are there guidelines or a regulation available that approves Minister Freeman's advice in his letter of 11/11/94 to suggest that a Parliamentary Enquiry takes natural precedence over my Queen's Regulation 52(8) application and place it in abeyance and deny me my right to orally put my case to the AOC."*

*"2. Is there any information or regulation held at the Ministry of Defence that would authorise Minister Roger Freeman's position of 'unable to deal' with my QR1001 of 5 October 1994 and close it off in the manner he chose and not pass it onto the appropriate service desk for actioning"*

## Scope of the case

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6. On 31 January 2017, the complainant wrote to the Commissioner to complain about the failure of the MOD to respond to his request.
7. Having reviewed this complaint, the Commissioner determined that the focus of her investigation should be to determine whether the MOD handled the complainant's request in accordance with the FOIA and, specifically, to determine whether the MOD is entitled to not respond to the complainant's information request.

## Reasons for decision

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8. Under section 1(1) of the FOIA, any person who makes a request for information to a public authority is entitled to be informed in writing whether the authority holds that information and to have that information communicated to them, provided that the information is not subject to an application of section 12, 14 or one of the exemptions provided at Part II of the FOIA.
9. Section 14(1) of the FOIA allows a public authority to refuse to comply with a request for information if the request is vexatious.

10. Under section 17(6) of the FOIA, a public authority is not required to issue a refusal notice to an applicant where the following criteria are met:
  - Where the public authority is relying on a claim that section 14 applies;
  - where the public authority has previously issued to that applicant a notice which states that it is relying on such a claim;
  - it would in all circumstances be unreasonable to serve a further notice in relation to the current claim.
11. The MOD advised the Commissioner that it has previously informed the complainant that it considers his requests for information regarding his previous grievances are vexatious and will no longer respond to his correspondence.
12. The MOD explained that since 9 April 2014, the complainant has been treated as vexatious under the FOIA on the subject of *"an injury sustained in Belize in 1991 and the subsequent administration of your medical treatment, compensation and related Service complaints"*.
13. The MOD provided a copy of its response dated 9 April 2014 to the complainant's previous request which states:

*"I have to advise you that the Ministry of Defence regards your request dated 26 February 2014 as a vexatious request under Section 14(1) of the Act. This means that the department has no obligation to comply with this request or any future request on this subject. Should you choose to submit further correspondence on this subject you are advised that it will be filed unanswered"*
14. The MOD provided an internal review on 23 May 2014 which stated:

*"Under section 17(6) there is no obligation to issue a further notice stating that MOD is relying on this exemption if we receive any further requests from you."*
15. The Commissioner investigated the handling of the request and issued a decision notice upholding the MOD's reliance on section 14(1) of the FOIA (FS50548527<sup>1</sup>).

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<sup>1</sup> [https://ico.org.uk/media/action-weve-taken/decision-notice/2014/1042896/fs\\_50548527.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2014/1042896/fs_50548527.pdf)

16. The complainant appealed the Commissioner's decision notice to the First Tier Tribunal<sup>2</sup>. The Tribunal allowed the appeal in part, requiring the MOD to provide the complainant with the meaning of acronyms used in previous correspondence with the complainant.
17. For the remainder of the request, however, the Tribunal dismissed the complainant's appeal stating at paragraph 19:

*"It is therefore clear that with respect to substantive information [the complainant] is treading a well-trodden path where the Tribunal has already determined that no further evidence is held. The requests for substantive information have already been considered by the Commissioner and upheld by the Tribunal that no further evidence is held. Although the MOD and ICO has characterised these requests which fall within s14(1) they are more appropriately considered as repeat requests which fall within s14(2). Since the requests relate to events 20 years ago it is highly improbable that there could ever be further information held by the MOD and therefore the "reasonable interval" before making a repeat request is exceptionally long"*

