

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

### **Decision notice**

**Date:** 11 December 2018

**Public Authority:** Ministry of Defence

**Address:** Main Building  
Whitehall  
London  
SW1A 2HB

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

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1. The complainant sent three emails to the Ministry of Defence (MOD) on the same day which in total contained 24 separate information requests concerning post-traumatic stress disorder and associated issues. The MOD considered the requests to be vexatious and therefore relied on section 14(1) of FOIA not to answer them. Furthermore, in light of its previous communications with the complainant it did not provide him with a refusal notice stating this fact but instead relied on the provision contained at section 17(6) of FOIA not to do so. The Commissioner has concluded that the requests are vexatious and furthermore that the MOD was entitled to rely on section 17(6) of FOIA not to provide the complainant with a refusal notice stating this.

### **Request and response**

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2. The complainant sent the MOD three emails on 27 April 2018 containing seven, eight and nine requests respectively.<sup>1</sup>
  3. The MOD responded on 24 May 2018 in the following terms:
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<sup>1</sup> The requests are set out in an annex attached to this notice.

*'Under Section 14(1) of the Freedom of information Act, public authorities do not have to comply with requests if they are deemed vexatious. Your requests of 27 April 2018 ask for substantially similar information which are within the scope of your earlier FOI requests. The Department fully complied with its responsibilities under the Act in respect of those earlier requests on the subject of 'Post-Traumatic Stress Disorder and associated issues' this includes but is not limited to, compensation claims, pension payment, diagnosis and treatment of PTSD in both military and civilian personnel. You were previously advised of this on 31 July 2015 and again in the internal review of this request on 9 September 2015. This means the Department has no obligation to comply with these new requests or with any future requests on the same subject. Should you choose to submit further requests or correspondence on this subject you should be aware they will go unanswered.'*<sup>2</sup>

4. The complainant contacted the MOD on 29 May 2018 and asked for an internal review of this decision.
5. The MOD responded on 4 June 2018 and explained that it had nothing to add to the internal review issued on 9 September 2015 in respect of the requests he had submitted in July 2015. The MOD did however note that the internal review of 9 September 2015 had explained that under section 17(6) of FOIA there was no obligation on it to issue a further refusal notice citing section 14(1) if it received any further requests from him on a similar topic.

### **Scope of the case**

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6. The complainant is dissatisfied with the MOD's decision to refuse to comply with his requests of 27 April 2018 and also its reliance on section 17(6) to refuse to issue a refusal notice.
  7. The complainant has provided the Commissioner with detailed submissions to support his complaint and these are referred to below.
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<sup>2</sup> In its earlier responses of 31 July and 9 September 2015 the MOD refused to comply with a set of FOI requests the complainant sent in July 2015 on the basis of section 14(1) of FOIA. It also explained in these responses that under section 17(6) of FOIA where a public authority seeks to rely on section 14(1) in response to future requests there is no obligation to issue a further notice stating that it was relying on such a claim. The background to the complainant's requests of April 2015 is set out further in paragraphs 13 to 17 and 19 to 24,

## **Reasons for decision**

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### **Section 14(1) – vexatious**

8. The MOD explained to the Commissioner that if it were necessary to process the complainant's requests of 27 April 2018 substantively it would seek to refuse to comply with them, in their own right, on the basis of section 14(1). However, it argued that such an approach was not necessary as it was entitled to rely on the provisions of section 17(6) to refuse to issue a section 14(1) refusal notice because the complainant had already been informed that requests on this subject matter would be deemed to be vexatious and that he would not receive a response to such requests.
9. The Commissioner considers it important to remember that when a public authority relies on the provisions of section 17(6), it is in effect still citing section 14(1) to refuse to comply with the request(s). The provisions of section 17(6) simply remove the obligation on a public authority to issue a refusal notice citing section 14(1).
10. Therefore, in the circumstances of this complaint the Commissioner considers it necessary to consider two separate, albeit interrelated, questions.
  - Firstly, are the requests of 27 April 2018 vexatious?
  - Secondly, is the MOD entitled to rely on section 17(6) in order not to issue a section 14(1) refusal notice in respect of these requests?

### **Are the requests of 27 April 2018 vexatious?**

11. In the Commissioner's view section 14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress.
12. This will usually involve weighing the evidence about the impact on the authority and balancing this against the purpose and value of the request. This should be judged as objectively as possible; in other words, would a reasonable person think that the purpose and value are enough to justify the impact on the public authority. Where relevant, this will involve the need to take into account wider factors such as the background and history of the request.

