

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2020

Public Authority: The Ministry of Defence
Address: Main Building
Ministry of Defence
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant submitted a request to the Ministry of Defence (MOD) seeking the home addresses of four individuals who served with the RAF during World War Two. The MOD withheld this information on the basis of section 41(1) (information provided in confidence) of FOIA. The Commissioner is satisfied that the information is exempt from disclosure on the basis of section 41(1).
2. The Commissioner does not require any steps to be taken.

Request and response

3. The complainant submitted the following request to the MOD 29 May 2019:

'I am seeking to find the war time addresses of the enclosed list of Palestinian Jews/Israeli SOE agents who died and are commemorated by the CWGC. [Commonwealth War Graves Commission] The CWGC will only accept official documents showing these addresses of these deceased personnel killed in action in WW2 in the British Forces, before adding these addresses to their commemoration pages.

Are you permitted to search for the records of these named (sheet attached) [six names were included] and photocopy for me JUST the

wartime addresses of these several men and women, obviously on the same page showing their name? I can then forward these to the CWGC so that can add the addresses to the commemoration page.'

4. The Army Personnel Centre of the MOD responded on 31 May 2019 and explained that no records for the individuals in question could be located within the British Army records. The response explained why this was likely to be the case and also explained that for two of the individuals the RAF may hold information about them and provided contact details for the RAF's disclosure team.

5. The complainant submitted the following request to the RAF's disclosure team on 7 June 2019:

'Please will you look at the letter to me from Army Personnel and see if you can help.

Bardicev, Grunhut, Reik and Reisz were WAAF/RAF and all on the CWGC website. I am not asking for a copy of their records – though that would be wonderful for our museum archives – but only for a PHOTOCOPY of the page which shows their names and their addresses and parents names.'

6. The MOD responded on 11 June 2019 and explained that the information which had been requested was considered to be exempt from disclosure on the basis of section 41(1) (information provided in confidence) of FOIA.
7. The complainant contacted the MOD on 15 June 2019 in order to ask for an internal review of this response.
8. The MOD informed him of the outcome of the internal review on 9 July 2019. The MOD noted that it appeared to be the case that the complainant had refined his request at the internal review stage to exclude the names of the individuals' parents. In any event, the MOD explained why the names of both parents was unlikely to be held. With regard to the home addresses of the four individuals who served in the RAF during the Second World War, the MOD confirmed that it considered this information be exempt from disclosure on the basis of section 41(1) of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 25 October 2019 in order to complain about the MOD's handling of his request. More specifically he disputed the MOD's refusal to provide him with the home addresses and the names of the parents of the individuals listed in his request of 7 June 2019. For clarity the service personnel in question are: 769448 Bardicev, 769470 Grunhut, 2992503 Reik and 769472 Reisz. The complainant suggested that he would be content with provision of a partial address, ie town and country.
10. During the course of the Commissioner's investigation the MOD explained that a search of the service records for the relevant individuals established the names of the parents are not held. The MOD noted that it had explained to the complainant that service personnel are required to supply a 'next of kin' (NOK) contact which does not necessarily have to be a parent.
11. Therefore, this decision notice focuses on whether the home addresses of the service personnel are exempt from disclosure on the basis of section 41(1) of FOIA.

Reasons for decision

Section 41 – Information provided in confidence

12. Section 41 of FOIA states that:

'(1) Information is exempt information if—

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'

13. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party **and** the disclosure of that information has to constitute an actionable breach of confidence.
14. With regard to whether disclosure would constitute an actionable breach of confidence the Commissioner follows the test of confidence set out in *Coco v A N Clark (Engineering) Ltd [1968] FSR 415*. This judgment

suggested that the following three limbed test should be considered in order to determine if information was confidential:

- whether the information had the necessary quality of confidence;
 - whether the information was imparted in circumstances importing an obligation of confidence; and,
 - whether an unauthorised use of the information would result in detriment to the confider.
15. However, further case law has argued that where the information is of a personal nature it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure.

The MOD's position

16. The MOD explained that the home addresses of the service personnel was provided by them on enlistment and therefore meets the requirements of section 41(1)(a).
17. The MOD argued that this information remained confidential because it was provided with the expectation that it would be treated confidentially. It argued that it had an enduring obligation to respect that confidentiality even after death of the Serviceman or woman. The MOD argued that a duty of confidence is owed by it not only to the individual who served in the Armed Forces but also their family members, to whom information may relate, such as a home address.
18. The MOD argued that even at a 75 year point, disclosure of this type of information to a third party could constitute an actionable breach of confidence, ie from the NOK and/or family members. The MOD explained that it had been criticised in the past by the families of deceased Service personnel for releasing details of their loved ones' Service careers to general enquiries where this has allowed these individuals access to information which the family felt was private and should not have been made public without their prior knowledge.
19. The MOD explained that as result of these complaints it was all too well aware of the importance Service families place upon their privacy and it seeks to protect Service families from intrusion and distress. It explained that although the risk of harm in this case may seem very remote, it was unable to assess the actual impact it would have. Therefore, the MOD explained that until the records of this period can be fully regarded as 'historic' rather than 'personal', the department was obliged to err on the side of caution and not release sensitive details from them. This included the disclosure of partial home addresses.

