

From Mrs S Gardiner



Ministry  
of Defence

Ministry of Defence  
Main Building (Ground Floor, Zone D)  
Whitehall  
London SW1A 2HB  
United Kingdom  
Telephone [MOD]: +44 (0)20 780 89000  
E-mail: CIO-FOI-IR@mod.gov.uk

Information Rights Team - Head

Our references:

FOI2018/16009 / FOI2019/00065  
FOI2019/00220 / FOI2019/00468

Mr G Roberts

Via e-mail:

[request-539909-f6255871@whatdotheyknow.com](mailto:request-539909-f6255871@whatdotheyknow.com)  
[request-541527-5746a20b@whatdotheyknow.com](mailto:request-541527-5746a20b@whatdotheyknow.com)  
[request-542269-6c6a325a@whatdotheyknow.com](mailto:request-542269-6c6a325a@whatdotheyknow.com)

17<sup>th</sup> May 2019

Dear Mr Roberts

**FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW**

1. I am writing in response to your emails of 15, 18 February and 20 March 2019. The latter email stated that you still required an internal review of the handling of your requests under the Freedom of Information Act 2000 (the Act) which are available on the WhatDoTheyKnow (WDTK) website at the following links:

- **Request of 17 December 2018 - FOI2018/16009**  
[https://www.whatdotheyknow.com/request/dates\\_of\\_vaccine\\_administration](https://www.whatdotheyknow.com/request/dates_of_vaccine_administration)
- **Request of 2 January 2019 - FOI2019/00065**  
[https://www.whatdotheyknow.com/request/data\\_evidence\\_to\\_back\\_up\\_mod\\_cla](https://www.whatdotheyknow.com/request/data_evidence_to_back_up_mod_cla)
- **Request of 10 January 2019 - FOI2019/00468 (including refined request FOI2019/02545)**  
[https://www.whatdotheyknow.com/request/statistic\\_of\\_non\\_deployed\\_gulf\\_t](https://www.whatdotheyknow.com/request/statistic_of_non_deployed_gulf_t)

The purpose of this review is to consider whether the requirements of the Act have been fulfilled. Its scope is defined by Part 5 of the Code of Practice<sup>1</sup> under section 45 of the Act. I apologise for the delay in providing this review.

## **Handling**

2. In conducting my review of the handling of your requests, I have focussed on the following provisions in 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(1) which states that section 1(1) does not oblige a public authority to comply with a request for information where the cost of compliance exceeds the appropriate limit;
- e. Section 12(4) which states that where two or more requests for information made to the public authority by one person or by different persons acting in concert or in pursuance of a campaign the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them; and
- f. Section 16(1) which states that it is the duty of a public authority to provide help and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

## **Aggregated Requests (Responses dated 18 January and 19 February 2019)**

3. In accordance with section 10(1) of the Act, responses to requests for information should be provided no later than twenty working days after receipt. You made a series of requests<sup>2</sup> to the MOD from 17 December 2018 and 10 January 2019, and the response to the first of these (dated 17 December) was due by 18 January 2019.

4. The substantive response dated 18 January (which appears to have been provided to you on 17 January on WDTK) was, therefore, within the statutory timescale. It provided a response to all of the requests, and explained that, under section 12(4) of the Act, MOD was permitted to regard the estimated cost of complying with any of the requests to be the estimated total cost of complying with all of them and would exceed the appropriate limit.

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<sup>1</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/722165/FOI-Code-of-Practice-July-2018.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722165/FOI-Code-of-Practice-July-2018.pdf)

<sup>2</sup> FOI2018/16009; FOI2019/00065; FOI2019/00220 and FOI2019/00468

5. The response further advised that your requests of 25 October and 5 November 2018 had also been included in the aggregation of requests under section 12(4). A full list of the requests included in the aggregation is provided at Annex A to this review for ease of reference.