### Background and history of requests

13. As the preceding parts of this decision notice suggest, there is a considerable background to the complainant's requests of 27 April 2018.
14. The MOD's view of the relevant background is as follows:
15. The complainant is an ex-Serviceman who, over the past nine years, has challenged his mode of exit from the Army and sought retrospective adjustments to his financial entitlement under various Forces pensions and compensation schemes. The MOD explained that these have now all been determined and no further appeal is possible to the decision made in August 2012. Additionally, the MOD explained that the complainant raised a private law claim against the MOD which was settled by joint agreement in October 2015. However, the MOD explained that the complainant remained discontent with the outcome of these actions and has continued to argue the same points. Consequently, action was taken by the relevant part of the MOD to make him vexatious for normal business correspondence.
16. The MOD explained that it had processed 38 FOI requests from the complainant in the period 2012 to 15 on PTSD and related issues. However, when a group of information requests were received in July 2015 the decision was taken to refuse them on the basis of section 14(1) of FOIA and to advise the complainant that these requests, and any subsequent ones received on the topic, would be considered vexatious and would not receive a response. This decision was subsequently upheld at internal review in September 2015. In its internal review the MOD explained to the complainant that it considered that the overarching topic *'includes but is not limited to, compensation claims, pension payment, diagnosis and treatment of PTSD in both military and civilian personnel'*.
17. The complainant did not seek to challenge the MOD's internal review response of September 2015 by way of an appeal to the Commissioner. As a result there is no previous decision notice regarding the MOD's reliance on section 14(1) of FOIA to the complainant's requests of July 2015. However, the MOD's basis for refusing those requests in 2015 is clearly material to its reliance on both section 14(1) and 17(6) in respect of the requests of April 2018.
18. The Commissioner has therefore summarised the MOD's basis for citing section 14(1) of FOIA to the requests of July 2015. The MOD concluded that the following factors identified in the Commissioner's guidance on

section 14 indicating a vexatious request were present in respect of these requests<sup>3</sup>:

*a) The requests placed a burden on the public authority.*

Since August 2012 the complainant had submitted 38 substantive requests on the same subject which more often than not contained multiple sub-requests couched in the form of questions, cross-referencing to previous requests or beginning from information provided by him. The MOD argued that these requests had impacted significantly on the work of various parts of the public authority and the effort required to sustain the handling of so many detailed requests had taken the resource away from its tasks. Alongside this activity, the MOD explained that it also processed a number of Subject Access Requests (SARs) under the Data Protection Act 1998 and had assisted the Pensions Ombudsman with his review of the complainant's case.

*b) Unreasonable persistence*

The MOD noted that all of the requests relate to the complainant's personal interest in PTSD diagnosis and the implications for his Service career, medical category, pension and compensation claim. The MOD noted that the complainant had raised his case through the formal pension complaint process and it had been subject to independent scrutiny by the Pensions Ombudsman. The complainant also had (at July 2015) a War Pension Tribunal pending and compensation claim against the MOD. The MOD argued that the complainant was clearly not satisfied with the handling of his case and was attempting to use FOIA to investigate the subject itself through the public release of information even though the legislation specifically prohibits the release of first party personal data and his concerns were being addressed by the appropriate pensions appeals procedure.

*c) Unfounded accusations*

The MOD argued that as part of his requests, the complainant had made reference to 'poor quality' reporting and 'perverse' decisions made by service personnel and Veteran Agency medical advisers in relation to his pension assessment and had asked for release of the qualifications of the medical advisor and the 'Deciding Officer' in this

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<sup>3</sup> <https://ico.org.uk/media/1198/dealing-with-vexatious-requests.pdf>

case. The MOD noted that the complainant had stated that he would raise allegations that the medical adviser did not adhere to GMC guidelines to the GMC. The MOD argued that in relation to these particular requests, it was satisfied that the driving factor seemed to be accusing the MOD of using poorly qualified medical advisors, or at least those who do not follow best practice, to provide pensions assessments that favour the MOD.

*d) Intransigence*

The MOD explained that the complainant had been previously informed that FOIA does not place an obligation on public authorities to answer questions, provide explanations or give opinions. However, the complainant had continued to make requests that contained lists of questions, asking the MOD to confirm or acknowledge statements and submitting questions requiring a yes or no answer. The MOD also noted that as part of the advice and assistance provided in response to a previous request the complainant was made aware of the official statistics on Armed Forces Compensation Scheme claims, UK Armed Forces mental health and UK Armed Forces medical discharges that are proactively updated on a regular basis and the existence of a newsletter to which the complainant could subscribe. Despite that advice, the MOD noted that the complainant had continued to make requests for statistical information and had not asked to be added to the newsletter mailing list.

