

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 May 2011

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

Summary

The complainant requested information from the Ministry of Defence (MOD) relating to disability claims made in a given period due to military service. The MOD refused to comply with the request on the grounds that doing so would exceed the appropriate costs limit – section 12(1) of the Act. The Commissioner has investigated and finds that the MOD applied section 12(1) in accordance with the Act, although it also breached its procedural obligations. He requires no further steps to be taken.

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.

The Request

2. On 29 August 2009 the complainant contacted the MOD to request the following information:

"I asked you to tell me [under the Freedom of Information Act], how many claims have been made for disabilities caused by service in Canada during the late 1960s, early 1970s. Disabilities caused by exposure to toxic chemicals [including Agent Orange]. Also the results of those claims and whether or not SPVA/MOD specifically mentioned

'toxic chemicals' or 'Agent Orange' in claims where awards were made...".

The complainant had previously asked for information of a similar nature and in March 2009 had told the MOD to *"restrict the period of claim to 2007/8."*

3. On 20 May 2010 the MOD responded to the complainant and refused to comply with the request on the grounds that doing so would exceed the appropriate costs limit.
4. On 22 May 2010 the complainant requested an internal review.
5. On 1 July 2010 the MOD completed the internal review. The MOD upheld the decision to refuse to comply with the request on grounds of cost.

The Investigation

Scope of the case

6. On 13 August 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the fact that the MOD refused to comply with his request on the grounds of the costs it would incur.

Chronology

7. On 4 February 2011 the Commissioner wrote to the MOD asking for a detailed breakdown of the estimated time and cost it would take to provide the information. The Commissioner asked the MOD to include a description of the type of work involved in complying with the request, to clarify whether a sampling exercise had been undertaken and to confirm that the estimate had been based upon the quickest method of gathering the information.
8. On 3 March 2011 the MOD responded to the Commissioner with a detailed explanation of the costs it would incur by complying with the request. For example, it had identified 31,700 files relating to disability claims made in 2008-09 and estimated that locating, retrieving and extracting the information from the files would take three minutes per file. This process was hindered by the fact that there was no key word search function available to use. The MOD explained that some sort of pro forma would also need to be created in order to provide the information owing to the fact that there was no business need to produce such statistical data.

9. On 28 March 2011 the Commissioner wrote to the MOD seeking further clarification regarding the tasks involved in locating the requested information. He made enquiries to the MOD concerning what search terms had been used and how information was recorded on the relevant computer systems. The Commissioner requested screen shots to be provided if possible and further details surrounding the process for ordering files. He also queried whether they were physical paper files or stored electronically. Further information on the War Pensions system was also sought, for example why a key word search could not be done, along with clarification on the business purpose for recording such information.
10. On 8 April 2011 the MOD responded to the Commissioner and provided the further clarification sought.

Analysis

Substantive Procedural Matters

Section 12 – cost of compliance exceeds the appropriate limit

11. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations).
12. Section 12(2) allows a public authority to refuse to confirm or deny whether it holds information of the nature requested if simply to do so would in itself exceed the appropriate limit.
13. The appropriate limit for central government departments and therefore the MOD in this case, is £600 at £25 per staff hour, or 24 hours of one member of staff's time.
14. The Regulations allow a public authority to charge for the following activities:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.

15. In investigating this case, the Commissioner has had to decide whether the estimate put forward by the MOD, regarding the costs it would incur in complying with the request, is a reasonable one. He is aware that a number of Information Tribunals have made it clear that an estimate for the purposes of section 12 has to be 'reasonable' which means that it is not sufficient for a public authority to simply assert that the appropriate limit has been met. In *Alasdair Roberts and the Information Commissioner* (EA/2008/0050) the Tribunal ruled that any estimate should be "*sensible, realistic and supported by cogent evidence*". This point echoed that previously made by the Tribunal in *Randall vs The Information Commissioner* (EA/2007/0004) and forms the basis of the Commissioner's investigation.