#### The complainant's position

18. The complainant explained to the Commissioner that:

*"A previous Information Rights Tribunal ascertained that the MOD could not substantiate ministerial advice they gave my MP in 1994 about a DGMS decision and retired DGMS [named individual] wrote and said he did not examine my case and made no decision, therefore the FOIA has been helpful to expose dishonesty at the highest level (ministerial) at the MOD. The MOD would not want to answer my FOIA of 26 October 2016 truthfully as it may expose further dishonesty to my MP in 1994 which is a serious matter."*

19. The complainant also explained that he considered the Tribunal decision found in his favour.

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[http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1580/Stuart%20Charles%20EA-2015-0004%20\(28.06.15\).PDF](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1580/Stuart%20Charles%20EA-2015-0004%20(28.06.15).PDF)

20. The complainant set out that he considers he has evidence of "*dishonest information*" provided to the Tribunal by a MOD staff member. The complainant requested a decision notice regarding the information provided by the MOD as part of a previous investigation undertaken by the Commissioner.
21. The complainant explained that his requests were regarding the alleged abuse of his health accountability, his legal rights within Queen's Regulations, and a "*possible misconduct in a public office*" of a Minister.
22. The complainant provided the Commissioner with arguments and correspondence regarding discrepancies between recorded information already provided to him. He also provided explanations of the maltreatment and abuse he considered he had been subjected to, and information regarding two grievances regarding Queen's regulations 52(8).
23. The complainant has explained that he considers the public interest lies in "*exposing any MOD cover up and getting justice for my historic abuse*". The complainant also confirmed that he considered he has the "*right to know*" if he has been misled by a Minister and he considers that if the MOD complied with his request it would "*reveal more misleading comments*".
24. The complainant requested the Commissioner find the MOD in breach of section 10 as it had not responded to his request for information and quoted the Commissioner's guidance regarding section 14(1) which states:  
  
*"An authority cannot simply refuse a new request solely on the basis that it has classified previous requests from the same individual as vexatious".*
25. The complainant confirmed that he was seeking information in order to petition the sovereign and he considers another named individual may wish to undertake their own further action.
26. The complainant also provided a witness statement from a member of the public supporting his request to the MOD.

#### The Commissioner's position

27. It is clear to the Commissioner that the complainant is not satisfied with the MOD's handling of his complaints and how it conducts itself. She understands that the complainant has his reasons for pursuing information from the MOD and the matter is of great importance to him. The Commissioner considers that allegations of misconduct by those in public office should not be dismissed lightly. However, in this instance,

she has no evidence in support of the allegations of medical negligence or abuse and it is not within her remit to issue decisions on whether these have taken place.

28. The term "vexatious" is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the *Information Commissioner v Devon CC & Dransfield*<sup>3</sup>. The Tribunal commented that vexatious could be defined as the "*manifestly unjustified, inappropriate or improper use of a formal procedure*". The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
29. The Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues:
  - (i) The burden imposed by the request (on the public authority and its staff);
  - (ii) The motive of the requester;
  - (iii) The value or serious purpose of the request; and
  - (iv) Any harassment or distress of and to staff.
30. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather it stressed the *"importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests"* (paragraph 45)
31. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
32. The Commissioner has identified a number of indicators which may be useful in identifying vexatious requests. These are set out in her

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<sup>3</sup> <http://administrativeappeals.decisions.tribunals.gov.uk//Aspx/view.aspx?id=3680>

published guidance on vexatious requests<sup>4</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All of the circumstances of a case will need to be considered in reaching a decision as to whether a request is vexatious.

