

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 August 2010

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

Summary

On 11 August 2008 following a lengthy chain of correspondence the complainant requested that the public authority provide copies of all documentation surrounding the medal claims he had put forward relating to his late grandfather in 2004. The public authority responded and over several months the complainant disputed whether the public authority had complied with the request fully. On 19 December 2008 the public authority issued a refusal notice stating the complainant had received all the information held pertaining to his request. The Commissioner has investigated the handling of the request and has found that the public authority has provided all the information it held, thus complying with section 1. However he has found that the public authority breached section 10(1) in not responding within twenty working days. The Commissioner requires no remedial steps to be taken by the public authority.

The Commissioner's Role

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.
2. The Commissioner notes that under the Act the Service Personnel and Veterans Agency (SPVA) is not a public authority itself, but is actually an executive agency of the Ministry of Defence (MoD). Therefore the public authority in this case is actually the Ministry of Defence. However, for the sake of clarity, this decision notice refers to the

Service Personnel and Veterans Agency as if it were the public authority.

Background

3. This decision notice references two medals which were the subject of the complainant's correspondence with the public authority beginning in 2004 when the complainant submitted grounds for his late grandfather's medal claims.
4. The 1939 – 45 Defence Medal was a campaign medal of the British Commonwealth awarded for service in World War II. It recognised both military and some types of civilian service served between 3 September 1939 and 15 August 1945. The types of service in the United Kingdom included, but were not confined to, civilian personnel who worked as members of the Home Guard, Police, Coast Guard and Royal Observer Corps. The 1939 – 45 War Medal was a British decoration awarded to those who had served anywhere in the Armed Forces or Merchant Navy fulltime for at least 28 days between 3 September 1939 and 2 September 1945. In the Merchant Navy the 28 days must have been served at sea.
5. The complainant has since disputed the handling of his grandfather's medal claims with particular reference to the alleged amendment of the Medal Regulations, affecting his grandfather's eligibility for the War Medal, referred to by the public authority in the course of processing the claims.

The Request

6. On 11 August 2008 the complainant contacted the public authority to request the following information:

"I have no alternative but to apply, under the FOI Act 2000, for copies of all documents and information concerning my claims to the MoD for my late grandfather's medals for full-time service in the Second World War."
7. On 16 September 2008 the public authority provided a response to the complainant in which it enclosed copies of all the information held pertaining to the request.

8. Following a chain of correspondence in which the complainant disputed whether all the requested information had been provided to him, the public authority wrote to the complainant on 19 December 2008 and repeated that it had provided all information held pertaining to the request.
9. Following further correspondence the complainant contacted the public authority on 08 May 2009 to request an internal review of its decision.
10. On 19 August 2009 the public authority wrote to the complainant detailing the outcome of the internal review. The authority upheld its original decision.
11. On 15 October 2009 the complainant contacted the Information Commissioner's Office to complain about the handling of his request.

The Investigation

Chronology

12. On 08 February 2010 the Commissioner wrote to the public authority to detail the scope of the investigation and ask for copies of the information previously disclosed to the complainant. He also wrote to the complainant to explain the scope of the investigation.
13. On 18 March 2010 the Commissioner telephoned the public authority following previous correspondence chasing a response. The public authority confirmed it was collating the information and waiting for the relevant department to send some of the documents. The Commissioner discussed the case and the public authority stated that it had conducted relevant searches to obtain the requested information and had provided all the information it held pertaining to the request to the complainant. The public authority confirmed that the complainant had received two copies of the "WO 1911" (one full, one amended) and redacted copies of letters and emails between MOD/SPVA staff.
14. On 25 March 2010 the public authority provided copies of the information discussed on 18 March 2010 to the Commissioner along with further details of its position regarding the handling of the request. The public authority wrote:

"I can confirm that [the complainant] has been provided with the following:

- *all documents and information held relating to [the complainant's] late grandfather's medals for service during WWII;*
 - *extracts from WO 1911 regulations relating to those elements concerned with the Home Guard service and the 1939 War Medal criteria (copy attached);*
 - *a copy of the WO 1911 – 'Campaign Stars and Commemorative Medals Instituted for the 1939 – 45 War issued by the Command of the Army Council dated 11 June 1948, reference 68/general/8533, WO Code 1911';*
 - *a clean full transcript of WO 1911 with all of the amendments made to it;*
 - *redacted emails and notes between staff at SPVA and others within the MOD upon which SPVA based its responses to [the complainant] (copies attached); and*
 - *details of [Officer at MOD]'s periods of tenure as Officer Commanding the Army Medal Office."*
15. With regard to the MOD's position concerning its handling of the request the public authority stated that it was satisfied that the complainant had received everything the MOD held pertaining to the request which he was entitled to under the Act. The public authority went on to state that:
- "...it was not unreasonable that the MOD should take the view that any further replies to additional requests from him on this specific subject would not be constructive and should be treated as vexatious under section 14 of the Act, given that [the complainant]'s continued requests have become obsessive and manifestly unreasonable."*
16. On 29 April 2010 the Commissioner contacted the public authority to request further arguments to support its position. He also wrote to the complainant to provide an update on the case.
17. On 11 May 2010 the public authority provided further details of its actions regarding the request.
18. On 20 May 2010 the Commissioner wrote to the public authority requiring further details to aid his investigation. The public authority provided its response the same day.