16. In the refusal notice issued to the complainant on 20 May 2010, the MOD explained:

"...whilst information is held concerning the medical conditions for which pensions have been subsequently awarded, the underlying cause of the condition is not recorded electronically, because the information is not required to make the benefit payments. Such information may be recorded in the original claim and other case papers, but the only way to provide that data would be to manually check the thousands of claims made in 2007 and 2008. It might be helpful if I explain that in 2008-09 SPVA received over 31,700 claims in paper form..."

17. The MOD upheld the application of section 12(1) in its internal review, reaffirming its position stating:

"...the underlying cause of the condition is not required to make benefit payments and is, therefore, not held centrally, electronically or otherwise. My review has ascertained that the SPVA's fifteen-year old computer and related databases are housed on an ICL mainframe on a COBOL system that has no standard key search word facility. Any full system search would have to be developed as an ad hoc application by SPVA's service providers at a cost of at least £1,000..."

18. In its response to the Commissioner's enquiries, the MOD provided a breakdown of the tasks involved along with the estimated cost the tasks would incur. With regard to locating and retrieving the information or a document which may contain the information, the MOD described a process involving "*accessing a website, enabling the system to locate a file, adding to cart, proceeding to order file and logging out of the system*". The MOD estimated that this would take three minutes per file. The number of files considered for the purposes of the calculation was 31,700 – the number of paper disability claims received in 2008-09 – meaning a total cost of £39,625 was given by the MOD.

19. The MOD went on to explain the nature of the work involved in determining whether the information was held and estimated that the tasks involved would cost £132,083. It explained to the Commissioner that:

"Once an awards file has been retrieved it would need to be examined for the following documents:

- *S of S submission sheets – to identify the claimed conditions/contentions and overseas service*
- *Certificate of Service to confirm dates of service in Canada or identify the claimant's participation in [named operations]*
- *The release medical which, again, might record the claimant's participation in the above exercises.*

It is estimated that to make a thorough check of all the necessary paperwork to locate and identify any Agent Orange cases would take approximately ten minutes per file."

20. The MOD estimated that extracting the information once it had been located and retrieved would incur a cost of £66,041. This was due to the fact that in order to record the information the MOD would need to devise a new kind of pro forma. The MOD informed the Commissioner that *"depending on the depth of information needed to populate the pro forma it is estimated that once the details of service had been located this would take approximately a further four to five minutes per case."*
21. In answer to the Commissioner's query regarding the use of a key word search to locate the requested information the MOD explained that this was not possible due to the old War Pensions Computer System (WPCS). It stated that there was no business need to produce analytical data of the type and form requested and to attempt to do this would require the installation of an ad hoc application.
22. After considering the MOD's response, the Commissioner sought further clarification concerning what search terms had been used, how information was recorded on the relevant computer systems and further details surrounding the process for ordering files, especially related to whether they were physical paper files or stored electronically. The Commissioner also requested further clarification regarding the business purpose for the WPCS.
23. In its response the MOD stated that it would be helpful to offer the Commissioner more clarification as to precisely what information was held before answering his queries regarding the searches carried out. The MOD wrote:

*"[the system] holds information on claimants: name and address, NI Number, DOB, Service Number; the illnesses they have claimed for and when; what has been diagnosed (i.e. the medical conditions in recognised medical terms); the level of disability; and progress with claims and payments made. **It does not hold the cause of conditions/illnesses/death or the location of casual incidents, since this information is not required to process a claim** [emphasis added by the MOD]. Placing this information on the system would be a huge administrative and data storage burden that would result in little benefit for the SPVA."*

24. With regard to the searches undertaken and the business purpose of the WPCS, the MOD informed the Commissioner that:

"other than searching by full name – which will produce multiple records – there are no keyword search facilities. The Defence Analytical Service Advisors (DASA) undertake interrogations of the system to produce Management Information reports, i.e. the number of claims in a year, the number of pensioners, etc. However, as the system was created to hold details on pensions and the recognised medical conditions causing disabilities, not the causation factors, locations, theatres of deployment, missions, operations, etc., searches on the latter criteria will produce no results."