### **Is the request obsessive?**

33. The Commissioner would characterise an obsessive request as one where the requester is attempting to re-open an issue which has already been comprehensively addressed by the public authority or otherwise subjected to some form of independent scrutiny.
34. In the Commissioner's view, the test to apply here is reasonableness. Would a reasonable person describe the request as obsessive in the circumstances? For example, the Commissioner considers that although a request in isolation may not be vexatious, if it is the latest in a long series of overlapping requests or other correspondence, then it may form part of a wider pattern of behaviour that makes it vexatious.
35. The Commissioner accepts that, at times, there is a fine line between obsession and persistence and although each case is determined on its own facts, the Commissioner considers that an obsessive request can be most easily identified where a complainant continues with the request(s) despite being in possession of other independent evidence on the same issue. However, the Commissioner also considers that a request may still be obsessive even without the presence of independent evidence.
36. From the information provided by the complainant and the MOD, the complainant appears to have been corresponding with the MOD regarding this issue since 1993.
37. The Commissioner has considered the arguments made by the MOD in paragraphs 13-15 of the decision notice issued for case FS50548527 as she considers that they are relevant to this case.
38. She also notes that in the refusal notice dated 9 April 2014 in which the complainant was initially informed his requests would be deemed vexatious, the MOD states:

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<sup>4</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

*"Additionally, your requests relate to issues covered in the adjournment debate of February 2009 and seem intended to reconsider issues that have already been debated and considered at length. It does not appear to acknowledge the clear position of the Department, which you have been aware of since 2004, that you have been recompensed for the injury suffered in 1991 through your compensation claim. This was a full and final settlement that legally binds both yourself and the MOD."*

39. In the internal review dated 23 May 2014, the MOD states:

*"...you spoke to me on the telephone on 1 May 2014 to advise that this information request would be the last that you would make on this subject as you had nearly all the information you required."*

40. The Commissioner considers that the complainant's persistence has reached the stage where it could reasonably be described as obsessive.

**Does the request lack any serious purpose or value?**

41. The Commissioner's published guidance is clear that the FOIA is not generally concerned with the motives of an applicant. However, if a request clearly lacks a serious purpose or value, it may support an argument that it is vexatious.

42. The complainant has provided arguments regarding the value and purpose of his request (paragraphs 18, 23 and 25 of this notice).

43. The Commissioner notes the decision notice issued on case FS50548527 which upholds the MOD's application of section 14(1) and the Tribunal decision EA/2015/0004 which orders disclosures of the meanings of acronyms used in previously disclosed material and states that section 14(2) "repeated requests" may be more appropriate than section 14(1) in the circumstances of that case.

44. The complainant was previously informed by the MOD that it did not hold further information regarding his complaint following an accident in 1991. The Commissioner and the First-Tier Tribunal both found that, on the balance of probabilities, the MOD did not hold any information further to that provided to the complainant.

45. The complainant has explained that he considers this decision has no bearing on his current request as he is requesting information on two separate complaints (QR1625 and QR1001).

46. The Commissioner has reviewed the complainant's correspondence in which he makes the request set out in paragraph 5 of this notice. The complainant references both grievances in relation to request 1 and states he is seeking information on QR1001 in his second request.



47. The Commissioner notes that the Tribunal decision (EA/2013/0210) quotes the request made in 2013 and the specific QR reference is not cited.
48. The Commissioner also notes that, although made separately, both complaints relate to the injury sustained in 1991 and his subsequent treatment. The Commissioner, therefore, considers that the two complaints are inextricably linked and information previously provided by the MOD is likely to be relevant to both complaints.
49. The Commissioner also notes that decision notice FS50548527 clearly sets out that, if held, information relating to the complainant's grievance would be exempt under section 40(1) or section 40(5) as it would be the complainant's own data. Although the requests are for policy documents or general information, the requests are for information that would explain the approach taken in his two complaints. As such, if the MOD were to comply with the request, it would, by default, disclose personal data about the complainant. The Commissioner set out in her decision notice that, if the MOD were to comply with the complainant's requests, it should rely on section 40(5) and neither confirm nor deny that information was held.
50. The Commissioner considers, therefore, that the complainant is aware that he is unlikely to obtain further information regarding the handling of his complaints from the MOD under the FOIA. The Commissioner considers that the complainant is seeking to use the FOIA to keep his grievances open and is requesting information in the hope of unearthing 'the truth' as he sees it.

