

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 May 2022

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Ministry of Defence (MOD) seeking information about an observation post which was referred to in a set of watchkeeper's logs for C Company, 2nd Battalion Royal Regiment Fusiliers, who were then based in Belfast, for 4 December 1971. The MOD responded by stating that it could not locate any information falling within the scope of the complainant's request.
2. The Commissioner is satisfied that on the balance of probabilities the MOD does not hold any information falling within the scope of the request.
3. No steps are required.

Request and response

4. The complainant submitted the following request to the MOD on 29 July 2020:

'Good afternoon, further to the email below [regarding the MOD's response to a previous information request which sought 'Watchkeeper's Log/Diary for C Company, 2nd Battalion Royal Regiment Fusiliers, December 1971. This is the Company-level Diary maintained for C Coy, 2RRF, then based in North Belfast, Northern Ireland'], could you check important information relating to Serial 33, Log Sheet 3 of Part 2 which is partially redacted?

It refers to an observation post in York St and an accidental discharge. Could you tell me if there is any other information in the files regarding this OP, including:

- It's location on York Street (it may have been Gallagher's Factory or one of the big stores – the whole area is redeveloped due to the motorway since then so there will be no problem with personal details)
- When it began and ended – even though there was an accidental discharge and the OP may have been compromised, there is no record that it had to move.
- What it deployed for – for example, there may have been trouble expected in the area or bomb attacks anticipated in City Centre.
- Which unit manned it – was it C Company 2 RRF or was it MRF (administered by 1 PARA) – for example, MRF was working with 2 RRF the night before in the files.

This information should be readily available in Company Watchkeeper Logs if not in the Tac HQ Battalion files, so advise if I require a separate FOI. Thank you in advance!

5. The MOD responded on 30 September 2020 and explained that it had not been able to locate any further information relating to the Observation Post mentioned in the serial 33, Log sheet number 3 of part 2.
6. The complainant contacted the MOD on 24 November 2020 and asked it to conduct an internal review of this response, explaining that he found it difficult to understand that such information was missing. More specifically, he made the following submissions in his request for an internal review:

'Regarding the very specific information I requested and to facilitate your review:

- The redacted information on Serial 33 regarding the accidental discharge may include information relating to a soldier and thus his regiment.
- I would expect related information to be found in the Company records of 2 RRF. Specifically C Coy and Recce Coy although other Company records could have reference
- I would expect important paperwork and pro forma regarding the accidental discharge itself, which, of course, would highlight the regiment and location.
- I would expect related information in any RMP Special Investigation Branch investigation into the shootings on 4th December 1971.

Can you confirm, therefore:

1. Whether the redacted information in Serial 33 regards no relevant information (I understand that the name of a person will have to be redacted, of course)
 2. That MoD cannot find basic but important Company records relating to the period and location (which recorded information on a mass killing and the shooting of C Coy Major Snow)
 3. That MoD cannot locate information relating to the accidental discharge contained in standard pro forma and disciplinary files
 4. That MoD cannot find related RMP SIB files
 5. Whether MoD has requested the support and search of 2 RRF Regimental Museum as I have experience of such logs kept in the museums.'
7. The MOD informed him of the outcome of internal review on 11 January 2021. The review concluded that no information falling within the scope of the request was held. The review also addressed each of the five numbered points the complainant had raised in his request for an internal review.

Scope of the case

8. The complainant contacted the Commissioner on 31 January 2021 in order to complain about the way his request for information had been handled. He remained of the view that the MOD was likely to hold some information falling within the scope of his request.

Reasons for decision

Section 1 – Right of access to information

9. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
10. In other words, 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. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered as to why the information is not held.

The complainant's position

12. In support of his position that the MOD was likely to hold information falling within the scope of his request the complainant made the following points:

'(1) the MoD's final response substantively ignores key files and questions (re Company-level Watchkeeper Logs, for example); (2) MoD fails to answer key questions regarding the deployment of the covert unit including where it was and what its operational orders were and I believe that this information should be accessible regardless of the passage of time due to the circumstances of that night; (3) Considering the failure of MoD to admit to the existence of this covert unit and then provide me with substantive information after I discovered it until I referred it to relevant files, I do not trust its intentions.'