*e) Frequent or overlapping requests*

The MOD suggested that the nature of the 38 requests provided clear evidence of the frequency and overlapping nature of the requests. It also noted that the requests for statistical information had often contained overlapping periods, requiring partial section 21 responses being issued.<sup>4</sup> The MOD also explained that the complainant had submitted identical requests to more than one area of the department and he had been advised on more than one occasion to use the MOD's FOI central mailbox to avoid creating administrative burden and confusion as duplicated requests required additional effort in logging and management. However, as with the advice on how to frame his information requests, the MOD explained that the complainant had ignored its advice on how best to facilitate his enquiries using that central address.

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<sup>4</sup> Section 21 of FOIA provides an exemption for information which is reasonably accessible to the requester.

*f) Scattergun approach and Drift*

The MOD acknowledged that although the complainant had a clear interest in this area there appeared to be little logic in some of the requests he submitted as they sought information already in the public domain, information which had already been provided previously, or a statement has been made confirming that the information did not exist. The MOD argued that there was also considerable drift in his requests from information about the MOD's policy and processes regarding those diagnosed with PTSD to wanting to know the outcomes of individual pensions calculations and common law claims and a Pensions Appeal Tribunal case to which he was not a party.

*g) Disproportionate effort*

The MOD acknowledged that although the matter is not trivial to the complainant personally, it had to take a broader view when considering if the engagement of section 14(1) is appropriate, taking into account the wider public interest in the matter. The MOD explained that it received many thousands of FOI requests each year and that it was disproportionate to spend so much resource on the requests of just one requester, especially when he it was satisfied that the underlying reasons for these requests has already been addressed in a more appropriate setting of a pension appeal process. The MOD argued that to respond to the complainant's further requests of July 2015 would hinder its ability to process other information requests and impact upon the workload of already hard-pressed pensions and claims casework and policy practitioners, medical administrators and MOD statisticians.

19. The complainant provided the Commissioner with detailed submissions to support his view that the requests of 27 April 2018 were not vexatious. Part of the complainant's submissions also focused on his view of the relevant background and history to these latest requests. The Commissioner has summarised the complainant's position in respect of this background as follows:
20. The complainant argued he had suffered pension injustice as a result of maladministration and negligence by the MOD. He noted that he had made complaints to the Pensions Ombudsman (both of which were upheld) and pursued medical negligence litigation against the MOD (which he described as successful). However, the complainant argued that some issues remained unresolved and he believed that his pension rights and entitlements had been unfairly and unlawfully forfeited which



constituted a breach of Sections 91 and 92 of the Pensions Act. He explained that he was therefore in the process of a new complaint to the MOD via their Internal Dispute Resolution Procedure (IDRP) and he made these FOI requests (and SARs under the DPA) to obtain information and evidence to support his complaints.

21. The complainant alleged that the MOD had deliberately withheld this information as they know that it will strengthen his case and result in them paying him a significant amount of money in backdated and corrective ill health pension benefits that he was entitled to as a result of his retrospective medical discharge in 2013.
22. The complainant also explained that he was going to pursue civil litigation against the MOD regarding his pensions and the information he requested under FOIA (and via SARs) was essential to support his case.
23. The complainant argued that in his view this is why the MOD had deliberately refused to comply with his requests as their objective was to subvert his complaint/claim in order to deprive him of the money from his ill health pensions and compensation that he was entitled to as a result of his retrospective medical discharge from the army.
24. The complainant also argued that as the MOD has in his view breached FOIA (and the DPA98) in relation to his requests, he alleged that its maladministration also amounts to a breach of the Fraud Act and misfeasance in public office.

