

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 October 2022

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

Decision (including any steps ordered)

1. The complainant requested from the Ministry of Defence ("MOD") the number of military personnel currently deployed to Borders General Hospital and other specific information relating to such personnel. The MOD provided some of the information but stated that it did not hold the rest of the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the MOD holds no further recorded information relevant to the complainant's request and has complied with section 1(1) of FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 11 November 2021, the complainant made a request to the MOD for information under FOIA in the following terms:

"I request the following under the freedom of information act 2000:

A) Please disclose any recorded information that would show the current number of all military medical personnel currently deployed to Borders General Hospital along with when they were deployed, how long they will be stationed there, to when they will be recalled.

B) Please also disclose any recorded information that would show if RAMC personnel have training in issuing emergency baptism of the Christian faith to civilians please disclose as well any information that would show civilians within their care have the right to request the

presence of a Catholic Army Chaplain to administer the Sacrament of Extreme Unction in the event for whatever reason, they should suddenly need one along with any provisions that would show the rights for cross dressing civilians to select which gender should treat them.

C) Please disclose if any recorded complaints that have been raised against such deployed personnel at the hospital detailing attempts or actual incidences of unconsented to withdrawal of treatment from any person with Coronavirus or any other medical disease, injury or condition resulting in death.”

5. The MOD responded on 10 December 2021 providing the information requested under Part A of the request and stating that it did not hold any information requested in Parts B and C of the request.
6. On 10 December 2021, the complainant requested an internal review, and, on 24 January 2022, the MOD upheld its original decision regarding Parts B and C of the request.

Scope of the case

7. The complainant contacted the Commissioner on 30 January 2022 to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of his investigation is to determine if the MOD has correctly refused to provide the information requested in Part B and Part C of the complainant’s request under section 1 of FOIA.

Reasons for decision

Section 1 FOIA - determining whether information is held

9. Section 1(1) of the FOIA states:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

If a public authority does not hold recorded information that falls within the scope of the request, the Commissioner cannot require the authority to take any further action.

10. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e. the balance of probabilities. In order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request.
11. Accordingly, the investigation will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered by the MOD as to why the information is not held.
12. The Commissioner will also consider any arguments put forward by the complainant as to why the information is likely to be held (as opposed to why it ought to be held). Finally, the Commissioner will consider whether there are any further steps the public authority could be required to take if the complaint were upheld.

The complainant's position

13. The complainant did not provide the Commissioner with any evidence in support of the complaint.
14. The complainant explained that they were acting on claims by unnamed third parties of alleged activities in medical facilities in the Scottish Borders during lockdown.

The MOD's position

15. The MOD has explained that it does not hold any information in respect of Part B and C of the request.
16. In respect of Part B "recorded information that would show if RAMC personnel have training in issuing emergency baptism of the Christian faith to civilians" the MOD explained that the Military Medic to Ward training course undergone by the Royal Army Medical Corps ("RAMC") does not have a requirement for personnel to be trained on the administration of emergency baptisms and accordingly, the RAMC would not carry out such baptisms and no such baptisms have been recorded. Accordingly, this information is not held by the MOD.
17. In respect of Part B "any information that would show civilians within their care have the right to request the presence of a Catholic Army Chaplain to administer the Sacrament of Extreme Unction in the event for whatever reason, they should suddenly need one" the MOD confirmed that it held no such information and advised that any emergency requests for the Sacrament of Extreme Unction (Anointing of the Sick) would likely have been passed to the Chaplaincy Centre at Borders General Hospital if there was an emergency and the individual's own priest was unavailable to perform the rite. The MOD further

confirmed that there had been no deployment of, or requests to deploy, military chaplains to Borders General Hospital.

18. In respect of Part B "any provisions that would show the rights for cross dressing civilians to select which gender should treat them". The MOD again confirmed that it did not hold any such information. The MOD explained that it had no policies that specifically reference the options available to "cross dressing civilians" when undergoing medical treatment by RAMC personnel. It went on to explain that its personnel deployed at Borders General Hospital would be working under NHS guidelines as regards such matters. The MOD signposted the complainant to the appropriate website to research the relevant NHS guidance.
19. As regards Part C the MOD confirmed it had not received any notification of complaints made against RAMC personnel during their deployment to Borders General Hospital that related to their withdrawal of treatment from an individual who then died as a result. The MOD explained that any complaints relating to patient care provided at General Borders Hospital would likely have been reported directly to the hospital or NHS Borders and explained that details of the NHS Borders complaints procedure is available on the NHS Borders website.

The Commissioner's view

20. The Commissioner has carefully considered the points made by the complainant and the MOD.
21. The Commissioner appreciates that the complainant has concerns about hospital treatments in the Scottish Borders. However, the Commissioner considers that the MOD's responses have adequately addressed these points.
22. In addition, the Commissioner is unable to identify any further action that the MOD could reasonably be expected to take as part of its statutory obligations under FOIA in order to identify or locate the information falling within the scope of Part B and C of this request. As has been set out above, if information is not held then it cannot be disclosed in response to a request.
23. In conclusion, the Commissioner finds, on the balance of probabilities, the MOD does not hold any recorded information falling within the scope of Part B and C of this request.

Section 16 – advice and assistance

24. Section 16(1) of FOIA states that:

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.”

25. The Commissioner notes that, in its initial response the MOD confirmed to the complainant that it was unaware of any recorded complaints of the nature requested by the complainant raised against military personnel deployed to Borders General Hospital.
26. In its internal review response, the MOD provided more detailed information to the complainant as regards section 16 which has been summarised in paragraphs 16 to 19 above.
27. Following the provision of this more detailed information to the complainant, the Commissioner is satisfied that the MOD has provided all advice and assistance to the complainant that it could be reasonably expected to do in the circumstances of Parts B and C of this request.

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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.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

**Pam Clements
Group Manager
Information Commissioner's Office
Wycliffe House
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