

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 September 2013

Public Authority: Ministry of Defence

Address: Main Building
Whitehall
London SW1A 2HB

Decision (including any steps ordered)

1. The complainant requested information regarding his late father's Royal Navy service record. The Ministry of Defence disclosed some information and explained that it did not hold any further recorded information.
2. The Commissioner's decision is that the Ministry of Defence was correct to claim that it did not hold any further recorded information and therefore had complied with section 1(1).
3. The Commissioner does not require the Ministry of Defence to take any steps.

Request and response

4. On 24 April 2012 the complainant submitted the following request to the Ministry of Defence (MoD) regarding his late father's time in the Navy and also complained about responses he had received to earlier related requests:

'Refer to original questions 1 to 10 dated 20 December 2011. In reply to letter 23 April 2012 note.

1) Can you answer items (b) and (c) from the medical records? What ship and what hospital?

2) Ditto above in Q1

3) *Ditto above Q1 and 2*

4) *I have sent paperwork for personal representative email and registered email addressed to yourself. Can I please have the medical records as requested (previously)?*

5) *I am still confused. MMS 1548 was in Harwich, February 1952 Dad was in Hongkong February 1952*

6) *Can you please clarify the MMS on his service record in 1952-1953*

7) *I note the P and V is not available for 1952, however it is still available for 1951. Can you please explain?*

8) *You stated that it is not known if dad signed any official secret documents, as no records are held. Can you please clarify this answer, are there records for people who do sign? Also did dad sign a standard requirement for new entrants?*

9) *Why is HMS Hornbill and For Halstead/Sevenoaks connected?*

10) *The DNA acronym is mentioned on the notice from CHATHAM to ADMIRALTY on 20 May 1958 and 23 May 1958 (7 times each). The notice is to inform the admiralty dad is dead. I do not think a doctor would write a note to the admiralty, United States Navy, second sea lord and others as well as DNA. Can you please explain why?'*

5. The MoD responded on the same day, explaining that it could not assist the complainant any further with enquiries regarding his late father's naval service. However, on 8 June 2012 the MoD contacted the complainant explaining that in light of his complaints in his letter of 24 April 2012, it had conducted an internal review into the way it had handled all of his requests, including his request of 24 April 2012.
6. In relation to question 6 the MoD explained that it did not hold a signed standard requirement for new entrants or for his late father. It also explained that all other requested information was either already held by the complainant or was not held by the MoD.
7. The complainant initially complained to the Commissioner on 18 December 2012 stating that the MoD had not answered his questions. Given that the complainant had submitted several requests to the MoD, the Commissioner asked him for clarification about which specific questions he was complaining about.

8. The complainant provided clarification on 8 January 2013 explaining that he was complaining about the MoD's application of section 41 to his late father's medical information and the way it had dealt with his request of 24 April 2012. The Commissioner contacted the complainant and explained that he would be considering whether the MoD had applied section 41 appropriately (this was subsequently dealt with in decision notice FS50476248) and that he would be considering how the MoD had handled the request of 24 April 2012, separately.
9. The Commissioner contacted the MoD about the way in which it had handled the complaint's request of 24 April 2012. The Commissioner notes that although the MoD carried out an internal review, it did not clarify which questions it had already answered and which questions it was saying that it held no recorded information in relation to. The MoD agreed to review its responses to the complainant's requests of 24 April 2012.
10. The Commissioner informed the complainant that the MoD was carrying out another internal review.
11. The MoD contacted the complainant on 11 March 2013 confirming that it had carried out a review of its responses to his requests of 24 April 2012. It answered the questions, clarifying that it did not hold recorded information in relation to questions 5, 6 and 9.

Background

12. The complainant has made several requests regarding his late father's naval service and medical health records. The MoD has previously disclosed the complainant's late father's naval service record to him.

Scope of the case

13. The complainant contacted the Commissioner on 15 May 2013 to complain about the way his request for information had been handled.
14. The Commissioner will go on to consider how the MoD handled the complainant's request of 24 April 2013.
15. The Commissioner notes that in its internal review of 11 March 2013 the MoD answered the questions of 24 April 2012, clarifying that in relation to questions 5, 6 and 9, it did not hold any recorded information. The Commissioner also notes the MoD's internal review response was late.

16. The Commissioner will therefore consider whether the MoD is correct to state that it does not hold any recorded information in relation to questions 5, 6 and 9. He will also consider the time taken for the MoD to carry out the internal review.

Reasons for decision

17. Section 1(1) of FOIA states that:

'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.'

18. The Commissioner has to determine whether, on the balance of probabilities, the MoD holds any further relevant recorded information which it has not disclosed to the complainant.
19. The Commissioner wrote to the MoD asking it a number of questions regarding whether it held any recorded information and it responded as follows.
- What searches were carried out for information falling within the scope of this request and why would these searches have been likely to retrieve any relevant information?

MoD response: Searches were conducted by the following departments: TNT, Swadlingcote – MOD Archive Repository for Service documentation.

CN Pers (formerly known as DN Pers), Whale Island – Authority for release of Service documentation and the Inquest Support Section for the Service records of deceased Service personnel.

Institute of Naval Medicine, Alverstoke – Authority and Repository for Service Medical Records.

AWE, Abbey Wood – Holder of the "Blue Books" listing Nuclear Test Veterans.

- If searches included electronic data, please explain whether the search included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

MoD response: The above searches were all related to manual records with the exception of:

1. The Naval Memorial Database – held locally on work computers used by key officials.

2. The National Radiation Protection Board (NRPB) Database – held locally on work computers used by key officials.

- If searches included electronic data, which search terms were used?

MoD response: In respect of 1 above, the terms used for the memorial databases search was the service number unique to the individual.

- If the information were held would it be held as manual or electronic records?

MoD response: Other than the electronic databases detailed above, all of the remaining information is held as manual records.

- Was any recorded information ever held relevant to the scope of the complainant's request, but deleted/destroyed?

MoD response: Manual records associated with the individual's service would have been held at the time he was serving. The Department has only been able to locate the complainant's late father's Service and Medical records and Pay and Victualing (P&V) ledgers for 1951.

- If recorded information was held but is no longer held, when did the MoD cease to retain this information?

MoD response: We cannot confirm when the Department ceased to retain this information. We can confirm that after extensive searches within the Department, no further information has been located and on the balance of probabilities, this information is no longer held by the Department.

- Does the MoD have a record of the document's destruction?

MoD response: The MoD does not routinely record a document's destruction if it is unclassified (as would have been in this case).

- What does the MoD's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the MoD describe the way in which it has handled comparable records of a similar age?

MoD response: We can only assume that such ledger information was destroyed in conjunction with the record retention policy in effect at that time and no destruction certificates to that effect have been retained.

- Is there a business purpose for which the requested information should be held? If so what is the purpose?

MoD response: No.

- Are there any statutory requirements upon the MoD to retain the requested information?

MoD response: No.

19. The Commissioner has considered the MoD's response to his questions about the searches it carried out. He is satisfied that given the age of the information it is reasonable that it would no longer be retained and that the searches carried out by the MoD support the conclusion that it does not hold any recorded information.
20. The Commissioner is satisfied that on the balance of probabilities, the MoD does not hold any recorded information in relation to questions 5, 6 and 9. The Commissioner does not consider that the MoD has breached section 1(1).

Other matters

21. Part VI of the section 45 Code of Practice makes it good practice for a public authority to have a procedure in place for dealing with complaints about its handling of requests for information and that the procedure should encourage a prompt determination of the complaint. As he has made clear in his 'Good Practice Guidance No 5', the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.

22. In response to a complaint from the complainant on 24 April 2012 regarding the way his request had been handled, the Commissioner notes that the MoD did not carry out the internal review until 8 June 2012. The MoD should ensure that it carries out internal reviews promptly in future, although in this particular case the Commissioner notes that the MoD had answered some of the questions previously.

Right of appeal

23. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.
25. 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

Jon Manners
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