MOD's additional submissions to support view that requests are vexatious

25. Whilst the background and history to these requests – both from the MOD's perspective and the complainant's perspective – is central to considering whether the requests of 27 April 2018 are vexatious, the Commissioner is very conscious that a period of nearly three years has elapsed since the complainant submitted his requests of July 2015 which the MOD considered to be vexatious. Therefore, as part of her consideration of this complaint, the Commissioner suggested to the MOD that given the time that has elapsed since July 2015 she did not accept that it could simply rely on same rationale set out in its internal review of September 2015 applying section 14(1) to the requests of July 2015 as the sole basis for refusing to comply with the requests of April 2018. Although the Commissioner acknowledged that such background was of course relevant, she suggested to the MOD that its refusal to process the requests of April 2018 had to take into account the passage of time between the two sets of requests.
26. More specifically, the Commissioner asked the MOD to respond to a number of specific questions in order to allow her to decide whether the



requests of 27 April 2018 were vexatious. The Commissioner has reproduced these questions below and summarised the MOD's responses:

- Why, despite the passage of time since July 2015, did the MOD consider that complying with the requests of April 2018 would still place a significant burden on it and/or would still require a disproportionate effort to respond to them?
27. The MOD argued that the requests of April 2018 represented a continuation of the complainant's previous enquiries. The MOD emphasised that in determining whether the requests of July 2015 were vexatious, it had identified a series of behaviours which led it to apply section 14(1),<sup>5</sup> and not simply because complying with those requests would place a burden or effort on the MOD.
28. The MOD quoted the following extract from the internal review of September 2015 which summed up the MOD's position:

*'Your pattern of requesting has gone beyond what is reasonable and is strongly in the arena of personal interest for reasons of pension and claim and in their volume and complexity you have demonstrated unreasonableness. The information request process provided for by the Act is not intended to give individuals the means to cross examine Government officials about the handling of their personal casework or provide a platform for them to present a scenario which is the basis for further questioning. The fact that you have been given advice on how to frame future information requests on more than one occasion but have continued to make requests for information in your previous manner — repeating requests for information you have already received or cannot be provided with or in the form of questions requiring 'yes' or 'no' answers or presented in a slightly different format — is particularly strong evidence of vexatious behaviour'*

29. The MOD drew the Commissioner's attention to an internal review issued to the complainant in March 2015 in which the MOD upheld the application of section 12(1) of FOIA to three requests. The MOD noted that the internal review explained at some length to the complainant the difficulties of processing requests that were framed as questions:

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<sup>5</sup> See paragraph 18 above.

*'The Act gives an applicant the right to access recorded information held by public authorities it does not require them to answer questions, provide explanations or give opinions... This is because any opinion or explanation provided would be speculation rather than based on factual information held; it may be misleading and, in the worst case, factually incorrect. There is also no specific provision in the Act that requires a public authority to interpret, explain or speculation on the meaning of any information provided to a requester, although where possible and where it would be helpful, the Department will do its best to assist.'*

30. The MOD provided the Commissioner with a detailed analysis of the 24 new requests the complainant had submitted on 27 April 2018. The MOD argued that 8 of these requests had in fact already been answered<sup>6</sup>; 12 were invalid under section 1 of FOIA as they sought either a yes or no answer or explanations and opinions from officials;<sup>7</sup> 3 were likely to exceed the cost limit at section 12(1) of FOIA an issue which the MOD considered to be strong evidence of their vexatious character<sup>8</sup>. In the MOD's view only one request was about the work of the Pensions Ombudsman was new and capable of being processed under section 1 of FOIA<sup>9</sup>.
31. Therefore, the MOD argued that complainant's latest requests indicate that there was been no change in his approach to making information requests and that he remains unwilling to follow any advice and assistance that had been previously provided to him. As noted above, the MOD explained that were it necessary to process them substantively it would seek to argue that the requests were vexatious in their own right. However, the MOD took the view that its reliance upon the section 14 decision of 2015 is the correct approach and that this is consistent with the judgement in the Upper Tier case of *Dransfield v Information Commissioner and Devon County Councils*<sup>10</sup> which has subsequently been upheld by the Court of Appeal<sup>11</sup>. The MOD noted that the Tribunal in *Dransfield* took the view that the ordinary dictionary definition of

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<sup>6</sup> Request 1.1, 1.7, 1.8, 2.3, 2.4, 2.6, 2.7, 3.1

<sup>7</sup> Requests 1.2, 1.4, 1.5, 1.6, 2.2, 2.3, 2.5, 3.4, 3.6, 3.7, 3.8, 3.9

<sup>8</sup> Requests 1.3, 2.1, 3.2

<sup>9</sup> Request 3.5

<sup>10</sup> GIA/3037/2011 UT, dated 28 January 2013

<sup>11</sup> CS/2013/1855&CS/2013/1901, dated 14 May 2015

'vexatious' is only of limited use because the question ultimately depends upon the circumstances surrounding the request. The Tribunal placed emphasis on whether the request has adequate or proper justification and suggested that 'vexatious' could be defined in this context '*...manifestly unjustified, inappropriate or improper use of a formal procedure*'. The MOD argued that this decision clearly established that proportionality and justification are central to any consideration of vexatiousness, rather more than identifying individual behaviours

32. The MOD acknowledged that the requests of 27 April 2018 are of a personal interest to the complainant, and arise from his dissatisfaction with his settled claims, but it argued that it was difficult to see any wider benefit. It explained that as far as it was aware he represents no association or group of veterans and the pattern and content of his requests relate directly to his specific circumstances. The MOD argued that the complainant is in receipt of the benefits to which he is entitled and he has, in addition, received a settlement of his private claim. It argued that any further processing of similar requests from him would only add to the already existing burden of his past enquiries and would keep officials from their primary task of progressing other pension cases.
- Whether the requests of 27 April 2018 contain unfounded allegations, like those of July 2015?
33. The Commissioner suggested to the MOD that the requests of 27 April 2018 did not appear to contain any unfounded allegations. In response, the MOD argued that request 3.9 is based on an unfounded allegation that Veterans UK did not use appropriately qualified medical professionals for the complainant's Armed Forces Compensation Scheme casework.
- Has the MOD had any further communication with the complainant since July 2015 and if so of what kind, eg FOI requests, SARs etc?
34. The MOD explained that the MOD had made two FOI requests in the period since July 2015 for which MOD did not invoke section 17(6). Both requests sought copies of blank forms and MOD took the view that had he not been made vexatious for normal business correspondence, the complainant would have been able to obtain these without invoking FOIA. It explained that it saw no reason to place the complainant at a disadvantage in this regard from other members of the public. The MOD noted that it took the view that these two requests were limited to specific recorded information, and did not fit the structure and pattern of the requests which prompted the MOD to apply section 14.

35. The MOD explained that it had processed 12 SARs from the complainant in the period 2014 to 2018 (9 by Defence Business Services and 3 by the Army). In this correspondence MOD argued that the complainant exhibited very similar behaviours to those identified as vexatious traits under section 14 of FOIA; he made lots of follow-up enquiries to his original requests, repeating demands or attempting to expand the scope of his requests, with no regard to advice that had been provided. The MOD argued that many of these further demands overlapped with existing requests, and sought information outside the remit of the DPA.
36. The MOD also explained that the Defence Business Services (DBS) had received 52 enquiries from the complainant during the period July 2015 to present date, and replied to 41 of these. Meanwhile, DBS Customer Services had investigated nine complaints from the complainant during the same period (4 in 2015, 1 in 2016, 2 in 2017 and 2 in 2018). In addition, the MOD explained that the complainant had written directly to Ministers and received 'Treat Official' replies.
- The Commissioner explained that she would welcome the MOD's views on the complainant's position that there is a serious purpose to his requests of April 2018 as he needs this information as part of his service complaint.
37. The MOD explained that it did not agree with the complainant's position that there is a serious purpose to his requests as part of a service complaint, as he has no such case pending. The MOD explained that whilst it is open to former Service Personnel to raise new complaints relating to their military service, the MOD argued that his case in relation to his claim can go no further.

The complainant's additional submissions to support his view that the requests are not vexatious

38. In addition to the points the complainant made as part of his submissions regarding the background to these requests, his submissions elaborated further on why he did not consider his requests of 27 April 2018 to be vexatious. He argued that he had a legitimate interest in pursuing an issue of significance. He also argued that it is the MOD that was being vexatious as its failure to comply with his requests was causing him annoyance, frustration and worry because he needed the requested information to pursue his service complaint.

39. The complainant also argued that a reasonable period of time had elapsed since his similar FOI requests in 2015.
40. The complainant also referenced the Tribunal decision in *Thackeray vs Information Commissioner*<sup>12</sup> in which the requester had made a number of requests to the City of London Corporation (COLC) concerning its dealings with scientology organisations. The complainant suggested that these mainly centred on COLC's decision to award mandatory rate relief to the Church of Scientology Religious Education College and often these requests would follow on closely from each other or be refined versions of previous requests. The complainant noted that COLC refused two of the later requests, citing in one refusal notice that this was on the grounds that the request was obsessive, harassing the authority and imposing a significant burden. However, the Tribunal unanimously upheld the requester's appeal and observed that: *'The dogged pursuit of an investigation should not lightly be characterised as an obsessive campaign of harassment. It is inevitable that, in some circumstances, information disclosed in response to one request will generate a further request, designed to pursue a particular aspect of the matter in which the requester is interested. We would not like to see section 14 being used to prevent a requester, who has submitted a general request, then narrowing the focus of a second request in order to pursue a particular line of enquiry suggested by the disclosure made under the first request'* (paragraph 26). The complainant drew a comparison to the Tribunal's decision in that case and his position and argued that this supported his view that the requests of 27 April 2018 were not vexatious.