**Will the request create an unreasonable burden on the public authority?**

51. Public authorities must keep in mind that meeting their underlying commitment to transparency and openness will require accepting a level of burden in responding to requests for information. However, the Commissioner does not consider that public authorities should be expected to accept disproportionate levels of burden such that the FOIA itself becomes a burden.
52. The Commissioner has reviewed the correspondence log provided with decision notice FS50548527 and the request being considered in this notice. The Commissioner considers future burden to be one of the key issues in this case.
53. In considering the issue of future burden, the Commissioner looked to the Dransfield Upper Tribunal decision for guidance. Paragraph 70 addresses the issue of future burden.

54. Having reviewed the correspondence provided, the Commissioner considers that the history of the complainant's correspondence demonstrates that the complainant is unlikely ever to be satisfied with the MOD's response. She considers that if the MOD had complied with the request, there is a high likelihood that correspondence would continue with no end in sight for the MOD.
55. The Commissioner is satisfied that providing a response to this request would prolong correspondence and places an unfair burden on the MOD which would be disproportionate to the request.

### **Conclusion**

56. In light of the provided information, previous decisions and her own analysis of the context in which the request was made, the Commissioner's decision is that section 14(1) is engaged in this case.
57. The complainant has been corresponding with the MOD for many years on the same issue and the Commissioner considers this case fulfils the criteria for an obsessive request which, if complied with, would place a disproportionate future burden on the MOD with likely protracted correspondence which is unlikely to ever satisfy the complainant.

### **Section 17(6) – refusal of request**

58. Section 17(6) of the FOIA allows a public authority not to issue a refusal notice when both the following conditions are met:
  - The public authority has already given the same person a notice explaining that a request is vexatious; and
  - it would be unreasonable to expect it to issue another one.
59. The Commissioner will usually only consider it unreasonable to expect a public authority to issue a further notice when it has previously warned the requester that it will not respond to any further vexatious requests on the same or similar topics.
60. In this case, the MOD provided the Commissioner with a refusal notice dated 9 April 2014 which informs the complainant that the MOD are treating his request as vexatious and states:

*"I have to advise you that the Ministry of Defence regards your request dated 26 February 2014 as a vexatious request under section 14(1) of the Act. This means that the department has no obligation to comply with this request or any future requests on this subject. Should you choose to submit further correspondence on this subject you are advised that it will be filed unanswered."*

61. The MOD also stated at internal review:

*"I should also advise you that under section 17(6) of the Act, where an authority seeks to reply [sic] on the section 14(1) exemption, there is no obligation to issue a further notice stating that we are relying on such a claim if we are in receipt of similar requests from you in the future and should we do so they will therefore go unanswered"*

and

*"Under Section 17(6) there is no obligation to issue a further notice stating that MOD is relying on this exemption if we receive any further requests from you."*

62. The Commissioner accepts that the MOD has given the complainant adequate warning that requests for information on the same theme would not be responded to and so it was not obliged to issue a further notice for this subject matter.

## **Other matters**

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63. The complainant set out to the Commissioner during the course of this case that he considered the information provided by the MOD to the Commissioner and the Tribunal for FS50548527 had been inaccurate and asked the Commissioner to provide a decision notice on this as it was an information rights issue.

64. Section 50(1) of the FOIA states:

*Any person (in this section referred to as "the complainant") may apply to the Commissioner for a decision whether, in any specified respect, a request for information made by the complainant to a public authority has been dealt with in accordance with the requirements of Part I.*

65. The Commissioner cannot, therefore, issue a decision notice regarding matters falling outside of the handling of a request for information. The Commissioner has already written to the complainant previously on this issue advising how he should proceed.

## Right of Appeal

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66. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

67. 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.
68. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed .....

**Gerrard Tracey**  
**Principal Advisor**  
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