13. Furthermore, the complainant explained to the Commissioner that the MOD could do the following to resolve his complaint:

'Retrieve the Company Records for 2nd Battalion Royal Regiment Fusiliers for each Company for 4th December 1971. If it cannot retrieve those basic British military documents, why that is - have they been lost or destroyed, for example. Source other streams of British military information and tell me what the operational orders were for a covert unit in the vicinity of McGurk's Bar and which regiment/company/unit manned it.'

The MOD's position

14. In order to investigate this complaint the Commissioner asked the MOD a number of questions about the steps it had taken to locate information falling within the scope of the request as well as seeking a response to the complainant's specific grounds of complaint. The Commissioner has set out the questions below and then summarised the MOD's response.

Question

15. Paragraph 9 of the internal review explains that:

'As part of this review I have established that, before stating that no further information was held in relation to the negligent discharge incident in York Street on 4 December 1971, HQ 38 (Irish) Brigade conducted searches [of] their archive database and RMP records.'

16. Please provide further details of the searches that were conducted, ie search terms and the types of records and files that were searched.

MOD Response:

17. The MOD explained that the 38 (Irish) Brigade Policy Legacy archives database could only be searched by date. For this request, the date of the incident, ie the bombing of McGurk's Bar, of 4 December 1971 was used as the search term. The results were then filtered by location and all Belfast-related references highlighted. The MOD explained that the only relevant recorded information found from this process was the 2nd Battalion Royal Regiment of Fusiliers (2RRF) Watchkeeper Log Sheets which had already been provided to the complainant in response to a previous information request under FOIA.
18. The MOD explained that the Royal Military Police (RMP) Gazette, which lists all incidents that the RMP were called to investigate, was also searched for the relevant date. It contained no mention of the negligent discharge (ND) or the Fusilier named in the Logs who fired the ND. The MOD explained that had there been an entry for the incident it would have had a Central Criminal Records Information Office (CCRIO) number.
19. The MOD explained that although no such number was found, a wider manual search of the CCRIO records was undertaken for completeness. This revealed that there were seven other incidents that day reported to the RMP in Belfast, but no information relating to the 4 December 1971 ND incident was found. The MOD highlighted that, as the 2RRF Log Sheet entry confirms there was no injury arising from the ND, it was assessed that the incident was most likely dealt with summarily by the Fusilier's commanding officer.
20. The MOD explained that during the internal review process the disciplinary record relating to the named Fusilier was accessed. The MOD confirmed that the record showed that the incident was one dealt with at a Summary Hearing, i.e. an arraignment of the soldier before his commanding officer who was advised of the charge of 'neglect to the prejudice of good order and military discipline', took oral evidence and awarded a punishment. The MOD explained that the disciplinary record holds no information relating to the observation post ('OP') and provided no useful avenues for research.
21. In summary, the MOD explained that the only information found within the holdings of 38 (Irish) Brigade was the reference to the ND found at Serial 33 of the 2RRF Watchkeeper Log Sheets. The incident was not subject to RMP investigation. The MOD explained that the reference to the 'ambush OP' in the Serial 33 was not clear and its subject matter experts thought that this could be a reference to Police-led operation rather than an Army observation post. The MOD explained that this is why it had advised the requester that he may wish to make enquiries to the Police Service of Northern Ireland (PSNI).

Question:

22. Paragraph 10 of the internal review explains that:

'In addition, a wider search of the Department has been made for relevant information in the MOD archives (Restore and MOD's Sensitive Archive) using relevant search criteria but no information was found.'

23. Please provide further details of the searches that were conducted, including the search terms used and the types of records and archives that were searched.

MOD Response:

24. The MOD explained that most information that still exists relating to the 1970s should now have been transferred to The National Archive (TNA) to meet the requirements of the Public Records Act 1958. However, where a file/item that has been selected for permanent preservation contains material that is not suitable for storage at TNA, (normally due to classification or sensitivity of contents) it, or relevant extracts from it, will be retained by the Department in an approved archive.

25. The MOD explained that its Sensitive Archive holds any sensitive information that has been retained under the terms of the Public Records Act. The Defence Business Services Knowledge and Information (DBS-KI) team manage this archive, and they were approached to determine if they held any information that might be relevant to this request. They confirmed that Commanders' Diaries of battalions serving in Northern Ireland (NI) in this period should have been transferred to TNA. However, they confirmed that any closed extracts or files that had been retained would be registered in the TNA catalogue. They conducted a search and found no reference to retained information that appeared to relate to this request.

