

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 December 2013

Public Authority: Ministry of Defence

Address: Main Building
Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant has requested information about Porton Down veterans. The public authority relied on a previous 'vexatious' response to not respond to this request. The previous request was found to be vexatious by the Commissioner but the decision notice in that case was overturned by the First-tier Tribunal prior to this request being made. The Commissioner is therefore of the opinion that that the public authority was not entitled to rely on section 17(6) of the FOIA and he requires it to issue a fresh response to the complainant.
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Background

3. Two earlier requests made by this complainant were deemed to be vexatious by the public authority. The complainant complained to the

Commissioner about the latter of these requests and the Commissioner's investigation into that complaint upheld that the requests were vexatious¹.

4. The complainant subsequently appealed the Commissioner's findings. On 14 January 2013, the First-tier Tribunal [EA/2012/0134] upheld his appeal.
5. The Commissioner has appealed this ruling and that further appeal is currently awaiting a hearing by the Upper Tribunal [GIA/1384/2013].

Request and response

6. On 29 April 2013, the complainant wrote to the public authority and requested information in the following terms:

"This FOI request relates to your letter dated 12 Oct 2010 where you refer to 645 Porton Down veterans as having been paid 8356 pounds and 54 pence compensation. In the same letter you refer to 39 families of deceased Porton Down veterans as having being paid compensation giving the impression they had received the same amount (8356 pounds and 54 pence)

To clarify this situation the following two questions need a response.

(Q1) Were the families of the 39 deceased Porton veterans paid the same amount of compensation - 8356 pound and 54 pence - as the 645 veterans you made mention to?

(Q2) If not, what amount of compensation was paid to the 39 families of Porton Down veterans who you say are deceased?

(Take note I DO NOT require any names)".

7. On 30 April 2013 the public authority advised the complainant:

"To save both yourself, and, importantly, this office any further wasted time, please can I draw your attention yet again to the contents of [name removed]'s letter to you of 29 March 2011 in which it was very clearly explained that any further requests for

¹http://www.ico.org.uk/~media/documents/decisionnotices/2012/fs_50436416.ashx

information in relation to this matter will not be answered. No further correspondence will therefore be entered into on this matter”.

Scope of the case

8. The complainant contacted the Commissioner on 30 April 2013 to complain that a response to his request had not been provided by the public authority.
9. The public authority subsequently confirmed to the Commissioner that it had previously notified the complainant that any further correspondence on the subject matter of Porton Down veterans would go unanswered in accordance with section 17(6). It considered that this case fell into that category.
10. The Commissioner will therefore consider whether the public authority was entitled to rely on section 17(6), by virtue of section 14(1), to forego a response to this request.

Reasons for decision

Section 14 – vexatious requests

Section 17 – refusal of request

11. Section 14(1) of the FOIA provides that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

12. As stated above, the Commissioner has previously issued a decision notice covering two requests from this complainant about Porton Down volunteers. That previous decision notice found that the public authority had correctly relied on the exclusion at section 14(1).
13. Further to that determination, the public authority found that the request which is the subject of this decision notice was also vexatious and that it was entitled to rely on section 17(6) meaning that it did not need to issue a response.
14. In correspondence with the Commissioner, the public authority confirmed:

“MOD did not provide [the complainant] with a further formal s17 refusal notice to the [current] request. This was on the grounds that its subject matter was related to the same subject matter as

that of the 28 March 2011 request which attracted the application of s14(1) ie Porton Down Volunteers which was upheld by the IC. MOD had applied the s14(1) based on [the complainant]'s behaviour and long history of requests for information on this subject when measured against the IC's guidance on the use of s14(1)).

MOD considers that the Information Commissioner was correct to find that the first request above was vexatious and that we were there not obliged to comply with the second under 17 (6). Since [this] request is on the same subject, MOD is strongly of the view that its reliance on a section 14(1) claim is legitimate. This being the case we also consider that under 17(6) there is no obligation on the Department to provide [the complainant] with a formal refusal notice to that effect".

15. The issue at stake here is not whether this particular request itself is vexatious, rather it is to determine whether or not the public authority is entitled to rely on its position that it does not need to provide a notice in response to this request by virtue of section 17(6) of the FOIA.

16. Section 17(5) of the FOIA 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.

17. Section 17(6) of the FOIA states that a public authority is not required to provide a refusal notice where:

- (a) the public authority is relying on a claim that section 14 applies,*
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and*
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.*

18. In this case, the public authority did not formally respond to the request, only providing a brief emailed reply on 30 April 2013 saying that it was relying on previous correspondence and it would not respond to any further requests on this subject matter. The public authority did not say in its reply that it was treating the complainant's latest request as vexatious. It has informed the Commissioner that, in accordance with section 17(6), it considers that it would be unreasonable to expect it to

continue to give further notices of the application of section 14(1) to the complainant for requests concerning Porton Down veterans.

19. The Commissioner notes that, at the time of the request, the First-tier Tribunal had already determined that the previous requests were not vexatious. In his opinion, it therefore follows that it cannot be 'reasonable in all the circumstances' for the public authority to rely on a position that has been overruled by Tribunal.
20. The Commissioner therefore concludes that section 17(6) has not been appropriately applied in this case and the public authority must issue a fresh response. If it wishes to do so, it is of course open to the public authority to state that it finds this request to be 'vexatious' and to provide the appropriate notice to the complainant.

Right of appeal

21. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

22. 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.
23. 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

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF