

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 February 2014

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

Decision (including any steps ordered)

1. The complainant requested a copy of the nominal roll of recipients of the Kenya Campaign Medal of 1968. The public authority withheld the information on the basis of the exemption at section 40(2) FOIA.
2. The Commissioner's decision is that the public authority is entitled to withhold the withheld information on the basis of section 40(2).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 24 February 2013, the complainant wrote to the public authority and requested; *'nominal rolls of United Kingdom personnel seconded for services with Kenya forces...'* However, following his complaint to the Commissioner, he claimed that his request was actually for:

*'a copy of the nominal roll of recipients of the Kenya Campaign Medal of 1968.'*¹
 5. The public authority responded on 26 March 2013. It explained that nominal rolls contain personal information and claimed that the
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¹ The public authority did not challenge the claim that this narrower request was the request that the complainant had actually made on 24 February because it did not make any difference to the authority's position with regards the application of the exemption.

information requested was exempt from disclosure on the basis of section 40(2) FOIA.

6. The complainant requested an internal review on 1 May 2013.
7. The public authority wrote to the complainant on 4 September 2013. It upheld the original decision to withhold the information requested.

Scope of the case

8. The complainant contacted the Commissioner on 30 October 2013 to complain about the way his request for information had been handled.
9. He challenged the application of section 40(2) on the following grounds:
'.....it is effectively impossible to identify anyone (to the extent of being able to discover his first name, current or previous address, age, place of birth, or marital status, for example) using the information (a surname, initials, rank, and service number) typically contained in a medal roll from fifty years ago, no matter what additional information might be likely to come into the possession of someone holding this data. That being the case, I submit that there can be no justification in withholding the Kenya Campaign Medal Roll from public scrutiny under Section 40.....'
10. The scope of the Commissioner's investigation therefore was to consider whether the public authority was entitled to withhold *a copy of the nominal roll of recipients of the Kenya Campaign Medal 1968* (the disputed information) on the basis of section 40(2).

Reasons for decision

The disputed information

11. In view of the volume of information within the scope of the request, the public authority provided the Commissioner (for the purpose of his investigation) copies of two *medal index cards* which contain the type of information within scope. Information on the cards includes, as the complainant has mentioned, the surname, initials, rank and service number of Service personnel. The cards also include the Corps/Regiment, the theatre of operation, medal awarded and date of award. The public authority explained that in some cases, details of other awards are also listed.

Section 40(2)

12. Information is exempt from disclosure on the basis of section 40(2) if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in section 40(3) is satisfied.

13. Personal data is defined in section 1 of the DPA as follows:

'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into possession of, the data controller; and includes any expression of opinion about the individual and indication of the intentions of the data controller or any person in respect of the individual.'

Is the disputed information personal data?

14. The public authority explained that the disputed information relates to named individuals who were recipients of the Kenya Campaign Medal (KCM) of 1968. The information has not been published in line with the long-standing practice of all medals of this type (i.e. Theatre Campaign medals). The information, therefore, constitutes personal data as defined by section 1 of the DPA.

15. The Commissioner is satisfied that the disputed information relates to individuals who can be identified from it or in conjunction with other information likely to be accessible to someone who wishes to identify the data subjects. The Commissioner is satisfied that an individual could be identified from their surname, initials, rank and service number alone or in conjunction with other accessible information about the individual. Being able to identify an individual does not require that the marital status, current and previous address, place of birth etc about that individual must be known. Surnames and initials alone could be adequate to identify someone. The Commissioner therefore accepts that the disputed information constitutes personal data as defined by section 1 of the DPA.

Would the disclosure of the disputed information contravene any of the data protection principles?

16. As mentioned, for section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

17. The first data protection principle states:

'Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless –

At least one of the conditions in schedule 2 [DPA] is met....'

18. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
 - The reasonable expectations of the individual in terms of what would happen to their personal data,
 - The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed?
19. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is an overriding legitimate interests in disclosure to the public.
20. With regards to the reasonable expectation of the data subjects, the public authority explained that the individuals have not consented to disclosure. It estimated that there are 60 – 70 medal index cards held for individuals who were awarded the KCM issued by the Army Medal Office (now part of the public authority), on behalf of the Kenyan Government in the late 1960s to early 1970s. Given the long-standing practice of not publishing this type of medal information, recipients of campaign medals have no expectation that the public authority would disclose the disputed information without consent. It would be impractical to try and track down 60 – 70 individuals named on individual medal cards to seek their consent in each case. The Departmental policy on the disclosure of recent medal rolls is based on the assumption that the individual is living. In this particular case, as the individuals would have served in the 1960s there is an expectation that they are still alive. Unless proof of death is supplied by the requester, the individual's personal information would be protected. In cases where proof of death can be supplied, then the disputed information can be provided with the consent of the next of kin. After a period of 25 years following death, the consent of the next of kin is no longer required. This policy also reflects the public authority's duty of care towards the next of kin.
21. With regards to the consequences of disclosure, the public authority explained that it was concerned that if the disputed information was released, it could be used (ie by medal collectors) to trace/approach the individual or family members about purchasing what is a rare medal. There is evidence that this has occurred in the past. There is also the

possibility that individuals have not disclosed to their friends or families that they served in any particular campaign during a specific period and the public authority must therefore respect the right to privacy of those individuals.

22. The public authority also explained that similar information contained in the medal index cards relating to deployment to a specific theatre of operations is also contained within the Military Records of Service which fall under its publication scheme. However, the position it has adopted for request of release of the disputed information is fully consistent with the public authority's policy for the broader set of information it holds about individual Service careers.
23. The Commissioner accepts that under the circumstances described by the public authority, the disputed information is likely to carry a reasonable expectation that it would not be disclosed to the public at large without the consent of the data subject, or their next kin (if proof of death has been established), or 25 years following their death. There is also the possibility that in some cases, disclosure could be distressing by virtue of the intrusion into the family and/or private life of the data subjects. The Commissioner does not consider that there is an overriding legitimate interest in disclosing the disputing information to the public regardless of the prejudice to the rights of the data subjects in this case. Although the complainant has suggested that there is a public interest in opening the disputed information to public scrutiny, there is no requirement to carry out a public interest in relation to the exemption at section 40(2). It is an absolute exemption. The Commissioner only has to consider whether in the circumstances of this case, there is a legitimate interest in disclosing the information to the public which overrides the rights and freedoms of the data subjects. He does not consider that there is.
24. The Commissioner is satisfied that the disclosing the disputed information would be unfair and in consequently in breach of the first data protection principle.
25. The Commissioner therefore finds that the public authority is entitled to withhold the disputed information on the basis of the exemption at section 40(2).

Other Matters

26. The FOIA does not stipulate a time limit for public authorities to issue internal reviews. However, as a matter of good practice, the Commissioner considers that a public authority should take no more

than 20 working days to issue an internal review and in exceptional circumstances, 40 working days.

27. The Commissioner therefore wishes to record his concern that it took the public authority over 20 working days to issue the outcome of its internal review to the complainant. He expects the public authority to complete internal reviews of responses to requests for information more promptly in future.

Right of appeal

28. 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

29. 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.
30. 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

Alexander Ganotis
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