

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 June 2023

**Public Authority:** The Cabinet Office  
**Address:** 70, Whitehall  
London  
SW1A 2AS

#### **Decision (including any steps ordered)**

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1. The complainant has made nine requests for information to the Cabinet Office. The Cabinet Office refused the requests under Section 14(1) of FOIA.
2. The Commissioner's decision is that the requests were vexatious and the Cabinet Office was entitled to rely upon Section 14(1) of FOIA to refuse them.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. Between 19 August and 9 September 2022, the complainant made the eight requests which are set out in Annex A.
5. The Cabinet Office responded on 20 September, refusing the requests as vexatious, on the basis of section 14(1) of FOIA and stated section 12 of FOIA (cost limit) would also apply.
6. Following an internal review, the Cabinet Office wrote to the complainant on 21 October 2022, upholding its original decision.

## Reasons for decision

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7. Section 14(1) of FOIA states that a public authority is not obliged to comply with a request for information if the request is vexatious. There is no public interest test.
8. The term 'vexatious' is not defined in FOIA. The Commissioner's guidance suggests that if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
9. FOIA gives individuals the right of access to official information in order to make bodies more transparent and accountable. As such, it is an important constitutional right. Therefore, engaging section 14(1) is a high hurdle.
10. The Upper Tribunal considered in some detail the issue of vexatious requests in the case of the Information Commissioner v Devon CC & Dransfield<sup>1</sup>. The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure."
11. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request and (4) harassment or distress of and to staff.

## The complainant's view

12. The complainant has stated: "[t]he information requested should be easy to provide, requiring little effort or cost. In addition, much of the information appears not available as the FOI team of the Cabinet Office appears to be ignoring Judicial precedence... It is considered that none of my actions should be considered vexatious in accordance with the FOIA."

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<sup>1</sup> <https://administrativeappeals.decisions.tribunals.gov.uk/Aspx/view.aspx?id=3680>

### **The Cabinet Office's view**

13. In its submissions to the Commissioner, the Cabinet Office has stated while they believe the complainant may have a serious purpose behind their requests, this is diminished by their large volume and overall character. Many of them request large amounts of information that the Cabinet Office have stated would take a long time to fulfil and which would pose a significant burden on the public authority.
14. The Cabinet Office also advised since February of 2017, the complainant has made numerous complaints related to the subject of the Advisory Military Sub-Committee (AMSC) and military honours. When these complaints have not been upheld, the complainant has submitted multiple further complaints to both the Cabinet Office and external bodies about individuals involved in their handling, alleging inaccuracy and malpractice. At each stage, these complaints have escalated, including a request for judicial review from the High Court, which was refused.
15. When each of these complaints have been found to be without foundation, the complainant has accused reviewers of inaccuracy, a lack of credibility, or of misleading tribunals. As a result of this, the Cabinet Office has advised they will no longer respond to the complainant's correspondence on the subject of military honours, and consider the complainant's actions amount to inadvertent harassment.
16. The Cabinet Office have also stated they believe the complainant's requests to form part of a wider campaign. To evidence this, they noted that the complainant had requested an internal review of a request they did not make regarding a similar matter. The Cabinet Office has stated this, combined with the number of requests and complainant's behaviour, has led them to determine the requests are vexatious.

### **The Commissioner's decision**

17. It is important to note that in cases such as this it is not the requester that is considered to be vexatious, only the request(s). Consequently any future requests should be dealt with on their own merits.
18. The Commissioner has considered all the circumstances of this case and agrees with the Cabinet Office that there may be a genuine purpose behind the complainant's requests. However, this is seriously diminished by the number of requests he has made, and the Commissioner is satisfied that to provide all the information requested in his eight requests would present a significant and disproportionate burden on the Cabinet Office.

19. In this case, the Commissioner is satisfied that the Cabinet Office is entitled to refuse to comply with the requests, citing section 14(1) as its basis for doing so.
20. The Commissioner does not require the Cabinet Office to take any steps.

## Right of appeal

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21. 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](mailto:grc@justice.gov.uk)

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

22. 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.
23. 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 .....**

**Susan Duffy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex A – requests for information**

### **1. 19 August 2022**

"I am aware of the Terms of Reference of the Advisory Military Sub-Committee. It would be appreciated if you would forward me a copy of the role profile and Job description if not the same in respect of the Chair of that Committee and of the supporting Secretariat of that Committee."

### **2. 22 August 2022**

"As you are aware the AMSC is an advisory subcommittee of the HD Committee and as such is not independent. In the 2019, 2021 and 2022 Terms of Reference they state that they have been approved by the HD Committee. The 2022 Terms of Reference increased the responsibilities of the AMSC. It is requested that you forward to me the minutes of the relevant HD Committee meetings in 2019, 2020 2021 and 2022 in which the HD committee agreed the AMSC Terms of Reference and in particular the 2022 meeting that agreed the increase of responsibility of the AMSC. It is accepted that all other discussions about other topics at the meetings which are included in the minutes will have to be redacted. Should the Terms of Reference not have been agreed at any HD Committee meetings, copies of all paper work that dealt with HD Committee approval and discussion around content of the Terms of Reference of its sub-committee is requested. It is understood that the HD Committee Secretariat would have played a significant role in this."

