



Ministry of Defence

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Katie de Bourcier
Head of Corporate Information

Our Reference: D/CIO/3/18/1/373

Mr Richard Taylor
By email to: 14713-E3D9E815@WHATDOTHEYKNOW.COM

22 February 2010

Dear Mr Taylor,

FREEDOM OF INFORMATION ACT 2000 INTERNAL REVIEW

1. I am writing in response to your e mail dated 12 August 2009 to the MOD's CIO-FOI Mailbox in which you requested an Internal Review of the Department's handling of your request for information dated 14 July 2009 under the Freedom of Information Act 2000 (the Act). You requested details of the nature of the injuries sustained by the 210 UK individuals who were publicly reported as being seriously or very seriously injured in Afghanistan between 7 October 2001 and 15 June 2009. I apologise for the late response to your request for an Internal Review.

2. In order to respond to these complaints I have now completed a full independent review of the handling of your request and substance of the responses you received. The purpose of the 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 section 45 of the Act, which can be found at:
www.foi.gov.uk/reference/impred/codepafunc.htm#partV1

Handling

3. In conducting my review of the handling of your request I have focused 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 12 which does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying exceeds the appropriate limit;
- e. Section 16 which places a duty on a public authority to provide advice and assistance, so far as it reasonable to do so, to persons who propose to make, or have made, requests for information;
- f. Section 26(1) which states information is exempt information if its disclosure under this Act would, or would be likely to, prejudice (b) the capability, effectiveness or security of any relevant forces;

4. Your initial request for information was received by MOD on 14 July 2009; a substantive response was therefore due no later than 11 August. DASA (Health Information) replied on 11 August, but inadvertently sent you a response to a request for information under the Act from another requester on a similar subject, for which I apologise. You drew the Department's attention to this error and it was quickly corrected on 12 August when DASA (Health Information) sent you a substantive response, marginally exceeding the statutory timescale for responding. Following your request for an Internal Review, DASA (Health Information) initially replied on 9 September reviewing their response to your request and providing some further information surrounding the request.

5. You were informed of your rights to appeal and in other aspects your request was handled in accordance with the Act.

Substance of the Reply to your Request

6. Your request dated 14 July 2009 stated: *"The MOD's published statistics relating to Operation Herrick (Afghanistan) state that during the period 7 October to 15 June 2009 210 UK individuals were seriously or very seriously injured. For each of those individuals please release brief details of the nature of the injuries sustained"*. DASA(Health Information)'s reply on 12 August identified the number of very seriously injured (VSI) and seriously injured (SI) as a result of hostile action or other causes and provided an explanation of the two categories. A link was also provided to published casualty statistics. I find that none of this information was in the direct scope of your request, although I acknowledge that it was provided in an attempt to be helpful in accordance with section 16 of the Act.

7. Your request specifically asked for brief details of the nature of the injuries sustained in Afghanistan by 210 individuals. DASA (Health Information) did not provide this information, stating that 'information on specific injuries for Service personnel is not held centrally. In order to answer this question DASA (Health Information) would need to review the individual medical records for the 210 Service personnel who have been recorded as VSI and SI and this would incur disproportionate cost'.

8. However, this review has found that not all the information in scope of your request is held by MOD. Under the FOI Act, a public authority is obliged to inform the requestor whether it holds the information. I have found that DASA (Health Information) did not explain sufficiently which information in scope of your request was held. During the Internal Review process, DASA (Health Information) have advised that details on the nature of injuries for serious or very serious injuries are not held centrally by MOD. The NOTICAS casualty categorisation is completed in theatre on the advice of a medical officer following direct visual assessment of the patient. The detail provided can be very broad, often stating 'multiple injuries'. MOD does not manage nor have access to patient records in secondary care that are treated by the NHS; this information is therefore not held. The trauma registry does hold some details on injuries, but this is also not a comprehensive source of information. The only information MOD holds relating to the nature of injuries for the personnel detailed in your request, is for patients who completed treatment in MOD Hospital Units or where MOD supplied tertiary care. This includes physiotherapy at DMRC Headley Court, the Regional Rehabilitation Units and the Departments of Community Mental Health.

9. While the reply you received referred to "disproportionate cost", it did not refer explicitly to section 12 of the FOI Act, and I apologise for this. However, I find that section 12 should not have been applied. This Internal Review has concluded that section 26(1)(b) should instead have been applied to the majority of the information in scope of your request which is held by MOD. I apologise that this was not previously explained to you. Section 26(1)(b) states 'information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the capability, effectiveness or security of any relevant forces'.

10. As this is a qualified exemption, a public interest test (PIT) has been completed. I am satisfied that DASA (Health Information) have provided a sufficient PIT to support the application of section 26. The PIT concluded that the balance of public interest lies with withholding the information in scope of your request. While there is a strong interest in releasing operational information where possible to the public, particularly due to the high level of political and media interest in Afghanistan, this is outweighed by the risk such information could pose to UK personnel and capabilities in Afghanistan. For example, the release of such information would pose a risk to tactics, techniques and procedures of our armed forces in Afghanistan by highlighting capability gaps and tactical limitations. Information already in the public domain relating to injuries sustained in Afghanistan includes details on amputees, deaths and the number of very serious and serious injuries. Under section 26(1)(b) of the Act, any release of more detailed information such as the nature of the injuries sustained in Afghanistan would enable the enemy to build up a fuller picture of the effect of the conflict on the UK forces which could threaten operational security.

11. You may wish to be aware that information on the number of UK service personnel who have sustained amputations as a result of their deployment on operations is already in the public domain (via Hansard) and from this month will be routinely published by DASA as an official statistic.

Conclusion

12. In conclusion I find that:

- a. DASA (Health Information)'s response to your request only marginally exceeded the statutory timescale for responding to FOI requests.

- b. Section 12 was incorrectly applied to your FOI request for which I apologise.
- c. The information in scope of your request is only partially held by MOD.
- d. Section 26(1)(b) applies to the information in scope of your FOI request held by MOD.
- e. Section 26(1)(b) is subject to a PIT, which on balance has concluded that it is in the public interest to withhold the information in scope of your request.

13. 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,

Katie de Souza