20. The MOD noted that the principle that individuals have an expectation of confidence in such circumstances was upheld by the Commissioner in a previous decision notice.¹
21. The MOD noted that the complainant had explained that he wished to be provided with the information in order to enable CWGC to update entries for these individuals on their memorial website. However, the MOD explained that the CWGC had advised it that it fully supported the position taken. The MOD explained that the CWGC would only populate their memorial pages with information obtained from the relatives of a casualty and with the consent of the casualty's family. The MOD explained that the family can apply for a copy of the Service record and would be likely to receive the home address and NOK details.
22. Finally, the MOD explained that the complainant had provided it with a list of service personnel and details of their home addresses which he had explained was sourced from the Izkor website, which was established by the Government of Israel, Ministry of Defence to commemorate fallen Israeli soldiers. The MOD informed the Commissioner that the service records it held did not appear to match the address details identified by the complainant.

The complainant's position

23. The complainant argued that the disclosure of the town/village and country of the service personnel would have no kind of security or privacy implications today as surviving relatives had long ago moved from the precise address or died. The complainant argued that not revealing information about where these individuals came from implied some intention to deny inclusivity and diversity about the men and women who died fighting for the Allied cause and somehow wishing to hide it.
24. The complainant noted that he had sent the CWGC original cuttings from the Jewish Chronicle newspaper of 11/1/1946 giving all the addresses and the same information from the Israeli MOD. He therefore noted that this information was in the public domain. He also noted that the address of Sgt Grunhut's was noted by the CWGC.²

¹ [FS50229110](#)

² The Commissioner notes that the CWGC appears to confirm his home town as 'Haifa, Israel' but no further address details are given.

The Commissioner's position

25. The Commissioner is satisfied that section 41(1)(a) is met as the information regarding the service personnel's home addresses at enlistment was clearly provided to the MOD.
26. In terms of section 41(1)(b), the Commissioner accepts that the information in question is relatively innocuous particularly when taking into account the passage of time since the information was provided to the MOD. However, the Commissioner is conscious of the comments of Eady J in a case involving a request to the Home Office to which section 41 of FOIA was applied:

'... [it was] beyond question that some information, especially in the context of personal matters, may be treated as private, even though it is quite trivial in nature and not such as to have about it any inherent "quality of confidence".³

27. The Commissioner is also conscious of the Tribunal's findings in the case of *S v the Information Commissioner and the General Register Office* (EA/2006/0030). The complainant in that case had argued that the information requested was trivial, but the Tribunal rejected this. It commented in conclusion, and in general terms, that *'Information cannot be said to be trivial if it is of importance to the person whose privacy has been infringed.'* (para 36).⁴
28. Therefore, taking into account these decisions the Commissioner is satisfied that the information does have the quality of confidence to meet the first limb of the *Coco* test. That is to say, in the Commissioner's view it is reasonable to assume that the service personnel's home addresses would have been of personal significance to them when they were provided.
29. With regard to the second limb, the Commissioner accepts that the MOD has an implied duty of confidence to the families of service personnel to maintain the confidentiality of information contained in a service record.

³ The Home Office v British Union for the Abolition of Vivisection and Information Commissioner [2008] EWCH 892 (QB) 25 April 2008.

⁴

http://www.informationtribunal.gov.uk/Documents/decisions/Svinformationcommissioner_9_may2007_.pdf

The only exception to this is information which the MOD has publicly stated that it will disclose under the publication scheme.⁵

30. Finally, the Commissioner is also satisfied that the requested information relates to private domestic information about the service personnel in question and that unauthorised disclosure of such private information would, of itself, give rise to a detriment to the service personnel and their families. In reaching this finding the Commissioner acknowledges the complainant's argument that the withheld information has no privacy implications today as surviving relatives have long ago moved from the precise address or died. Nevertheless, in light of previous cases where the MOD has faced criticism from the families of service personnel for disclosing information to general enquiries, the Commissioner considers it appropriate for the MOD to err on the side of caution and rely on section 41(1) of FOIA, despite the risk of any detriment being remote. Furthermore, as noted above at paragraph 15 case law has argued that where the information is of a personal nature, as in this request, it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure.
31. In light of the above, the Commissioner is satisfied that the withheld information was obtained by the MOD from another person and that disclosure of that information would amount to an actionable breach of confidence. This finding extends to the disclosure of partial addresses of the service personnel in question.
32. The Commissioner has considered whether there is any overriding public interest in the disclosure of the home addresses that would justify an actionable breach of confidence. She notes that the complainant wishes to be provided with the information so that it can be shared with the CWGC so that they can update their records. However, based upon the MOD's submissions to the Commissioner, which were confirmed by her own correspondence with the CWGC, it will not use the information provided by the complainant to update its records.
33. In contrast the Commissioner believes that there is a general and very compelling public interest in protecting confidences even if the information which is confided is relatively innocuous and was obtained many decades ago. The Commissioner also believes there is a public interest in ensuring that an employee can give their employer all necessary private or domestic information about themselves with the

⁵ Further details of the type of information about deceased service personnel available under the publication scheme are available [here](#).

certainty that it will be held by the employer in confidence and only used for specific purposes that are within an employee's reasonable expectations.

34. Taking the above into account, the Commissioner has concluded that there is no compelling argument in support of a public interest defence against an action for breach of confidence.
35. The Commissioner has therefore concluded that home addresses of the service personnel in question are exempt from disclosure on the basis of section 41(1) of FOIA.

Right of appeal

36. 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@justice.gov.uk

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

37. 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.
38. 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

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF