

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 January 2024

Public Authority: Ministry of Defence
Address: Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant submitted two requests to the Ministry of Defence (MOD) seeking a copy of his late father's service record. The MOD refused the requests on the basis of section 14(2) (repeated requests) as it had previously responded to an earlier such request and stated no information was held.
2. The Commissioner's decision is that the MOD are entitled to refuse the requests on the basis of section 14(2) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the MOD on 19 July 2023:

"I am Submitting to the Ministry of Defence forNew [sic] Request for Information about my father's Service record to apply my British Passport'

This request is new and subject to the Ministry of Defence's Finding on 22 November 2021 that my father was a Locally Employed person who was engaged by the British Armed Forces.

Please Register my NewRequest [sic] for Information about my father's Service Record."

5. The complainant contacted the MOD again on 24 July 2023 in the following terms:

"1. Thank you for your response on 22 November 2021 which you stated that the Ministry of Defence found that my father was Locally Employed Civilian who was engaged by the HM Forces.

2. On 19 July 2023, I sent you my request my father's Service Record pursuant to the MOD finding my father's Service record under 1 (1) of FOIA 2000.

3. This request is subject for the MOD's finding that my father was Locally Employed Civilian who was engaged by the HM Forces.

4. I am requesting my father's service record to apply for my British Passport, and this request made under s1 of FOIA 2000."

6. The MOD responded to the complainant on 21 August 2023. It explained that its records showed that the complainant had previously submitted a request for his father's service record through the publication scheme to which it had responded. The complainant had requested an internal review of that response and the MOD had issued a response on 22 November 2021 stating that all reasonable searches had been completed and there was no record of the complainant's late father having served in the armed forces or as a locally employed civilian. The MOD explained that its position had not changed since that response and therefore it was refusing this request on the basis of section 14(2) (repeated requests) of FOIA. The MOD also advised that under section 17(6) of FOIA where a public authority relies on the provision at section 14(2), there is no obligation to issue a further refusal notice saying that section 14(2) applies to any further repeated requests seeking the same information.
7. The complainant contacted the MOD on 24 August 2023 and asked it to conduct an internal review of this response. He explained that "I am British and I have a right to hold my father's service record from the Ministry of Defence and I am not satisfied with the MOD's response on 21 August 2023."
8. The MOD did not receive the complainant's request for an internal review due to it being sent to an incorrect email address. The

complainant contacted the MOD again on 2 October 2023 (a communication it did receive) and asked for an internal review in the following terms:

"Please I am requesting internal review for the MOD's response on 21 August 2023.

Please I am requesting to give me right for section 50 of FOIA to send my complaint to the Information Rights. As soon as possible."

9. On 19 October 2023 the complainant also contacted the MOD in the following terms:

"1. My original request on September 03, 2019, was my father's service record in the 1st Battalion, The Queen's Own Cameron Highlanders in the Korea and Suez conflicts.

2. The MOD informed me in its response on November 22, 2021 that the 1st Battalion, The Queen's Own Cameron Highlanders was in the British Army, not the Royal Navy.

3. The MOD asked fresh searches and argued that no record were found.

4. On February 2022, I informed to the ICO that I am not happy for searching in the 1st Battalion, The Queen's Own Cameron Highlanders.

5. On February 22, 2022 the MOD relied section 12 of FOIA in its submission to the ICO.

6. On July 19, 2023, I made fresh response to the MOD of my father's service record in the British Army. My current request is any record of my father's service in the British Army.

7. The MOD refuse my current request in ground of the request is identical or substantially [sic] similar. in its response on 21 August 2023.

8. On 24 August 2023, I sent my request for an Internal Review of my request.

9. I Am requesting, from the MOD fairly to consider whether the section 12 of FOIA fairly relied on the searches of the 1st Battalion, The Queen's Own Cameron Highlanders. And whether the MOD is correct to apply section 14 (2) of my current request on July 19, 2023."

10. The MOD informed the complainant of the outcome of the internal review on 1 November 2023. It upheld the decision to refuse his requests of 19 July and 24 July 2023 on the basis of section 14(2) of FOIA. It explained that its position had not changed following its previous determination that it held no recorded information about his father's service record and the complainant had not advanced any new information for the department to consider.
11. With regard to section 17(6), the MOD reiterated the points made in the refusal notice. However, it explained that "should any new information or new evidence of your late father's service record become available to you that would enable the Department to consider your request in a new light and would mean that the Department would be required to conduct different searches, then we would of course process such a request." (emphasis in original). Under section 16 of FOIA the MOD also provided the complainant with some advice and assistance to address his references to the MOD previously having relied on section 12 of FOIA and to his father being a locally employed civilian. (The Commissioner has commented on the nature of this advice and assistance later in this decision notice.)

Scope of the case

12. The complainant contacted the Commissioner on 3 November 2023 in order to complain about the MOD's decision to refuse his requests of July 2023 on the basis of section 14(2) of FOIA.

Reasons for decision

Section 14(2) – repeated requests

13. Section 14(2) of FOIA provides that 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.
14. The Commissioner's guidance explains that a public authority may only apply section 14(2) if it has previously provided the same requester with

the information, or if it has previously confirmed, to that requester, that it does not hold the information.¹

The MOD's position

15. As noted above, the MOD issued a response to the complainant on 22 November 2021 which stated that it did not hold any information about the complainant's late father's service record. This response was issued after a First Tier Tribunal decision EA/2020/0105 which ordered the MOD to provide a new response to the complainant's previous request for information about his late father's service record in the British Armed Forces.² The MOD explained that its response of 22 November 2021 stated that "Under section 1 of the Act, I can confirm that, following extensive searches within the Department, MOD does not hold any record of service that confirms that your father was a member of the British Armed Forces."
16. The MOD explained that unless there is new information for it to consider which would assist in any different or new searches (which it did not consider there to be) then given the extensive consideration given to his previous request, it was reasonable to conclude that the response to the new requests would be the same, ie that no recorded information is held.

The complainant's position

17. The complainant did not provide the Commissioner with any submissions to support his challenge to the MOD's refusal on the basis of section 14(2).

The Commissioner's position

18. The Commissioner is satisfied that the complainant's requests of 19 and 24 July 2023 are repeated requests for the reasons advanced by the MOD. The MOD has informed the complainant on 22 November 2021, in response to a previous request he submitted to the MOD on 3 September 2019, that it did not hold any information regarding his late father's service record. Furthermore, the Commissioner agrees that the complainant has not provided any evidence which would require different or new searches to be conducted for any relevant information

¹ <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/dealing-with-repeat-requests/>

²

<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i3067/Abdullah,%20Mohamed%20Mohamood%20-%20EA.2020.0105,%2029.09.2021%20-%20Decision.pdf>

about such a service record. Given the extensive nature of the MOD's searches following the Tribunal decision, the Commissioner is satisfied that any response to this request would be likely to reach the same decision that the information is not held. The MOD is therefore entitled to refuse the request on the basis of section 14(2) of FOIA.

Section 16 – advice and assistance

19. Section 16(1) of FOIA places an obligation on public authorities "to provide advice and assistance, as far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".
20. In its internal review response the MOD noted that the complainant's email of 19 October 2023 raised a point regarding section 12 of FOIA. The MOD explained that this appeared to be referring to an extract from an email sent to the Commissioner by the MOD on 22 February 2022 which stated that:

"The response provided to [the complainant] of 22 November 2021 contains a detailed account of the searches undertaken, and areas involved in our attempts to locate information relevant to his request.

As stated in the second paragraph of that response, the information [the complainant] provided to the Tribunal contained details that was not available to us during the original processing of the request. This opened up further areas of research and it is estimated that staff have spent more than 50 hours conducting searches within various holdings across the Department. Despite this effort, which is more than double the appropriate limit set under section of the Act, no information that confirms that [the complainant's] father served in the Royal Navy has been located."³

21. The MOD's internal review response explained to the complainant that the reference to section 12 was an explanation that the searches previously conducted had vastly exceeded the cost limit for central government departments, under this provision of FOIA, and highlighted the 50 hours work that had been spent. However, for clarity the MOD confirmed that section 12 had not been applied to the complainant's

³ This MOD sent the Commissioner this email in the context of the complaint made by the complainant following the MOD's response of 22 November 2021 to his original request for a service record. The Commissioner's decision, which upheld the MOD's position that it did not hold the service record, is set out in decision notice IC-142084-D8P9, <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4020041/ic-142084-d8p9.pdf>

previous request. The MOD noted that despite extensive searches across many business units, no information was found in relation to the complainant's father having served in the British military.

22. The MOD's internal review also addressed the reference in the complainant's email of 24 July 2023 referring to his father as a locally employed civilian. The MOD noted that the MOD's response of 22 November 2021 in response to the complainant's previous request had stated that "I find that, on the balance of probabilities, it is likely that your father was a 'locally employed' person who was engaged by, but not a member of, the Royal Navy or any other Service."
23. The Commissioner is satisfied that the MOD's has provided adequate advice and assistance, as outlined above, to address the peripheral points raised by the complainant as part of his information requests of July 2023.

Other matters

24. The Commissioner notes the MOD's advice to the complainant regarding section 17(6) of FOIA.
25. The Commissioner would also like to highlight to the complainant that under section 50(2)(c) of FOIA he does not have to accept a complaint about a public authority's handling of a request if he considers such a complaint to be frivolous or vexatious.
26. Should the MOD refuse a further request from the complainant on the basis of section 17(6) of FOIA, then the Commissioner will consider whether any possible complaint to him about such a refusal is a frivolous one given the history of this matter and on this basis he may refuse to accept such a complaint.

Right of appeal

27. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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

Jonathan Slee
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