

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 February 2012

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

Decision (including any steps ordered)

1. The complainant requested information in connection with radiation film badges worn by Armed Forces personnel following British Nuclear tests in 1958.
2. The Commissioner's decision is that the public authority was correct to deem the requests vexatious within the meaning of section 14(1) of the Freedom of Information Act 2000 (the Act).
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. The complainant wrote to the public authority on 3 and 30 August 2011 in connection with radiation film badges issued to Armed Forces personnel following nuclear tests conducted by the British government in 1958. His requests were worded as follows:

3 August 2011

'The information requested is for the Atomic bomb tests in 1958 – Operation Pennant and Operation Burgee:

Could you please break the numbers into a. RN/Marines b. Army. C. RAF. D. Civilians

1. *How many radiation film badges were issued for Operation Pennant?*

2. *How many radiation film badges were issued for Operation Burgee?*
3. *How many radiation film badges for Operation Pennant went missing/destroyed/etc and the radiation levels for individuals not recorded?*
4. *How many radiation film badges for Operation Burgee went missing/destroyed etc and the radiation levels for the individuals not recorded?*

30 August 2011

'On the 22 August 1958 Atomic Bomb Pennant was detonated at Christmas Island. Two hours after detonation, fourteen Army Members of the TSFG (Technical Services Forward Group) were ordered to carry out various tasks in and around the area known as ground zero. They were each issued with a radiation film badge to discover the full body dose of radiation received whilst working in the radioactive area. Only 16% of these film badges are recorded as having been returned and we are led to believe the remaining 84% mysteriously disappeared. Could you please supply me with the following information:

1. *A detailed map showing the working positions of these fourteen men in relation to Ground Zero.*
 2. *Could you please indicate the positions of the holders of radiation Film Badges '10550' and '10564' (these were the only two badges which were acknowledged as being returned!)*
5. The public authority refused to comply with both requests on the grounds that they were vexatious requests within the meaning of section 14(1) of the Act. It informed the complainant of its decision in letters dated 5 August 2011 and 26 September 2011 (internal review) respectively.

Scope of the case

6. On 28 September 2011 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He submitted that his requests were not vexatious and that the public authority had abused its entitlement to rely on section 14(1) of the Act.

Reasons for decision

Section 14(1)

7. By virtue of section 14(1) of the Act, a public authority is not obliged to comply with a request for information if the request is vexatious.
8. According to the public authority, the complainant had made numerous requests generally in connection with the health implications of the nuclear tests on the Armed Forces personnel (specifically regarding the radiation film badges they had been provided with) who were subsequently deployed to the affected areas/sites.
9. The public authority explained that in response to previous requests made by the complainant, it had provided him with information held within the scope of the request of 3 August, and also informed him that it did not hold any information within the scope of the request of 30 August.
10. The public authority calculated that since the Act came into force in 2005, the complainant had made approximately 99 requests on the subject of British nuclear tests. It confirmed that 58 of the requests had been submitted by the complainant in 13 pieces of correspondence from 10 November 2010 to 25 January 2011. In support, the public authority provided the Commissioner with a summary of all of the requests and its responses to each.
11. According to the public authority, it took into account the following factors in deciding that the requests above in August were vexatious¹:
 - Whether the requests could otherwise fairly be characterised as obsessive,
 - Whether compliance would create a significant burden in terms of expense and distraction,
 - Whether the requests have the effect of harassing the public authority or its staff,
 - Whether the requests are designed to cause disruption or annoyance, and

¹ The Commissioner will generally consider the context and history of a request as well as the strengths and weakness of the arguments in relation to some or all of the factors mentioned by the public authority in determining if a request is a vexatious.

- Whether the requests have any serious purpose or value.