The Commissioner's decision on whether the requests of 27 April 2018 are vexatious

41. As set out earlier in this notice, in determining whether a request is vexatious the Commissioner will consider evidence about the impact on the authority and balancing this against the purpose and value of the request. The ultimate question being whether a reasonable person would think that the purpose and value are enough to justify the impact on the public authority of complying with the request.
42. With regard to the complainant's position, having considered the detailed submissions he has put forward to her, the Commissioner acknowledges that it appears that in the past there have been some errors made by the MOD in respect of the complainant's pension arrangements and when the complainant has sought to challenge these

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<sup>12</sup> EA/2011/0082 18 May 2012

arrangements there appears to have been, at least at points, some delay in how these issues have been addressed. Given the direct impact such matters have had on the complainant the Commissioner can understand his perseverance in pursuing this matter and seeking the further information which he considers it necessary to acquire.

43. On this point, the Commissioner notes that there is a clear divergence of views between the MOD and complainant with regard to what purpose this further information could actually serve. The MOD's view being that the complainant's claim in relation to this matter can go no further and the complainant's own view being that he intends submit a further complaint via the MOD's Internal Dispute Resolution Procedure and pursue civil legal action against the MOD. Setting these divergent views aside for a moment, the Commissioner nevertheless acknowledges that the complainant clearly has a genuine interest in receiving the information he has requested.
44. However, the Commissioner is minded to agree with the MOD that the purpose and value of the information being provided would appear to only serve the individual interests of the complainant rather than any broader or wider public interest.
45. Furthermore, the Commissioner is of the view that a number of the factors which can indicate whether a request is vexatious, as set out in her guidance, and as cited by the MOD's internal review of September 2015 regarding the requests of July 2015, can also said to also apply to the complainant's requests of April 2018.
46. Firstly, in the Commissioner's opinion the number and nature of the requests, ie 24 submitted on the same day, indicate that complying with them – either by providing the information sought – or by seeking to refuse them by explaining that no information is held given the manner in which the requests are framed – is likely to impose some burden on the MOD. The Commissioner's notes that the MOD has identified that three of the requests would be likely to exceed the appropriate cost limit, ie take more than 24 hours to process. In relation to this point, the Commissioner considers it relevant to note that in the period since the previous requests of July 2015 were refused the MOD has received and dealt with a significant amount of correspondence from the complainant both in terms of SARs and as enquires and complaints processed by the Defence Business Services. In the Commissioner's view assessing the burden that complying with the requests of 27 April 2018 would place on the MOD must be seen in the context of this prior interaction the complainant has had with the MOD and indeed the demand on its resources dealing within this interaction will have placed on its resources.



47. Secondly, the Commissioner is also of the view that the requests of April 2018 also represent an element of intransigence on behalf of the complainant. The Commissioner's guidance defines intransigence in this context as *'the requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority'*. As evidenced by the MOD's submissions, the complainant has been provided with advice on a number of occasions about how to frame requests so that they constitute valid requests under FOIA and worded in such a way so as to not place a burden on the MOD in terms of it actually understanding what has been asked for. However, the pattern of the requests submitted on 27 April 2018 does not suggest that the complainant has adhered to this advice and this refusal to take on this advice represents a continuation of the behaviour of his earlier requests.
48. Thirdly, with regard to the behaviour of frequent or overlapping requests, the Commissioner's guidance describes a *'requester [who] submits frequent correspondence about the same issue or sends in new requests before the public authority has had an opportunity to address their earlier enquiries.'* Given that the complainant submitted 24 requests on the same day to the MOD the Commissioner considers this to be clear evidence of the frequent nature of the requests. Moreover, she notes that in terms of 'overlapping' a significant number of these requests seek information which the MOD has already provided to the complainant.
49. Fourthly, in terms of unreasonable persistence, the Commissioner's guidance describes this as a requester *'attempting to reopen an issue which has already been comprehensively addressed by the public authority, or otherwise subjected to some form of independent scrutiny'*. In relation to this factor, as noted above there is some divergence of opinion between the MOD and complainant as to whether this matter is in fact concluded, or whether there is a further option or action the complainant can take regarding his pension arrangements. The Commissioner respects the complainant's view that he intends to take the further action which he has described in his submissions to her. Nevertheless, taking into account the comments in her guidance, the Commissioner takes the view that as the complainant's case is one that has been considered by an independent body, namely the Pensions Ombudsman, the complainant's requests can be objectively seen as evidence of an unreasonably persistent approach to seeking information on this issue. The pattern and nature of the requests, ie 24 requests submitted on the same day, allied to the complainant's previous interactions with the MOD since July 2015, also suggest to the Commissioner that the complainant's requests can be accurately classified as unreasonably persistent.



50. Taking all of the above factors into account, and in particular viewing the requests of 27 April 2018 against the history and background of the complainant's previous requests, the Commissioner is not persuaded that the purpose and value of the requests are enough to justify the impact on the MOD in complying with them. The Commissioner is therefore satisfied that the requests of 27 April 2018 are vexatious and the MOD was not obliged to respond to them by virtue of section 14(1) of FOIA.

### **Section 17(6) – refusal notices**

51. In order for a public authority to be able to rely on section 17(6) of FOIA the following two criterion have to be met:
- The authority has already given the same person a refusal notice for a previous vexatious or repeated request; and
  - It would be unreasonable to issue another one.
52. The first criterion is clearly met in this case given the MOD's refusal of the requests of July 2015 on the basis of section 14(1). The question for the Commissioner is therefore whether it would have been unreasonable for the MOD to have to issue a refusal notice in respect of his requests of April 2018.
53. In considering this point, the Commissioner is very conscious of the period of time that has elapsed between the MOD's refusal of the requests of July 2015 and the requests which are the focus of this notice, ie those submitted in April 2018. Given that nearly three years has elapsed the Commissioner has some sympathy with the complainant's view that it would have been reasonable to expect the MOD to issue a refusal notice citing section 14(1). There will become a point where such a period of time has elapsed that a requester could not reasonably be expected to remember that they have been previously been informed by a public authority that future requests will be met with a section 17(6) response.
54. However, in the circumstances of this case the Commissioner is persuaded that it would have been unreasonable to expect the MOD to do so. She has reached this decision for the following reasons. Firstly, the MOD informed the complainant in its internal of September 2015 that further requests on this topic would not be responded to in line with the provisions of section 17(6) of FOIA. Secondly, the requests of April 2018 are clearly on the topic which the MOD had previously advised the complainant that it would not respond to. Thirdly, the pattern and nature of the complainant's requests mirror those submitted in July

2015. Fourthly, in the period between July 2015 and April 2018 the MOD had refused to respond to normal course of business enquires from the complainant on this topic thus, in the Commissioner's view, indicating to him that there was very unlikely to be any change or revision to the MOD's position in respect of FOI requests and its previously notified intention to rely on section 17(6) of FOIA in respect of any future such requests. Fifth and finally, the Commissioner also notes that in other cases she has accepted that such a passage of time does not undermine a public authority's reliance on section 17(6).<sup>13</sup>

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<sup>13</sup> In cases FS50687228 and FS50665623 the Commissioner accepted that it was reasonable for both public authorities to rely on 17(6) of FOIA despite the gap between them informing the respective requesters that any further requests on the same subjects would be treated as vexatious and not responded to, and their further requests to the public authorities being 30 months after this notification.

## Right of appeal

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55. 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)

56. 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.
57. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Annex

The 24 requests which the subject of this request were set out in three emails sent by the complainant on 27 April 2018. The Commissioner has reproduced these requests in the table.

### Request F012018/05845

	<b>Request</b>
1.1	Under the Armed Forces Pension Scheme 05, in the last 13 years since the introduction of the AFPS 05, how many ill health pensions have been awarded at Tier 1, Tier 2 and Tier 3 to veterans that have been medically discharged due to PTSD?
1.2	If an armed forces veteran received early payment of the AFPS 05 preserved pension (before age 55 due to ill health), under AFPS 05 Rules D.S. and D.7. would this automatically trigger the award of the AFPS 05 Tier 3 ill health pension?
1.3	Since the introduction of the Armed Forces Pension Scheme 05, how many times has the AFPS 05 preserved pension been paid early due to serious ill health?
1.4	As a diagnosis of PTSD restricts many types of employment opportunities for medically discharged veterans, why has the AFPS 05 awarded varying ill health Tiers (1,2 and 3) when each veteran with PTSD has the same diagnosis and the same range of unavailable jobs?
1.5	Can you please clarify why some medically discharged Veterans diagnosed with moderate PTSD are in receipt of AFPS 05 Tier 2 and Tier 3 ill health pensions and others are in receipt of Tier 1 awards?  Why are the awards not consistent?
1.6	Do the MoD accept that as a diagnosis of PTSD would result in a significantly impaired capacity for gainful employment? If not, can you please explain why many Veterans diagnosed with PTSD are in receipt of Tier 2 ill health pensions from the AFPS 05 which requires a significantly impaired capacity for gainful employment.
1.7	Is there an official MoD policy regarding medical discharges and ill health pensions for Veterans discharged due to PTSD and other mental health disorders?
1.8	Can you please provide me with copies of documents regarding pension policy and policy changes that have been issued to Veterans UK decision makers and medical advisers since the introduction of AFPS 05.