6. Under section 16 (advice and assistance), you were advised that your requests of 17 December and 10 January would require the retrieval and review of a large number of medical records, something that could not be achieved within the appropriate limit. You were informed that MOD could answer your requests of 2 and 6 January from information held centrally. You were informed of the right to appeal.

7. On 15 and 18 February 2019, you requested an internal review of the handling of the requests listed at paragraph 1 of this review. On 19 February, the Joint Medical Group (JMG) Secretariat provided you with further information to explain why MOD could not provide the information requested under FOI2018/16009 (17 December 2018) and FOI2019/00468 (10 January 2019), using the informal resolution process.

8. Again, it was noted that the information required to answer these questions was not held centrally and would require the retrieval and review of potentially thousands of Service personnel medical records to locate, extract and collate the information required to provide a definitive response to each question. The time required to complete this process would exceed the appropriate limit several times over. However, I note that the exemption at section 12(1) was not specifically applied in this response although it was implied.

9. You were again advised that MOD could handle your requests of 2 and 6 January within the appropriate limit. You were asked to confirm if you would like the searches to be conducted. On 20 February, you confirmed that you would like the searches to be carried out and these requests were logged as a new refined request (FOI2019/02545). The response to this request was provided on 19 March.

### **Request for Internal Review**

10. I note that my team contacted you on 20 February to ask you to confirm if you required an internal review of the response issued on 18 January 2019 (which advised that your requests had been aggregated under section 12(4) of the Act). I can find no record of your response to this enquiry; however, I note that on 20 March (following receipt of the response to your refined request) you emailed the JMG directly stating that you still required an internal review.

11. As your case is complex, and involves a number of overlapping requests, I have decided to conduct two reviews. This report details my findings in relation to the aggregation of your requests and response dated 18 January, while a separate one will focus on the handling of your refined request (FOI2019/02545)<sup>3</sup>.

12. Details of the requests covered by this review, and others included in the aggregation are provided at Annex A.

### **Application of section 12(4) (aggregation of requests) and Fees Regulations**

13. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004<sup>4</sup> prescribe the circumstances in which requests may be aggregated for the purposes of section 12 (exceeding the cost of compliance) of the Act and state that two

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<sup>3</sup> [https://www.whatdotheyknow.com/request/statistic\\_of\\_non\\_deployed\\_gulf\\_t](https://www.whatdotheyknow.com/request/statistic_of_non_deployed_gulf_t)

<sup>4</sup> <http://www.legislation.gov.uk/uksi/2004/3244/introduction/made>

or more requests to one public authority can be aggregated for the purposes of calculating costs if they:

- (a) are by one person, or
- (b) are by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign (section 12(4)(b) of FOIA);
- (c) relate, to any extent, to the same or similar information; and
- (d) are received by the public authority within any period of sixty consecutive working days.

14. For (a), I am satisfied that the requests listed at Annex A were submitted by one person, namely yourself, and so the first criterion is met.

15. For (d), your requests were received by the Department over a period of ten working days, from 17 December 2018 to 10 January 2019. Even if you included the earlier requests of 25 October and 5 November (which are not subject to this review), they would all have been received within 50 consecutive working days.

16. For (c) above, I can advise that this criterion allows for the aggregation of requests where requests relate "to any extent" to the "same or similar information". The Information Commissioner has stated that requests will be similar where there is an overarching theme or common thread running between them in terms of the nature of the information requested<sup>5</sup>. Although it was not specified, I am satisfied that the subject of all of your requests contain the common thread of information about the ***'administering of vaccines to Service personnel, including during the Gulf Conflict 1990/91'***.

17. I therefore find that your requests fully meet the criteria for aggregation as outlined at (a), (c) and (d) above. I will now consider whether MOD was entitled to apply the exemption at section 12(1) of the Act.

### **Section 12(1) (exceeding the cost of compliance)**

18. Section 12(1) of the Act does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with it would exceed the appropriate limit, which is set at £600 for central government departments by the Fees Regulations. This limit is calculated at a rate of £25 per hour of staff time, and £600 equates to 24 hours work.

19. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) states that an authority can only take into account the costs it reasonably expects to incur in determining whether it holds the information and then to locate, retrieve and extract it.

20. MOD's responses dated 18 January and 19 February explained that the information in scope of two of your requests (those dated 17 December and 10 January) was not all held centrally or electronically. The processing of your request would involve the retrieval and review of potentially thousands of hard copy Service medical records from 1990. I have explained the position further for the two requests below:

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<sup>5</sup> [https://ico.org.uk/media/1199/costs\\_of\\_compliance\\_exceeds\\_appropriate\\_limit.pdf](https://ico.org.uk/media/1199/costs_of_compliance_exceeds_appropriate_limit.pdf)

## **Request of 17 December 2018 - FOI2018/16009**

21. For ease, your request was: *'When was the last date MOD administered Pertusis and Anthrax simultaneously on troops on its Armed forces?'* and *'When was the last date MOD administered multiple vaccines on its Armed Forces? (5 or more simultaneously and/or within 4 weeks)'*.

22. I note that you made a similar request to the Department on 5 November 2018, and also in your complaint of 20 March. In the latter, you have amended the wording of this request to *'when was the last time 5 or more vaccines were administered to British troops within 1 sitting/ the same day/ within 3 weeks'*. However, I should advise that your amended wording does not assist in refining the request and does not reduce the burden of handling it under the Act.

23. To provide a response to the questions raised in your request, MOD would have to locate and retrieve all Service medical records from the MOD archives and electronically held records to identify the last date the vaccines were administered. Each record would need to be manually checked to determine the vaccinations provided to each person, the number of vaccinations received and the time period in which they were administered. This information is not held electronically, or in a central location and cannot be obtained without considerable staff effort.

24. In addition, while the wording of your requests suggests that you are interested in receiving this information for the period of 1990/91, you have not specified a time period and it is unclear if you are seeking information after this period. Nevertheless, your request is very wide. There are several thousand medical records held from 1990/91 to the present day and where vaccines such as Anthrax or others have been administered over the years. Even if you were to limit this request to a specific unit in the Gulf War conflict 1990/91, it may not be possible to provide this information within the cost limit. This is because the electronic medical records and paper files of every service person in that unit would have to be located and checked in order to extract and provide the last date of administering the vaccines.

25. Section 12(1) requires a public authority to estimate the cost of compliance with a request; it is not required to calculate the exact cost of the request. I can advise that the cost of conducting the searches required for this request involves a review of some 53,000 medical records (if we assumed that you were interested in the number of personnel deployed on Op GRANBY alone) which would exceed the cost limit by some considerable margin. If we allow a reasonable ten minutes for a suitably qualified person to retrieve and review each record (electronic and/or paper file) to extract the requested information, it is estimated that it would take one person approximately 1111 working days (8833 hours) to complete the relevant searches and identify the information in scope of your request.

26. MOD may be able to provide the last date that MOD administered **one** of the vaccines of interest to you if you narrowed your request to electronic medical records held from 2007, for a limited period (i.e. in the last year), where coded entries are available in the database (excluding any free text fields). However, this is not likely to provide you with the information that you are seeking.

## **Request of 10 January 2019 - FOI2019/00468**

27. In response to your request *"the percentage (%) of the vaccine regime (inc Anthrax) prepared troops that DID NOT DEPLOY INTO THEATRE (Saudi, Iraq, Kuwait) are suffering/have suffered Gulf War symptoms"*, you were advised that several thousands of medical records would also have to be reviewed to determine if it is held (i.e. in order to calculate a percentage) as this information is not readily available electronically or in a central location.

28. I can advise that the MOD does not hold the recorded information you have specifically requested. However, it is possible that the building blocks that could be used to calculate the 'percentage' response you are seeking is held.
29. To calculate the answer, the Department would first have to identify all the individuals who were selected for, but not subsequently deployed on, Op GRANBY. I have not been able to determine any easy method to create any such list, although it was noted that it may be possible to collate a list of units that did not deploy and check any existing unit records or orders to determine if they had been readied for deployment at some point. Further work would then have to be conducted to identify each individual assigned to the 'readied' units at the time, so that their medical records could be checked to confirm if they received the relevant vaccinations. This method would not capture individuals who were prepared but subsequently did not deploy with their units and I can advise that to locate this information alone is a time consuming and burdensome task.
30. If it is possible, then once a list of vaccinated, non-deployed individuals had been compiled, a further manual check of medical records and/or paper War Pension Scheme (WPS) claims would then have to be conducted to determine which, if any, of these individuals had reported symptoms that were related to their service at that time.
31. Unfortunately, I am unable to offer a suitable refinement for this request under section 16 of the Act.
32. I am satisfied that such effort would, therefore, exceed the cost limit under section 12(1) (exceeding the cost of compliance) of the Act for both requests. MOD is therefore not obliged to comply with them if the authority estimates that the cost of locating, retrieving and extracting any information held in scope of the request would exceed the appropriate cost limit and, in this case, is by some considerable margin.
33. In summary, it is unfortunate that the information in scope of at least two of your requests cannot be obtained through a simple search as not all of the information is held electronically or in a central location in the form that you have requested. MOD has provided an explanation of where the effort and estimated costs involved in processing your requests would occur. I, therefore, find that MOD is correct to apply section 12(1) and the cost of dealing with these requests can be regarded as the cost of dealing with all of them under the terms of section 12(4) of the Act.

### **General issues**

34. In conducting this review, I noted that the JMG Secretariat has dealt with a number of requests for information and associated correspondence from you on this subject. Although the Department has an obligation to assist requesters to make a request so that it can be accommodated within the appropriate limit, there will be occasions where, despite all attempts at refinement, the Department is unable to provide anything other than a section 12 response to requests for the same or similar information.
35. For future requests, you may wish to consider how you could frame them so that they can be handled within the cost limit. It would also assist the Department if you would reduce the burden of your requests by refraining from raising new overlapping requests<sup>6</sup> on the same or similar subject when you have already made a complaint and requested an internal review to be conducted.
36. As advised, MOD is entitled to rely on section 12(1) of the Act to refuse to comply with any future requests if to locate, retrieve and extract the information exceeds the cost limit. MOD can also aggregate any new requests (after your refined request of 20

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<sup>6</sup> [https://www.whatdotheyknow.com/request/informed\\_consent\\_gulf\\_war\\_1991](https://www.whatdotheyknow.com/request/informed_consent_gulf_war_1991)

February) under section 12(4), which are received within any period of 60 consecutive working days and if two or more requests are made on the same or similar subject.

### **Section 16 (advice and assistance)**

37. Under section 16 of the Act, it is the duty of a public authority to help persons who propose to make, or have made, requests for information. Where a section 12 refusal notice is issued by the public authority, the Act requires the requester to specify a refinement before any further processing.

38. As explained above, section 12(1) can be applied to your requests of 17 December 2018 and 10 January 2019. As your request of 5 November is similar to the request of 17 December and was also received within 60 consecutive working days, it can be aggregated for the purposes of applying section 12(4). I have explained the difficulties in the handling of these requests.

39. In the MOD's responses, you were correctly advised that a search could be conducted for any studies/research undertaken by the MOD and held centrally that might answer the questions you raised on 6 January. Similarly, a search could be undertaken for any centrally held MOD policy/guidance within the scope of the request of 2 January.

40. I find that MOD, therefore, provided you with the appropriate advice in order for you to refine your requests and a response was provided on 19 March 2019. However, the Department should have considered whether the requests of 17 December and 10 January could have been refined in any way so that they could be handled within the cost limit.

