

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 July 2016

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

Decision (including any steps ordered)

1. The complainant has requested correspondence on the involvement of the Royal New Zealand Navy in the British Nuclear testing programmes of 1957 and 1958 with respect to radiation film badges worn by crewmen.
2. The Commissioner's decision is that the Ministry of Defence ('the MoD') has appropriately relied on section 14(1).
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 8 January 2016, the complainant wrote to the MoD and requested information in the following terms:

"'The Involvement of the Royal New Zealand Navy in the British Nuclear testing programmes of 1957 and 1958.'

On page 23 of the above publication the last paragraph reads:

'Apparently before each nuclear test the crewmen were issued with a new film badge and after the test they would be collected and sent for processing on HMS NARVIK. However, during Operation Grapple most film badges including those from the New Zealand frigates were not processed, principally because of problems with storing the chemicals needed for processing.'

Can you please supply me with copies of letters from HMS NARVIK stating this fact?"

5. The MoD responded on 3 February 2016. It stated that it considered the request to be vexatious under section 14(1) FOIA and consequently would not be complying with the request.
6. Following an internal review the MoD wrote to the complainant on 9 March 2016 with a comprehensive review upholding its decision to apply section 14(1).

Scope of the case

7. The complainant contacted the Commissioner on 14 March 2016 to complain about the way his request for information had been handled. The complainant explained to the Commissioner the history of his requests to the MoD. He considers that:

"My requests were forced on me by uncooperative MoD officials refusing to answer questions, furthermore, my request was for a **'letter'** not radiation film badges or levels. The Ministry of defence are attempting to block any requests that I make for information relating to the radiation levels at Christmas Island in 1958."

8. The Commissioner considers that the scope of his investigation is to determine whether the exemption at section 14(1) has been appropriately applied to the request.

Reasons for decision

9. Section 14 FOIA provides that a public authority is not obliged to comply with an information request that is vexatious.
10. The Upper Tribunal in *Information Commissioner and Devon County Council vs Mr Alan Dransfield* (GIA/3037/2011) emphasised the importance of adopting a holistic approach to the determination of whether or not a request is vexatious.
11. The judgement proposed four broad issues that public authorities should have regard to when considering whether FOI requests are vexatious:
 - (i) the burden of meeting the request;
 - (ii) the motive of the requester;

- (iii) the value or serious purpose of requests; and
 - (iv) any harassment or distress caused.
12. The Commissioner's guidance on vexatious requests suggests that the key question a public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. In addition, where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
 13. The Commissioner is cognisant of his decision notice FS50419535 dated 15 February 2012 concerning the same parties, the same topic and the same reliance on section 14(1).¹
 14. The MoD acknowledges that the request in this case is not particularly onerous in terms of the burden it would create in isolation. However, prior to the vexatious determination in 2012 the MOD had expended a considerable amount of resource in responding to the complainant's requests concerning the subject of radiation film badges.
 15. The MoD provided the Commissioner with a summary of the 150 requests made by the complainant in relation to, or in support of his theories on, events that happened in 1958/9. These date from April 2005 to date, with 47 requests received since the decision notice of February 2012.
 16. The Commissioner reiterates his considerations in decision notice FS50419535. The obsessive pattern of requests has persisted. The MoD advised the Commissioner that the complainant has exhausted enquiries in respect of radiation film badges. It added that:

"....his request pertains to historic information and no new relevant information has been added to the Atomic Weapons Establishment's (AWE) archives, where information on this subject is stored, there is no reason to believe this has changed."

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2012/702466/fs_50419535.pdf

17. The MoD explained that the complainant has "monopolised" the officers working on information rights over several years:

"...absorbing more of their resource than any other single requester by quite some margin, this is not including a team of staff at AWE and other Subject Matter Experts."

18. The Commissioner notes that the complainant has already made a further request on the same topic pending the Commissioner's decision on the vexatious determination of the request in this case.

19. The Commissioner concurs with paragraph 10 of the MoD's internal review which, notwithstanding the disproportionate and unreasonable history of requests, explains why this request is vexatious in that:

"...this latest request, the terms of which are essentially limited to finding information to reiterate information already in your possession which you have quoted in the request,"

20. The Commissioner is aware that the content and focus of the complainant's requests address serious matters from both his personal interest and in the public interest. However, he does not accept that the FOIA was enacted to facilitate persistent and repetitive correspondence in this manner.

21. The complainant referred the Commissioner to a quotation from the judgement in June 1998 of *McGinley and Egan v the United Kingdom* at the European Court of Human Rights:

"The Court recalls that the Government have asserted that there was no pressing national security reason for retaining information relating to radiation levels on Christmas Island following the tests."

The complainant appears to interpret this statement as applying to any related information he may choose to request. The Commissioner wishes to explain that the vexatious determination of a request is unrelated to the Court's statement.

22. The Commissioner notes that the complainant considers the volume of requests he has submitted has been as a result of the MoD's responses to his requests. The Commissioner does not take this view. He also has seen no evidence to support the complainant's assertion that the MoD is "blocking" his requests for information.

23. Consequently the Commissioner finds that the requests could be fairly characterised as obsessive. His view is that the complainant is unlikely to achieve satisfaction from his requests and consequently will continue to pursue matters by persistently contacting the MoD. He therefore finds

that in the circumstances of this case the MoD was correct to refuse to comply with the request in reliance of section 14(1).

Right of appeal

24. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

25. 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.
26. 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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