Request F012018/05842

	<b>Request</b>
2.1	Regarding medical negligence or personal injury litigation against the MoD in the last 10 years, how many times have armed forces pensions been included in the settlement and paid in advance, as lump sums?
2.2	If an armed forces veteran is in receipt of a war pension, attributable benefits or compensation from the AFCS and later receives civil compensation from the MoD for medical negligence or personal injury, are the ill health pension/compensation benefits then lost/surrendered completely or are they abated only by the head of loss for general damages/pain suffering and loss of amenity?
2.3	If an armed forces veteran is in receipt of an AFPS 05 Tier 1 lump sum and later receives civil compensation from the MoD for medical negligence or personal injury, is the AFPS Tier 1 lump sum deducted or offset from the compensation?
2.4	Since 2008, how many civil compensation claims have the MoD paid compensation for PTSD? a. What were the settlement figures for each of these claims? b. What is the average settlement for a PTSD claim against the MoD?
2.5	If an armed forces veteran living abroad receives civil compensation from the MoD, would the calculation of his/her residual earnings capacity by the MoD be based on a UK figure or on a figure relevant to his/her country of residence?
2.6	How many soldiers are currently serving in the British Army and have been diagnosed with PTSD? Of this figure, how many are considered as medically nondeployable?
2.7	Do the MoD acknowledge that PTSD is a permanent, serious ill health disorder?

Request F012018/05844

	<b>Request</b>
3.1	Under the War Pension Scheme, how many pensions are currently in payment for the following invaliding conditions:  • ICD F32 - Depressive Episode

	<ul style="list-style-type: none"> <li>• ICD F33 - Recurrent Depressive Disorder</li> <li>• ICD F34.1 - Dysthymia</li> <li>• ICD F10 - Mental and behavioural disorder due to use of alcohol</li> <li>• ICD F40 - Phobic anxiety disorders</li> <li>• ICD F51 - Nonorganic Sleep Disorders</li> <li>• ICD F60.6 - Anxious (avoidant) personality disorder</li> <li>• ICD F62.1 - Enduring personality change after psychiatric illness</li> <li>- ICD G47.63 - Sleep related bruxism</li> </ul>
3.2	<p>How many servicemen and servicewomen have forfeited their entitlement to the following ill health pension and compensation schemes:</p> <ul style="list-style-type: none"> <li>- AFPS 05;</li> <li>- War Pension Scheme;</li> <li>- Armed Forces Attributable Benefit Scheme;</li> <li>- Armed Forces Compensation Scheme.</li> </ul>
3.3	Since 2009, how many retrospectives medical discharges have been awarded by the army?
3.4	Following a retrospective medical discharge would an armed forces veteran then receive retrospective medical assessments and backdated ill health pension and compensation entitlements from the date of their discharge?
3.5	<p>In the last 6 years, how many times has the Pensions Ombudsman instructed Veterans UK to reconsider a decision regarding the level of ill health benefits awarded?</p> <p>Of these reconsiderations, how many decisions were subsequently changed by Veterans UK?</p>
3.6	Do the MoD accept that a soldier medically discharged due to PTSD will not have the full range of civilian jobs available to him/her?
3.7	If an FMed 23 (Medical Board Report) is inaccurate or incomplete what remedies are available to the soldier to challenge/appeal the content of the FMed 23?
3.8	For the assessment and diagnosis of mental health disorders do Medical Board's require the presence of a legally qualified professional such as a Consultant Psychiatrist or Clinical?
3.9	Considering that the AFCS requires that mental disorders be assessed and

	diagnosed by an accredited professional, which is defined in AFCS Legislation as a Consultant Psychiatrist or Clinical Psychologist, why do Veterans UK use GPs instead of a Consultant Psychiatrist or Clinical Psychologist when determining mental health invaliding conditions and the appropriate compensation awards?
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