### **3. 29 August 2022**

"The date of the AMSC meeting which evaluated the submission of the Harmonisation of the ACSM?"

"Provide the date the AMSC advice on this medallic recognition submission was notified to the HD Committee?"

"The date of the HD Committee meeting which discussed there commendation of the AMSC in respect of this medallic recognition submission and the date the HD Committee promulgated its decision?"

"Reasons as to why it took the AMSC one year, four months and twenty-five days from receiving a submission from this military medal campaign group to notify the group of the non-recommendation?"

### **4. 26 August 2022**

"Details of the HD Committee meeting which agreed this change to the Terms of Reference of the AMSC."

"The authority under which the AMSC operated when it turned down the appeal of both the Nuclear Test Veterans and the BRIXMIS military medal campaign groups after the AMSC had previously recommended against the institution of the particular medallic recognition. The dismissal of these appeals was carried out by the AMSC without reference to the HD Committee and prior to the date of amendment and promulgation of the above increased powers of the AMSC. This appears a strange process were a sub-committee makes a recommendation and is then in a position to veto any appeal that is made against such a recommendation without referral and then subsequently amends its Terms of Reference."

### **5. 31 August 2022**

"The AMSC is a publicly funded sub-committee of the HD Committee, a part of the Cabinet Office. However, no details of expenditure can be found in the public domain in respect of this organisation.

It would therefore be appreciated if under the FOIA you would forward to me the following information:

1. Which Government Department(s) is/are responsible for its funding and has funded it?

2. How much did it cost to operate the AMSC in each of the Financial Years listed below:

a. FY 2018/19?

b. FY 2019/20?

c. FY 2020/21?

d. FY 2021/22?

e. FY2022/23 (April to August)?

3. How much has the Chair and each individual member received in remuneration, including any subsistence payments in each FY?

4. How much has the AMSC expended in each FY on carrying out investigations by persons other than its members?

5. How much has the AMSC expended in each FY in carrying out research by persons other than its members?

6. How much has the AMSC Secretariat cost in each FY.”

**6. 1 September 2022**

“Confirm whether the appeals were discussed at an AMSC meeting, if so, which one?”

If the appeals were discussed and recommendations made to reject the appeals outside of committee, on what date was this carried out?

If the discussions and recommendations made to reject the appeals were made outside of AMSC meetings, please forward the records of these discussions and recommendations.

Provide the details of where the recommendations to reject the appeals have been promulgated in the public domain.

Provide details of which members of the AMSC made the recommendations to reject the appeals outside of AMSC meetings.

Was the Chair of the HD Committee or the Secretary to the HD Committee made aware of the AMSC operating outside the scope of authority of its Terms of Reference?”

**7. 31 August 2022**

“Part One – who was on the Board that appointed Dr Winstanley as the Chair of the AMSC and what was the criteria?”

Part Two - Details of why there is such a disparity between what was recommended by Sir John Holmes and endorsed by Prime Minister Cameron in respect of Membership of the AMSC and what was recruited by the Cabinet Office? Who authorised this in the Cabinet Office and was it discussed at a meeting of the HD Committee?

Part Three – How and who was on the Board that recruited the Members of the AMSC and what was the criteria for recruitment?”

**8. 1 September 2022**

“The number of officials from each of the Secretariats that attended each of the AMSC meetings, their appointments and where appropriate their name.”

“In addition, it would be appreciated if you would forward the details of all persons attending each of the AMSC meetings who were either not members of this sub-committee or officials from the Secretariats.”

**9. 9 September 2022**



"On 21 May 2019, the Office of the then veteran's minister, [redacted], forwarded to the AMSC Secretariat a submission from the military medal campaign group in respect of medallic recognition of those Injured as a direct result of military service. This submission was discussed at what is understood to have been the newly formed AMSC's second meeting on 3 September 2019.

In accordance with the FOIA the following request is made for the following information:

- a. The date the AMSC Secretariat received the submission.
- b. The date the briefing papers in respect of that submission were circulated to AMSC Members prior to its meeting on 3 September 2019.
- c. A copy of the briefing paper or if the AMSC decide not to release a copy of that briefing paper, provide details of the briefing circulated to Members.
- d. The date the advice/recommendations arrived at by the AMSC at their meeting on 3 September 2019 was submitted to the HD Committee."
- e. The date of the meeting of the HD Committee which received the AMSC advice/recommendation
- f. The decision of the HD Committee on receiving that advice/recommendation.
- g. The date the recommendations of the AMSC were promulgated on its GOV.UK web page which came online on 9 August 2019.

Should any of this information be withheld, please provide the reasons why."