26. The MOD explained that 38 (Irish) Brigade Group were asked to confirm if they had included MOD's Main Archive in their initial search. They advised that they would only be able to conduct keyword searches of file titles that would then have to be recalled and reviewed to determine which, if any, held any information relevant to the request. However, for completeness, the following keyword searches were made:

- OP York Street, Belfast in 1971
- Observation Post, York Street, Belfast in 1971
- AMBUSH Observation Post
- Observation Post, Gallaghers Factory, York Street, Belfast

27. The searches did not return any results.
28. The MOD explained that at the internal review stage, it also contacted the Head of the Army Historical Branch to seek advice on the potential sources of information held by the Department that might contain a record of the 'ambush OP' and ND incident. As noted above, he advised that surviving material of that age would likely have been transferred to TNA and confirmed that a search of the MOD Sensitive Archive operated by DBS-KI would be the best approach.
29. The MOD explained that the Head of the Army Historical Branch confirmed the level of reporting required for disciplinary charges would depend on the nature of the charge. In his opinion, a case involving a ND that did not result in any reported damage to property or persons would be unlikely to require significant amounts of paperwork. As it appears that the individual in this particular case did not contest or appeal the charge, it is likely that very little information in the form of casework would have been required, except the evidence of the person who witnessed the incident who in this case was another soldier (who the MOD suggested was most probably the other person present at the time) and who may have given his evidence orally to their Commanding Officer at the hearing. The MOD explained that the outcome of the summary hearing was recorded in the individual's disciplinary record within their Service file, but there is no supporting casework filed with it or evidence of it having been subsequently destroyed.
30. The MOD explained that having completed enquiries to DBS-KI, there were no further potential sources of information that it could search for within the organisation. However, the MOD highlighted that it was noted in the internal review that Regimental Museums (external to the MOD and not subject to FOIA) may hold relevant information.

Question:

31. Paragraph 14 of the internal review addresses the complainant's allegation 'That MoD cannot find basic but important Company records relating to the period and location (which recorded information on a mass killing and the shooting of C Coy Major Snow).' It states that:

'Due to the age of the information requested, many surviving files have been transferred to The National Archives (TNA) in accordance with the Public Records Act. There are several entries for 2RRF in the TNA main catalogue , and I would suggest that the unit historical returns (UHRs) may be of interest to you. In particular, WO 305/5582 which relates to 2RRF and covers the period 1 April 1971 to 31 March 1972'

32. Based on this response, the Commissioner was unclear whether the MOD still holds relevant 'company records' for the shooting at McGurk's

Bar which could potentially contain information about the location of the OP on York Street. Therefore:

- Please confirm whether the MOD still holds (in the words of the complainant) 'company records for 2nd Battalion Royal Regiment Fusiliers for each Company for 4th December 1971?'
- If so, have any searches been made of these records in order to locate the requested information? If so, please explain how these searches were conducted, ie search terms used and types of files examined.
- If no such searches were conducted, is the MOD prepared to undertake them at this stage?
- If not, please explain why the MOD does not consider such searches to be necessary or appropriate. (For example, would undertaking such work exceed the appropriate cost limit?)

MOD Response:

33. The MOD explained that if 2RRF completed a Commander's Diary for the period then it should be at TNA, however a check of the TNA catalogue did not identify a file of this name. The MOD explained that is why it provided the complainant with advice and assistance that he may wish to conduct his own research at TNA where the unit historical returns (UHRs) for 2RRF covering the period in which he is interested are held. The MOD noted that Commander's Diaries of higher formations (eg brigade/HQ level) relating to NI during this period are also available from the same source.
34. The MOD explained that it did not hold 'company records' of any description; the lowest level of operational record-keeping are Commander's Diaries completed at battalion level.
35. The MOD also explained that it was its understanding that papers of a purely administrative nature were often only held for short periods of time. At the time of the incident in question paperwork created in support of Summary Hearings would have been retained for a period of 7 years. This means that any files relating to the Hearing regarding the ND mentioned in the log disclosed to the complainant would likely have been destroyed in line with this policy in 1978.

Question:

36. Paragraph 18 of the internal review states that:

'As stated at para 10, a search was undertaken amongst police records [ie RMP records] for such information and none was found. I have been

advised that accidental discharges which result in no injury to any person are unlikely to be investigated by the RMP. It is therefore unsurprising that no files relating to the incident were found in RMP SIB holdings'.

37. The Commissioner appreciates that the MOD has not located any information in RMP records about the accidental discharge. However, it is the Commissioner's understanding of the complainant's position that he believes the RMP files into the shootings that shortly followed the bomb blast may include information about the location of the OP on York Street.
- Please confirm whether the RMP files into the shootings have been searched in order to locate information about the OP, as opposed to only being searched to locate information about the accidental discharge?
 - If such searches have been conducted, please explain how these searches were conducted, ie search terms used and types of files examined.
 - If no such searches were conducted, is the MOD prepared to undertake them at this stage?
 - If not please explain why the MOD does not consider it necessary or appropriate to do so. (For example, would undertaking such work exceed the appropriate cost limit?)

MOD response:

38. The MOD advised that the shootings referred to by the Commissioner were not in the jurisdiction of the RMP and would have been investigated by the Royal Ulster Constabulary (RUC). The MOD explained that Major Jeremy Snow was shot by a 'rioter' while trying to hold back crowds. The other shooting victims were RUC officers. All of these were on North Queen Street in the New Lodge area.
39. The MOD noted that York Street, ie the site of the OP, is more than half a mile long and runs parallel to North Queen Street, on which the shootings occurred, at a distance of approximately 150-200 metres. While there are some roads that would have provided a direct connection between York Street and North Queen Street, the MOD noted that it does not appear that the shootings happened at such a junction. The MOD suggested that it was therefore unlikely that any personnel on York Street would have been approached for witness testimony. The MOD advised that the RMP would only hold a file directly relating to the OP if there had been an incident that occurred there which required their attendance. The MOD confirmed that no such file exists.

40. Furthermore, the MOD explained that if the 'ambush OP' was an Army observation post and not a reference to an RUC-led operation, it would likely have been a temporary position, perhaps used only for a few hours as and when required. The MOD explained that the likely temporary nature of it meant that any administrative paperwork that may have been created was likely only held by the Army for a short time, if it existed at all.

Question:

41. As noted the complainant argued that in addition to searching various company records for information relevant to his request, the MOD should 'source other streams of British military information' in order to locate information relevant to his request.
42. The Commissioner asked the MOD's view on whether there were any additional files or sources of records, beyond those set out above (ie company records, RMP files and the Restore and MOD's Sensitive Archive) that could potentially contain relevant information.

MOD response:

43. The MOD explained that it was not aware of any. It explained that any additional searches would involve queries outside of the Department to PSNI, TNA and Regimental Museum collections. The MOD noted that it had advised the complainant of this as part of the advice and assistance provided at the internal stage.

The Commissioner's position

44. The Commissioner is satisfied that on the balance of probabilities the MOD does not hold any recorded information falling within the scope of the request. He has reached this conclusion for the following reasons.
45. Firstly, in his view the MOD has conducted thorough, focused and extensive searches of locations that could hold information falling within the scope of the request. The Commissioner notes that the MOD has not simply focused on searching for details of the OP but also explored whether any information it holds about the ND, which took place at the OP, could provide a source for relevant information.
46. Secondly, based on the MOD's submissions the Commissioner is satisfied that there is no certainty that the OP was in fact an Army one. As the MOD noted it could have been a police one and even if it were an Army OP, then it may only have been established for a few hours. The Commissioner accepts that in either scenario, especially the former, it is perhaps unsurprising that there is no further recorded information held about the OP, beyond the reference in the logs disclosed to the

complainant. Moreover, the Commissioner notes that the reference in the logs to the OP is only a brief one.

47. Finally, the Commissioner appreciates that the complainant has raised a number of specific grounds of complaint both as part of the internal review process and in submissions to support his complaint which set out why, in his view, the MOD would hold relevant information or the steps the MOD could take to locate it. However, the Commissioner considers that the MOD's submissions to him, and as set out above, have adequately addressed these points.
48. Moreover, the Commissioner is satisfied that there are no further steps that the MOD could reasonably take to locate information falling within the scope of this request. On this point, the Commissioner notes that the complainant suggested to him that the MOD could 'tell me what the operational orders were for a covert unit in the vicinity of McGurk's Bar and which regiment/company/unit manned it.' However, the Commissioner considers that to be a separate request for information, and based on the MOD's extensive searches in respect of the request which is the focus of this notice, it is not clear that processing such a further request would locate any additional information on the OP.

Right of appeal

49. 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

50. 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.
51. 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
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