

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 January 2020

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

Decision (including any steps ordered)

1. The complainant submitted a request to the Ministry of Defence (MOD) seeking information about the provision of medical care given to Gurkhas. The MOD provided the complainant with a document falling within the scope of his request albeit with redactions on the basis of section 40(2) (personal data) of FOIA. The complainant argued that in addition to this information the MOD was likely to hold a copy of a submission made by a former Adjutant General but this document had not been provided to him. The MOD explained that it had searched for this document but it could not be located.
2. The Commissioner is satisfied that on the balance of probabilities the MOD does not hold the document sought by the complainant.
3. The Commissioner does not require the MOD to take any steps.

Request and response

4. The complainant submitted the following request to the MOD on 19 March 2019:

'Reference:

A. HQBG BG 0226 dated 19 April 1996 Working Group Review of Gurkha TACO.

- 1. Paragraph 81 of Reference A states, 'The major after care concern, the provision of medical care, remains unresolved. The disparity between the treatment of IA Gurkhas and their British counterparts is a growing source of concern. A number of efforts have been attempted to resolve it, one even sponsored personally by a former AG (Adjutant General), but have failed. It is a resource issue and one which must be addressed'.*

Under the FOIA 2000, please provide copies of any correspondence that will show what efforts were made to resolve the disparity between the treatment of IA Gurkhas and their British counterparts and the reasons why these efforts were unsuccessful. Please include the submission of the former Adjutant General.'

5. The MOD responded on 16 April 2019. It explained that a search for information had been conducted and a document had been located. The MOD provided the complainant with this document but explained that some information had been redacted on the basis of section 40 (personal data) of FOIA. The MOD explained that no further documents had been located and that locating the document in question had taken five working days, breaching the FOI cost limit.
6. The complainant contacted the MOD on 17 June 2019 and explained that in his view it was likely that it would hold a copy of the submission by the former Adjutant General. He asked the MOD to conduct an internal review and provide him with this document.
7. The MOD responded on 23 July 2019. It explained that it could have refused the request on the basis of section 12(1) of FOIA from the outset but chose to search beyond the limit in this case in order to be helpful. However, the MOD explained that it was satisfied that on the balance of probabilities no further information was held, beyond the document provided in its initial response. It also explained that the information redacted from that document was exempt from disclosure on the basis of section 40(2) of FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 25 July 2019 to complain about the way his request for information had been handled. He argued that it was likely that the MOD would hold a copy of the submission of the former Adjutant General.

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, or other explanations offered as to why the information is not held.

The complainant's position

12. The complainant argued that he found it implausible that the MOD did not hold a copy of the submission submitted personally by a former Adjutant General, a three or four star General, particularly as this issue is still being discussed at Ministerial level.

The MOD's position

13. In its internal review response the MOD explained that normally information of this age would either have been destroyed in accordance with MOD retention policies or, where appropriate, sent for permanent preservation at the National Archives or to the Gurkha museum. (The refusal notice had directed the complainant to the Gurkha Museum in Winchester who may hold relevant documents). However, the MOD explained it had established that some files relating to the period are still held at the British Gurkha Head Quarters and 72 of these files were searched in an attempt to locate information falling within the scope of the request. The MOD explained that this consisted of a manual search

of each file, holding on average 30 enclosures each (all of a different number of pages per enclosure). The MOD also explained that as part of the internal review the Defence People Secretariat had also conducted searches of their holdings as they have previously been involved in Gurkha pension related issues. However, no information falling within the scope of the request was located.

14. As part of her investigation of this complaint the Commissioner asked the MOD to clarify why the 72 files in question were searched and she also asked the MOD to explain the nature of the searches undertaken by the Defence People Secretariat in order to locate any potentially relevant information.
15. In response, the MOD explained that the files, and additional loose folders that were selected for review, were those with the most relevant file title/description, that had been open in the period that the document in question may have been issued or the dates in which attempts were made to resolve any disparity. Files that did not meet these criteria were assessed as having very little or no potential of holding information in scope of the request.
16. The MOD explained it had asked the Defence People Secretariat to initiate a search of the records held by those parts of Defence People that deal with Gurkha related issues, primarily related to pay and pensions. The MOD explained that People — Armed Forces Remuneration (formerly Service Personnel Policy Pensions), have two areas where documents relating to Gurkha pension policy are located. One is on the Gurkha Pension Scheme (GPS) and the other is on the Gurkha Offer to Transfer (GOTT). The MOD explained that the earliest document is in the GPS area and is dated Oct 2003, which is seven years after the Adjutant General's submission is believed to have been created. The MOD explained there are no documents held electronically that pre-date this one. Furthermore, the MOD explained that a review of the (hard copy) registered file list that existed before the electronic file system was introduced to Defence People was carried out and it confirmed that no files were listed that cover GPS or GOTT.

The Commissioner's position

17. In the Commissioner's view the searches undertaken by the MOD in order to locate information falling within the scope of this request are reasonable and sufficiently detailed ones in order to locate the document required by the complainant. The searches have focused on the areas of the MOD where it is logical to assume that the document, if held, would be located. Furthermore, the Commissioner notes that the work undertaken by the MOD to locate information falling within the scope of the request has been extensive; it has spent five working days trying to

locate relevant information. The Commissioner acknowledges the complainant's point that the document in question was written by a senior member of the army and accepts the implication that as a result it is assumed that such a document would be retained. However, it is difficult to see what further steps the MOD could conduct to locate the document, assuming of course, that it is held. Therefore, the Commissioner has concluded that on the balance of possibilities the MOD does not hold a copy of the submission of the former Adjutant General.

Right of appeal

18. 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: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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
Senior Case Officer
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Wilmslow
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