25. In answer to the Commissioner's question as to whether the MOD logged and searched for files that would contain the information electronically but held the information in the form of physical paper records the MOD confirmed this to be the case. It offered further explanation to the Commissioner stating:

"All cases have a paper file typically containing the original claim form, medical and Service material, correspondence, Tribunal papers etc. Currently the WPCS File Store holds approximately 2.2 million individual paper files, stored on 3 floors in an old mill in Nelson, Lancs... Files range in size from a few pages to several boxes. There is no method of extracting information from these files other than by manual search. The documents are not scanned in or held electronically..."

"To retrieve a single file from the archive, the individual is identified on the WPCS and the file ordered one at a time either by the computer system, or by fax and telephone".

The MOD considered that undertaking the tasks it had described to the Commissioner would involve effort and cost "well beyond the section 12 limit for compliance by a significant margin".

26. Finally, the MOD reiterated the business need for the WPCS. It stated that its main purpose was to:

“allow claims to be recorded and awards to be administered and paid. The WPCS was created in 1995 by the Department for Work and Pensions and is still administered by them. It is written in COBOL (i.e. not windows or web-based) and hosted on mainframe servers. It was cloned from the existing Disability Living Allowance database and modified to hold only very basic details on individuals with war Disability Awards or War Pensions...”.

The MOD reminded the Commissioner that the production of Management Information was only a secondary requirement of the WPCS and the system limited this function.

27. The Commissioner has considered all of the arguments put forward by the MOD in support of its application of section 12(1) to the request. While he understands the complainant's frustrations with the MOD's responses regarding the costs refusal and explanation as to how the requested information is held and stored, the Commissioner accepts the estimate provided by the MOD as reasonable.

Section 16 – Duty to provide advice and assistance

28. Section 16 of the Act states that public authorities have a duty to provide advice and assistance to applicants making, or proposing to make requests for information. This advice and assistance, with regard to requests that engage section 12, often relates to how the request could be refined to bring it under the appropriate costs limit.
29. The Commissioner sought examples of any advice and assistance that had been provided to the complainant. The MOD did not provide specific advice and assistance to the complainant at the time of the refusal notice regarding refining his request to bring it under the costs limit, nor did the MOD rectify this at the internal review stage.
30. However, in the internal review the MOD provided the complainant with details of ways in which he could attempt to obtain related information in the public domain. Details provided included those of various research papers connected with subjects similar to that of the request and, for example, the Armed Forces Compensation Scheme (AFCS) Official Statistic which is published quarterly and based on information supplied by the SPVA.
31. The MOD drew the Commissioner's attention to this advice and assistance which it had provided, along with the fact that it considered there to be no obvious way in which the request could be refined due to the nature of the information requested and how it was held and stored. The MOD told the Commissioner that *“it is difficult to ascertain what else, by way of advice and assistance, we could have provided”*.

32. The Commissioner accepts the MOD's position that, due to the nature of tasks involved in complying with the request and the way in which information is stored and recorded, there was no feasible way in which the MOD could assist the complainant in refining his request further. He also notes that the MOD did provide more general advice and assistance to the complainant about obtaining information of a related or similar nature in the public domain.

Procedural Requirements

33. Section 17(5) of the Act states that where a public authority is relying on a claim that a request should be refused on grounds of cost, it should give the applicant a notice stating that fact within 20 working days.
34. From the information provided to the Commissioner, it is evident that the MOD failed to respond within the statutory time limit. The late response was acknowledged by the MOD in the internal review. This constituted a breach of section 17(5) of the Act.

The Decision

35. 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:
- the MOD refused to comply with the request under section 12(1).
36. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- the MOD issued the refusal notice late and therefore breached section 17(5).

Steps Required

37. The Commissioner requires no steps to be taken.

Other matters

38. Although they do 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'*, the Commissioner considers that these internal reviews should be completed as promptly as possible.

39. 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 has noted that in this case it took 28 working days for an internal review to be completed, despite the publication of his guidance on the matter.

Right of Appeal

40. 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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

41. 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.
42. 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 23rd day of May 2011

Signed

**Jon Manners
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."

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

Duty to provide Advice and Assistance

Section 16(1) provides that -

"It shall be the duty of a public authority to provide advice and assistance, so 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."

Refusal of Request

Section 17(5) provides that –

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