41. I can also advise that the key facts about the medical countermeasures used to protect British Forces during the 1990/1991 Gulf conflict have been disclosed and have been in the public domain for some years:

- <https://www.gov.uk/guidance/gulf-veterans-illnesses>
- <http://webarchive.nationalarchives.gov.uk/20050328231439/mod.uk/issues/gulfwar/>.

### **Information requests framed as questions**

42. I note that some requests have been raised in the form of questions e.g. your request of 6 January (*..If this practise is not followed..*). Information requests framed as questions pose particular processing difficulties under the Act. This is because the scope of the Act is limited to an entitlement to recorded information held by a public authority at the time of the receipt of the request. Although the Act does not specifically state that the "held" information will be restricted to "recorded" information, the Information Commissioner has confirmed that the information "held at the time the request is made" will be limited to "recorded information".

43. In a Decision Notice FS50279127<sup>7</sup> of 15 February 2011 the Information Commissioner stated that:

*"The Act does not provide a right to ask questions from public authorities. It provides the right to ask an authority for a copy of any recorded information that it holds...Although this is the case, the Information Tribunal has clarified that any written question to a public authority can be considered to be a freedom of information request. If a question can be answered by simply providing the applicant with copies of recorded information that it holds then it should do so. Otherwise it should simply state that it does not hold relevant information."*

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<sup>7</sup> [https://ico.org.uk/media/action-weve-taken/decision-notice/2011/585872/fs\\_50279127.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2011/585872/fs_50279127.pdf)

44. The Act does not require officials to offer their opinions or provide explanations solely for the purpose of answering the questions raised by the requester as they are not, in themselves, a legitimate substitute for proper compliance with the FOI obligations placed upon public authorities. So, whilst you may require MOD to answer your questions under the Act, the legislation only requires the Department to make the appropriate declaration at section 1 (quoted above) and meet the legal obligations associated with that declaration.

45. You may wish to use the ICO's guidance at <https://ico.org.uk/your-data-matters/official-information/> in helping you to frame any future requests for information under the Act. This guidance includes a useful "dos" and "don'ts" table which advises that it is advisable to use straightforward, polite language and avoid basing your request on assumptions, opinions. It is also important to not mix requests for recorded information under the Act with personal complaints or comments.

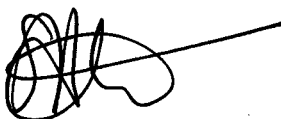
## Conclusion

46. I find that:

- Your requests for information were broadly handled in accordance with the Act.
- I am satisfied that your requests were received within 60 consecutive working days and contain the common thread of information about the '**administering of vaccines to Service personnel, including during the Gulf Conflict 1990/91**'. Therefore, your requests can be aggregated under the terms of section 12(4) of the Act.
- Section 12(1) applies to your requests of 17 December 2018 and 10 January 2019 as to determine whether the information is held for at least two of your requests subject to this review and then to locate, retrieve and extract the information would exceed the cost limit of £600 by some considerable margin. Further advice and explanation of the estimated cost burden in processing your requests is provided in my review.
- The Department provided advice and assistance in compliance with its obligations under section 16(1) of the Act in the initial response and during a period of informal resolution. Further advice is provided in this review on a possible refinement of the request of 17 December 2018 which may bring it under the section 12 cost limit.
- Unfortunately, I am unable to offer a suitable refinement for the request of 10 January 2019.

If you remain 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 the following website: <https://ico.org.uk>. The address is: Information Commissioner's Office, Wycliffe House, Water Lane, WILMSLOW, Cheshire, SK9 5AF.