Whether the request can otherwise fairly be characterised as obsessive

12. The public authority claimed that the volume and history of the complainant's correspondence regarding radiation film badges can be characterised as obsessive because he has refused to accept its previous responses. According to the public authority, the complainant believes that it is deliberately hiding information from the public, and may never accept that no recorded information is held in relation to some of his requests. It explained that most of the requests are substantially similar to requests previously made by the complainant.
13. The Commissioner reviewed the summary of the requests made by the complainant and the responses provided by the public authority. He finds that the complainant has made a considerable number of requests since April 2005 in connection with Nuclear tests in 1958, specifically in relation to the health risk posed by the exposure of Armed Forces personnel to radiation in the affected areas. He also finds that between November 2010 and January 2011, the complainant had made at least 50 requests in 13 pieces of correspondence to the public authority. He also notes that the complainant has written to Parliament expressing in strongly worded terms that the public authority had deliberately misled him and the public about the resulting health effects from the radiation exposure of Armed Forces personnel to the radiation from the nuclear tests.
14. The Commissioner agrees with the public authority that some of the requests are substantially similar to requests previously made by the complainant. He specifically finds that the request of 3 August is substantially similar to a previous request made by the complainant in December 2009 to which the public authority responded by disclosing copies of the recorded information held. Furthermore, the Commissioner agrees with the public authority that given the history of the correspondence from the complainant, complying with the requests in August above would have in any event generated further requests from him. The tone of his correspondence clearly suggests that he was not satisfied with the public authority's responses to his previous requests and there is no reason to suggest that he would have been satisfied with subsequent responses to the requests in August.
15. In view of the volume, nature, and frequency of the complainant's previous requests, the Commissioner finds that the requests above in August can be fairly characterised as obsessive.

Whether compliance would create a significant burden in terms of expense and distraction

16. The public authority acknowledged that responding to the requests in isolation would not have involved significant expense. However, it submitted that the burden and expense has to be considered in the context of the continuous stream of detailed requests and questions from the requester all with a very narrow and similar focus. The public authority submitted that responding to the complainant's request had placed a considerable burden on the limited resources available for handling information requests. It further submitted that the administrative burden of handling the requests had increased by the virtue of the fact the information in question is at least over 50 years old. The public authority argued that it was unfair and against the public interest that an individual applicant could consume such a high volume of the resources allocated for handling information requests.
17. The Commissioner agrees that in the context of the previous requests already made by the complainant, responding to the requests above in August would have created a significant burden on the public authority in terms of expense and distraction. The public authority had clearly expended a considerable amount of resources in responding to the previous requests and providing a response to the requests in August would have increased the already significant burden on its resources. The evidence also suggests that responding to the requests would have generated further requests thereby increasing the burden on its resources. The Commissioner agrees that it is not in the public interest for an individual applicant to take up so much of the public authority's resources by continuously making requests in connection with a specific issue.
18. In view of the history and context in which the requests above in August were made, the Commissioner finds that complying with the requests would have created a significant burden on the public authority's resources.

Whether the request has the effect of harassing the public authority or its staff

19. The public authority also claimed that the tone of some of the complainant's requests as well as some of his public critical comments had the effect of harassing its officials. It also submitted that dealing with the same or similar questions/requests repeatedly, and the high volume and frequency of correspondence sometimes with unsupported accusations, had a harassing effect on the officials who had to deal with the complainant's requests.

20. The Commissioner considers that the tone and language of some of the complainant's correspondence could be described as accusatory. For instance, in his request of 4 October 2010, he states:

'I have only made reference to the contempt shown towards Servicemen during the two Atomic Bombs on Christmas Island in 1958. Was equal contempt shown towards the British Servicemen and their Allies at the other testing sites for the British Nuclear tests?'

21. Also, in his request of 16 December 2010, he states, '*The Ministry of Defence have coerced the BNTVA into sanctioning a paper exercise....'* His email to Parliament is headed, '*THE INVETERATE LIARS OF THE MINISTRY OF DEFENCE!*'

22. Although some of the complainant's comments are accusatory in nature, the Commissioner considers that officials with experience in dealing with dissatisfied members of the public would not feel harassed by them. They do not appear to be targeted at specific officials handling the requests, and appear to be more of a reflection of the complainant's frustration with the public authority in connection with the subject matter of his requests. The Commissioner also does not consider that the comments would have had the effect of harassing the public authority.

Conclusion

23. The Commissioner did not consider the remaining factors taken into account by the public authority as he is satisfied that they would not have made any significant difference to his decision. It is however worth pointing out he agrees with the public authority that the requests above in August have an entirely legitimate purpose and value.
24. Nevertheless, in view of his finding above that the requests could be fairly characterised as obsessive and that compliance would impose a significant burden on the public authority's resources, he finds that in all the circumstances of this case, the public authority was correct to refuse to comply with both requests on the basis that they were vexatious within the meaning of section 14(1) of the Act.

Right of appeal

25. 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

26. 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.
27. 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

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**