

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 June 2018

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

#### Decision (including any steps ordered)

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1. The complainant has requested information on the inaugural meeting of the Advisory Military Sub Committee ('the AMSC') held on 5 December 2012.
2. The Commissioner's decision is that the Ministry of Defence ('the MoD') has correctly engaged the exemption at section 35(1)(a) but she considers that the public interest in disclosure outweighs the public interest in maintaining the exemption.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the requested information.
4. 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.

#### Request and response

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5. On 23 January 2017 the complainant wrote to the MoD and requested information in the following terms:

*"I have now had time to carry out an in depth evaluation of the Partially Name Redacted Minutes of the AMSC Meeting in MoD Main Building on*

*29th August 2013 which were released to me as a result of my GRC First Tier Tribunal Decision.*

*This document refers to an earlier Inaugural Meeting of AMSC which had been held sometime in December 2012. Would you please be kind enough to furnish me with a partially name redacted set of minutes for that meeting."*

6. The MoD responded on 20 February 2017. It stated that the information was held but was withheld in reliance of section 35(1)(a) FOIA pending consideration of the public interest test. A further response was provided on 7 April 2017 advising that the information which the MOD had initially considered to be within the scope of his request had now been deemed to fall outside the scope as the information was not 'finalised'. Consequently the MoD response was that the requested information was not held.
7. Following an internal review the MoD wrote to the complainant on 15 June 2017. It stated that a copy of draft minutes held should have been considered in the scope of the request, however, in any event, the information was withheld under section 35(1)(a) with the public interest favouring maintaining the exemption.

## **Background**

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8. The Committee on the Grant of Honours Decorations and Medals ('HDC') is the channel by which proposed changes in medal policy may be submitted to Her Majesty The Queen. A number of veterans groups and individuals have been lobbying the Ministry of Defence and the Government about perceived injustices in medallic recognition, in some cases for many years. Some are in relation to specific actions or campaigns that have not been recognised. Other groups feel unfairly excluded by qualifying criteria for campaigns that were recognised. There are also campaigns to recognise military service more generally, notably for a National Defence Medal (NDM). Sir John Holmes conducted a review of the rules, principles and processes for medallic recognition. The Review was conducted between 1 May and 29 June 2012. The team took a wide range of evidence from individuals and campaign groups with the outcome published in July 2012 as the "Military Medals Review". The Review recommended the establishment of a standing sub-committee charged with looking more deeply at the military issues and making recommendations to the full committee. The Committee on the Grant of Honours, Decorations and Medals Advisory Military Sub-Committee ('AMSC') was set up to provide advice on medallic recognition and policy to the HDC.

9. The complainant previously requested information from the Ministry of Defence ('MoD') comprising the minutes of a meeting of the AMSC on 29 August 2013. The request was refused and following his complaint to the Commissioner, who did not uphold his complaint, he appealed to the First-Tier Information Tribunal. On 30 August 2016 the Tribunal ordered disclosure of a redacted copy of the requested Minutes which it considered to be in the public interest "in light of the aims and purposes of the AMSC."

## Scope of the case

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10. The complainant contacted the Commissioner on 17 June 2017 to complain about the way his request for information had been handled. He explained the reason for his request was to clarify concerns regarding information which had been disclosed as a result of his appeal to the First Tier Tribunal in respect of his request for other AMSC minutes.
11. The Commissioner considers the scope of her investigation to be the MoD's application of section 35 to the information held.

## Reasons for decision

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12. Section 35(1)(a) of FOIA states:

"Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

(a) the formulation or development of government policy."

13. The MoD explained that the information contained in the draft minutes of the first AMSC contains the committee's discussions in respect of Military medal claims provided to the HD Committee. The HD Committee provides the mechanism for discussion of all matters relating to UK honours and awards. It further explained that the HD Committee is the only channel through which proposals for additions to, or changes in, the honours system, including proposals affecting specifically Armed Forces awards, may be submitted to the Sovereign. The MOD therefore argued that section 35(1)(a) was engaged because it related to formulation of government policy in relation to military medals.
14. The MoD explained its view to the Commissioner that:

"The disclosure of discussions at the draft AMSC meetings would harm the medal policy making process as it would restrict the panel's space to fully consider and candidly record all the relevant issues of any given

claim, both for and against. The disclosure of the committee minutes would impair the nature and quality of advice which the HD relies on in reaching its own position on the formulation of military medal policy.”

15. To be exempt from disclosure in reliance of this exemption, the information must relate to the formulation or development of government policy. The Commissioner understands these terms to broadly refer to the design of new policy, and the process of reviewing or improving existing policy. She accepts that the requested information comprises information relating to the formulation or development of policy in regard to the award of military medals. She is therefore satisfied that the exemption is engaged. Section 35 is subject to the public interest and the Commissioner will now proceed to consider this.

### **Public interest test**

16. Section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 35(1)(a) outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of maintaining the exemption**

17. The MoD also stressed that the minutes comprising the withheld information are in draft format and therefore not a full and accurate reflection of the decisions made, which could be misleading for the public.
18. The MoD explained that the decisions taken on the medal claims considered at the AMSC meeting of 5 December 2012 were publically announced on 26 February 2013<sup>1</sup> and much of the background information for each medal claim was also published on 27 July 2014<sup>2</sup>.
19. Notwithstanding this, the MoD argues that in many instances, such as the National Defence Medal ('NDM'), campaigners will revisit these claims and will continue to lobby for the award of a medal. The MoD

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<sup>1</sup> <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06564>

<sup>2</sup> <http://www.parliament.uk/business/publications/business-papers/commons/deposited-papers/?fd=2014-07-28&td=2014-07-29#toggle-1168>

provided the Commissioner with an example of the House of Lords statement in respect of the NDM, that "this issue might usefully be reconsidered in the future".

20. The MoD also noted that for a number of the medal claims, for example the South Atlantic Medal, the claim is for an extension to the qualifying period and therefore the "risk and rigour" surrounding the campaign discussed at the AMSC will be revisited again if further claims be made.
21. Following from this the MoD concludes that although decisions on medal claims considered by the AMSC have already been announced, the policy issues around the claims should be considered to be 'live'. As a consequence the MoD considers that the information should not be disclosed in order to:

"protect the safe space for policy making process and the AMSC to reconvene, should there be a requirement, to discuss any future medal claims and revisit medal policy decisions already taken, which may continue to be challenged."

### **Public interest arguments in favour of disclosure**

22. The complainant explained his views to the Commissioner as follows:

"Given the level of seniority of those attending, it is quite frankly beyond belief that no formal agreed minutes were produced with respect to such an important subject.

We do know that a high degree of unfairness was in place from our work reading the redacted minutes of the AMSC minutes which we were able to see."

23. The complainant continued to explain that:

"We have identified that a large number of medal submissions twenty one in number were never fully evaluated by the Medals Review Team and a number of those were rejected out of hand. So why was this carried out and upon whose authority. There are a number of concerns within our evaluation of those minutes which can only be resolved through sight of the Inaugural Meeting Minutes."

### **The Commissioner's view**

24. The Commissioner agrees that there is a need for a safe space to develop policy and debate live issues away from external interference and distraction. The need for such a safe space will be strongest when the issue is still live. Once a decision has been made a safe space for deliberation will no longer be required and this argument will carry little weight. The timing of the request is therefore an important factor. This

was confirmed by the Information Tribunal in *DBERR v Information Commissioner and Friends of the Earth* (EA/2007/0072, 29 April 2008):

“This public interest is strongest at the early stages of policy formulation and development. The weight of this interest will diminish over time as policy becomes more certain and a decision as to policy is made public.”

25. In this case the Commissioner is not convinced that the matter is still 'live'. The Review concluded in July 2014 and the decisions taken were published. Therefore although the MoD has argued that the medal claims may be raised again or might be usefully reconsidered in the future this does not mean that the matter is 'live' in respect of the safe space arguments provided. She has difficulty accepting that disclosure would restrict the panel in expressing their views with candour or would result in impairment of the nature or quality of advice given. She would not expect such a panel to be easily deterred from expressing their views by the possibility of future disclosure.
26. The Commissioner accepts that disclosure of the minutes could add further detail to the information that is already in the public domain surrounding the AMSC's discussions of the various medal claims. She notes that the minutes contain a significant amount of background information regarding the Review which is already in the public domain.
27. The Commissioner considers that disclosure of the draft minutes could also reassure the public of the rigour of the AMSC's discussions; or conversely, may confirm to the public, the complainant's view that there was a lack of rigorous evaluation of the submissions. She makes no comment on whether disclosure would provide answers to the questions posed by the complainant.
28. The Commissioner notes the MoD's comments in respect of the draft nature of the information. She also notes the complainant's view that formal agreed minutes must have been created. The Commissioner can understand why the complainant would have expected the MoD to hold an agreed copy of the minutes but she accepts the MoD's assertion that it only holds a draft copy of the same. That said, she notes that the MoD has advised that the draft form is "not a full and accurate reflection of the decisions made". She is unsure why the draft minutes would be inaccurate, however, she accepts that this may be the case. She does not accept that the public would be misled by disclosure of a document clearly marked "DRAFT".
29. On balance the Commissioner has determined that the public interest in disclosure is more compelling than the public interest in maintaining the exemption. In reaching this conclusion she has been persuaded that clarification of the AMSC's considerations in respect of reviewing military

medals has been a matter of public concern for a prolonged period of time and holds significant, greater weight in the balance of the public interest test. Consequently she finds that the MoD should disclose the requested information.

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## Right of appeal

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30. 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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

31. 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.
32. 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** .....

**Gerrard Tracey**  
**Principal Advisor**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**