



Ministry of Defence

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Katie de Bourcier
Head of Corporate Information

CIO-CI-Information Access Review

D/CIO/3/18/1/364
(14-05-2009-110651-001)

Mr Chand Bakshi
(via the www.whatdotheyknow.com)

27 November 2009

Dear Mr Bakshi,

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your request of 31 July 2009 for an internal review under the Freedom of Information Act 2000 (the Act) of this Department's handling of your request for information dated 13 May 2009. I have now conducted a review, looking at both the handling of your requests and the substance of the response you received on behalf of the Ministry of Defence (MOD) from the Deputy Chief of Defence Staff (Personnel) Secretariat. The purpose of this internal review is to consider whether the requirements of the Act have been fulfilled. The scope of the review is defined by Part VI of the Code of Practice under s45 of the Act, which can be found at: www.foi.gov.uk/reference/impref/codepafunc.htm#partVI. I must apologise for considerably overshooting our self-imposed target of 40 working days to deal with appeal cases, this was due to some unforeseen problems of resourcing in the internal review area which has only recently been addressed.

Handling

2. In conducting my review of the handling of your request, I have focussed in particular on the following requirements of the Act:

- a. Section 1(1)(a) which, subject to certain exclusions, gives any person making a request for information to a public authority the entitlement to be informed in writing by the public authority whether it holds information of the description specified in the request;

- b. Section 1(1)(b) which, subject to certain exemptions, creates an entitlement to receive the information held by the public authority;
- c. Section 10(1) which states that, subject to certain provisions allowing extensions of time, the public authority must comply with the requirements of section 1(1) promptly, and in any event not later than the twentieth working day following the date of receipt;
- d. Section 17(1) which states that, where it claims that information is exempt information, the public authority must, within the time for complying with section 1(1), give the applicant a notice which states the fact, specifies the exemption(s) in question and states why the exemptions applies;
- e. Section 17(2) which states that the notice under section 17(1) must, if applicable, state that a decision has not yet been made whether the public interest in maintaining an exemption outweighs the public interest in disclosing the information and give an estimate of the date that the authority expects such a decision will be made.

3. Your request for information was received in MOD via the www.whatdotheyknow.com website on 14 May 2009 and, accordingly, a response was due on 11 June 2009. You were advised in a letter dated 15 June 2009 from the Deputy Chief of Defence Staff (Personnel) Secretariat that your request was considered to be a request for information in accordance with the Freedom of information Act 2000 and that MOD held some information relevant to your request but that it might fall within the scope of section 37 of the Act. Section 37 is a qualified exemption requiring a Public Interest Test. You were therefore advised that an additional 20 days were needed to decided where the balance of the public interest lay. They also stated that they intended to respond to you substantively by 10 July 2009 or advise you if it was to take longer. Firstly, I must apologise that the 'notice' letter citing section 17(2) was not sent to you in a timely fashion. Secondly, contrary to the advice in the previous letter, I can find no evidence of your being notified of the additional time that was taken before the substantive reply was finally sent on 3 August 2009. The time taken (58 working days) represents a considerable delay, for which I must also apologise.

Substance

4. You requested the following information:

'Are members of the Royal Family serving in the military subject to the Armed Forces Act? In particular, you would like to know if they are:

- a. *Subject to the Armed Forces Act of 2006?*
- b. *Could they be court-martialled? For example a General Court Martial?*
- c. *With some members having served in recent conflicts (for example Prince Harry in Afghanistan) are they liable for prosecution for war crimes if any were to be committed?*

d. Are there any laws prohibiting the UK handing them over to the International Criminal Court?

e. Has the Ministry of Defence held meetings to discuss these possibilities or produced material for their staff and soldiers in dealing with royals in the military? If yes please provide copies of any meetings, training manuals etc".

5. The Deputy Chief of Defence Staff (Personnel) Secretariat reply informed you that the Act provides applicants with a right of access to recorded information and that your request was not a request for recorded information. It explained that we would re-consider the questions asked if they were re-phrased as a request for recorded information. They also apologised that their previous letter of 15 June confirming that some information was 'held' and additional time was required to test the public interest in relation to its release was in fact a mistake. They further admitted that they should have written sooner to confirm that your request was not valid. Details of the internal review procedure or how to complain to the Information Commissioner were not included in the reply in view of the fact your questions were not considered in scope of the Act.

6. I am content that Deputy Chief of Defence Staff (Personnel) Secretariat were correct in rejecting your questions as being incapable of being answered under the Act. It was not possible from your questions to identify the information in scope of your request and where it might be held in the Department. I note that you have since refined your request and have resubmitted it. Your modified request is being treated as a new request by this Department (reference: AIT 13-11-2009-172510-001).

7. I note from your various comments on-line on the www.whatdotheyknow.com website that you are unsure whether the information you requested is 'held' or not and if so which exemptions will apply to its release. I can confirm that where it is not possible to respond to a request within the framework of the Act a normal business reply is all that can be provided. I am sorry if this was unclear. The only one of your questions that I consider had potential to be answered under the Act was the second part of question (e) which states "*If yes please provide copies of any meetings, training manuals etc*" but this request has since been overtaken by your submission of a refined request.

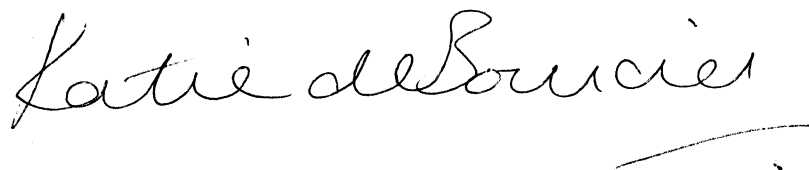
Conclusion

8. In summary, I find that:

- Your questions were incapable of being answered under the Act.
- A section 17 'notice' stating that the public interest needed to be tested in relation to relevant information 'held' was issued erroneously, for which you have received an apology.
- You have since refined your questions and they have been accepted as a new request under the Act.

If any aspect of this review is unclear, I should be happy to explain it. If you are dissatisfied with the review, you may make a complaint to the Information Commissioner under the provisions of section 50 of the Act. Further details of the role and powers of the Commissioner can be found on his website at: www.ico.gov.uk. His address is: Information Commissioner's Office, Wycliffe House, Water Lane, WILMSLOW, Cheshire, SK9 5AF. Fax 01625 524 510.

Yours sincerely,

A handwritten signature in cursive script that reads "Katie deBoucier". The signature is written in black ink and includes a horizontal flourish at the end.