Scope of the case

19. Originally on 15 October 2009 the complainant contacted the Commissioner to complain about the way his request for information of 11 August 2010 had been handled. The complainant specifically asked

the Commissioner to consider the following points concerning non compliance with section 1 and section 14 of the Act:

- The public authority had failed to provide all the information requested.
- The public authority's refusal to provide further information by declaring the request vexatious.

However, the complainant did not object to the redactions made to the emails and notes supplied to him, referred to in paragraph 14 above.

20. As part of his investigation the Commissioner considered the public authority's application of section 14 during its handling of the request. The Commissioner acknowledges that on several occasions between December 2008 and October 2009 the correspondence provided in this case shows that the public authority cited section 14 as grounds for refusing compliance with the request.
21. However the Commissioner notes that the public authority only made reference to section 14 and did not specifically apply it in response to the 11 August request. Rather, the public authority complied with the request and provided information pertaining to it. After its initial response on 16 September 2008 there then followed a lengthy chain of correspondence where reference was made to section 14 but the Commissioner notes the public authority was applying it to "future correspondence" and, moreover, continued to respond to the complainant regarding the same issues.
22. Section 14 cannot be applied in the way described above, i.e. retrospectively to a request made some months previously and as a threat or warning that correspondence in the future will be deemed vexatious. The grounds for deeming the request vexatious must be applied to a specific request at the time it is made. The Commissioner is sympathetic to both the public authority's attempts to comply with the request and then refuse entering into further correspondence regarding issues it believes it has already resolved. However for the reasons stated above the Commissioner cannot include an analysis of the section 14 issues in this Notice as the public authority did not issue a valid refusal notice under the provisions contained within section 14. This Notice will, for the reasons listed above, only concern the section 1 and section 10 issues surrounding the public authority's handling of the request.

Analysis

23. In determining this case, the Commissioner has taken into account the submissions of both the public authority and the complainant. The full wording of all the extracts of the Act included in this notice can be found in the Legal Annex.

Section 1 – general right of access

24. Section 1 of the Act states that any person making a request for information is entitled to be informed in writing whether the information is held and, if this is the case, to have the information communicated to them.
25. The Commissioner has considered the public authority's handling of the request with regard to the section 1 requirements of the Act. In doing so he has viewed all the information and representations provided to him by the public authority and complainant. The Commissioner has found evidence contained within the case file from both parties that the information requested on 11 August 2008 had been the subject of past requests and correspondence dating from May 2007. Even so the public authority complied with the August 2008 request.
26. From the explanations provided to him by the public authority in response to his detailed enquiries, the Commissioner is of the view that the public authority has carried out searches of the appropriate locations in order to locate and retrieve the relevant information. The Commissioner holds that it is not reasonable to suggest that other information pertaining to the request may be held by the public authority elsewhere. Moreover the Commissioner has viewed all the information provided to him by the public authority within the course of his investigation and he has not found any evidence within the correspondence, emails between members of staff or other documents to suggest that further information related to the medals claims exists. The Commissioner has considered the time that has lapsed between the request and this notice and holds that it is unlikely that the circumstances of this case have altered. Therefore, in the absence of any evidence to the contrary, he is satisfied that the public authority has provided all the information it holds pertaining to the request.

Section 10 – time for compliance

27. Section 10 of the Act stipulates that on receipt of a request for information a public authority should respond promptly and no later than 20 working days.

28. The correspondence provided to the Commissioner in this case shows that the public authority responded outside the 20 working day time limit.

The Decision

29. 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:

- Section 1 – the public authority provided the complainant with all the information pertaining to the request satisfying sections 1(1)(a) and 1(1)(b)

However, the Commissioner has also decided that the following element of the request was not dealt with in accordance with the Act:

- Section 10 – the public authority failed to respond within 20 working days and therefore breached section 10(1).

Steps Required

30. The Commissioner requires no steps to be taken.

Other matters

31. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his '*Good Practice Guidance No 5*', published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days. The Commissioner is concerned that in this case, it took over 70 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of Appeal

32. 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.

Website: 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 sent.

Dated the 26th day of August 2010

Signed

**Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

"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."

Section 1(2) provides that -

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

Section 1(3) provides that -

"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 1(4) provides that -

"The information -

- (a) in respect of which the applicant is to be informed under subsection 1(1)(a), or
- (b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request."

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Time for Compliance

Section 10(1) provides that –

“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.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is 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.”

Section 10(3) provides that –

“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 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –
“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –
“In this section –
“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”