Yours sincerely,



Sandra Gardiner



**Aggregation of information requests under section 12(4)**

No	FOI ref	Date of request	Request details	MOD's position
<b>Requests that are subject to this internal review</b>				
1	FOI2018/16009	17 Dec 18	<p>When was the last date MOD administered Pertusis and Anthrax simultaneously on troops on its Armed forces?</p> <p>When was the last date MOD administered multiple vaccines on its Armed Forces? (5 or more simultaneously and/or within 4 weeks)</p>	<p>Section 12(1) applies to this request as explained above. Therefore, it was correctly aggregated under s12(4).</p> <p>Further advice is provided in this internal review above on how this request could be refined.</p>
2	FOI2019/00065	2 Jan 19	<p>Could you please forward a copy of DATA /Document which contained the information that I and others as you claim should have been briefed on in 90/91, The document which MOD sent out to units/medical units</p> <p>Any other Data/Evidence that backs up MOD claim of ordering her Units to give Informed consent to its troops.</p>	<p>Under section 16(1), this request was correctly offered as a refined request and MOD has complied with it.</p> <p>Further advice on 'informed consent' provided in this review.</p>
3	FOI2019/00220	6 Jan 19	<p>The time between the administration of Live vaccines has increased over the years since 1990.</p> <p>What lessons were learned from only having a few days/weeks between live vaccines such as Anthrax?</p> <p>If this practise is not followed, is there an increased risk of autoimmune conditions?</p> <p>If the practise is not followed, is there an increased risk of cancers?</p>	<p>Under section 16(1), this request was correctly offered as a refined request and MOD has complied with it.</p> <p>See the section above on 'Information requests framed as questions'</p>
4	FOI2019/00468	10 Jan 19	<p>What percentage (%) of the vaccine regime (inc Anthrax) prepared troops that DID NOT DEPLOY INTO THEATRE (Saudi, Iraq, Kuwait) are suffering/have suffered Gulf War symptoms?</p>	<p>Section 12(1) applies to this request as explained above. Therefore, it was correctly aggregated under s12(4).</p> <p>Further advice is provided in this internal review on how this request could be refined</p>

Requests not subject to this review but have been aggregated under section 12(4)				
1	FOI2018/13439	25 Oct 18	Is it agreed that since MOD reduced the multiple vaccine regime from Gulf Era 90/91, through the Iraq /Afghanistan Era's to the current day, that MOD has managed to reduce autoimmune symptoms/conditions in our troops dramatically more in line if not better than within our civilian population ?	Response provided on 25 Oct 2018 asked for clarification of the recorded information that you were seeking.
2	FOI2018/13473	25 Oct 18	From your Data Is it correct that autoimmune conditions have been virtually irradiated since the reduction in vaccines and time extended between vaccines?  In essence is today's vaccine regime on our troops is safe?	Clarification of FOI2018/13439 was received.
3	FOI2018/13978	5 Nov 18	Q, I can see that the green book was published in 1992. On what date did the green book become part of MOD protocol? Please provide the MOD document/source that substantiates this. ORDER/EMAILS Etc to ALL units.  Q The green book protocol states clearly that any new vaccines administered are subject to enhanced surveillance for all. Considering MOD was aware that they had administered its troops with new vaccines (at best), new untested experimental vaccines/ combinations administered in multiples (at worse). What steps did MOD take to adhere the Green Book Protocol to avoid being negligent to " It's Duty Of Care" of the troops administered. Please show Data of the ADR's it reported to the Dept of Health/and/ during the years 1991 - 1999 surrounding vaccines.  Q What ENHANCED surveillance did MOD carry out on its troops between 91 -99 ? Please forward Copies of ORDERS/Emails to units/medical dept's to carry out ENHANCED SURVEILLANCE on troops during these years.  Q When was the last date/year/conflict that MOD administered Pertusis simultaneously with Anthrax on its troops?  Q When was the last date /year/conflict MOD administered multiple vaccines (5 or more within 4 weeks) to its troops?	Response of 22 Nov 2018 applied section 12(4). This request was aggregated with your earlier ones above at FOI2018/13439 and FOI2018/13473.  Under section 16, advice was provided on refining your requests.