



MINISTRY OF DEFENCE

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CIO/3/18/1/350-18-05-2009-100525-001
& 18-05-2009-103727-002

Mr R Varley
Via www.whatdotheyknow.com
(request 12049)

29 July 2009

Dear Mr Varley,

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your e-mail of 18 June 2009 in which you requested an internal review under the Freedom of Information Act 2000 (the Act) of this Department's handling of your request for information dated 15 May 2009. In accordance with the Secretary of State for Justice's Code of Practice under section 45 of the Act, any expression of dissatisfaction with the handling of information request within the Department triggers an independent review of the handling of the case.

2. Your request for information was sent to MOD via the link on the www.mod.uk website on 15 May 2009. Abbreviating the wording of your request slightly, I consider it to have been in three parts:

a. *Why the MOD feels it necessary to ask for this information [sexual orientation] from civil servants, but not from the Armed Forces?*

b. *How many members of the Armed Forces who have provided the requisite information on (i) HRMS , and (ii) any other similar system have declared their sexual orientation as being anything other than heterosexual?*

c. *How many MOD civil servants who have provided the requisite information on HRMS have declared their sexual orientation as being anything other than heterosexual?*

Handling

3. In conducting my review of the handling of your request, I have focussed 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.

4. As you acknowledge in your e-mail, a written reply to the third part of your request was sent by the Pay and Pensions Agency (PPPA) at Cheadle Hulme within four working days, on 21 May 2009 which was very prompt, well within the statutory requirement of section 10(1) of the Act (a response was due no later than 12 June). Their response included the information that "We have been asked to respond to Q3 only with a separate formal response being issued for Q1's and 2 from within the Department". With hindsight, it would have been more helpful if it had advised you precisely who in MOD would be answering the rest of your request, and that the first part of your request did not come within the scope of the Act. It required a policy specialist to formulate a reply to your question why the MOD feels it necessary to ask for this information from civil servants on sexual orientation and not from members of the Armed Forces because the Act only gives entitlement to access to *recorded* information held by a public authority at the time the request was made.

5. Having reviewed your request, I have concluded that the second and third parts of your request should have been answered together by the PPPA as they held the relevant recorded information on behalf of MOD and could have provided it to you in their letter of the 21 May. This would then have left central policy staffs to write to you a normal business reply outside the scope of the Act giving you an explanation of the MOD's policy on collecting sexual orientation data. However, the Deputy Chief of Defence Staff (Personnel) Secretariat have, instead, have had to obtain information from PPPA to answer the second part of your request, as well as providing a policy explanation of their own in response to the first part of your request. This approach has occasioned a very unfortunate delay, but you will be receiving a letter today from MOD that completes our response in full to your request of 15 May. Our sincere apologies for the delay.

6. I'm sure you will appreciate that we are unable to undertake a review of the substance of the responses you have received under the Act until you have received the outstanding reply. This letter does not affect your statutory rights to request a further independent internal review of the substance of the response should you require it.

Conclusion

7. In summary, I find that:

- The first part of your request required an explanation of current policy outside the terms of the Act;
- The second part of your request has been delayed, wrongly in my view, in order to reply to your policy question, for which I must apologise;
- The third part of your request was answered promptly within the prescribed timescale.

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.

FOI Internal Reviews Team