First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Appeal Reference:EA/2017/0225

Heard at Alexandra House Manchester
On 2nd March 2018

Before

JUDGE
MISS FIONA HENDERSON

TRIBUNAL MEMBERS
DR MALCOLM CLARKE
MS JEAN NELSON

Between

MR CHARLES STUART

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

DECISION AND REASONS

Introduction

1. This is an appeal against decision notice FS50665623 dated 13 September 2017 which held that the Ministry of Defence (MOD) were entitled not to reply to the complainant's request on the grounds that it is vexatious in reliance upon s17(6) FOIA. We uphold this decision with the exception of some clerical substitutions for clarification as detailed in paragraph 11 below.

Background

2. The Appellant is a former Senior Aircraftsman in the RAF. He suffered a neck injury in an accident on duty in Belize in November 1991. The chronology from the documents indicates that:
   - The accident was never subject to an investigation by a unit inquiry despite having been entered in the accident book,
   - He presented to a Doctor at his UK unit in January 1992 complaining of head and neck pain (no recommendation was made at that time to reduce his existing duties related to heavy lifting).
   - He saw the same Doctor and on 27.2.1992 a Consultant Physician (neither of whom arranged any x-ray, USS or MRI). The documentary evidence indicates that at that time his pain was believed to be muscular or related to vascular headaches.
   - He saw another doctor and was placed on "light duties" in March 1992[1]
   - Prior to full investigations of a spinal injury taking place he was treated by a civilian physiotherapist employed by the RAF. It is the Appellant's case that this treatment aggravated the injury
   - He was referred at his own request for an MRI scan in August 1992 which showed a prolapsed disc in his cervical spine.
   - It was only after this scan that he was fitted with a neck collar and advised against heavy lifting and strenuous exercise in September 1992.
   - He initiated a claim against the MOD in May 1993 relating to personal injuries he had sustained in Belize, which was settled in August 2004. As part of that settlement he agreed not to make further claims against the MOD in relation to the incident.
   - He was referred to a spinal expert in 1994 and had spinal surgery which was ultimately not successful.
   - He was invalided out of the RAF in the summer of 1995 and is now assessed by the Veterans Agency as 70 percent disabled and unfit to work.

3. He has continued to raise issues relating to his treatment (both medical and by his line managers). He raised two grievances in accordance with QR[2] 52(8) dated 7.10.93[3] and

[1] P43
[2] Queen's Regulations
[3] Copy at p 162-4

10.11.93[4] and raised a grievance under QR 1001 in 1994. He raised a separate complaint QR 1625[5] relating to the treatment by the civilian physiotherapist. He is not satisfied with the way that these have been handled and believes that they have been closed wrongfully and in breach of regulations. He has made a number of requests for information and his MPs (there have been several incumbents during the time period) have exchanged correspondence with the MOD Ministers and secured an Adjournment debate in the House of Commons in 2009.

4. The Appellant maintains that his service complaints are unresolved *"due to a corrupt chain of command who consistently obstructed my service rights to redress and misled my MP from September 1993 to February 1995. Many people were involved in covering up and many documents were raised especially medical ones. The information the MOD hold on me is vast and self-produced so there will inevitably be requests from me probing for information to unravel the cover up*"[6].

5. Pursuant to an information request to the MOD in 2014 which was refused on the grounds that it was vexatious, the Appellant was notified that any further correspondence on the same subject "*will be filed unanswered*" and that s17(6) FOIA would be relied upon in future. The 2014 request was the subject of a complaint to the Commissioner which upheld the reliance on s14(1) in Decision Notice FS50548527. This was appealed to the FTT[7] who allowed the appeal in part (requiring the MOD to provide the meaning of acronyms used in earlier correspondence) but upheld the reliance on s14(1) FOIA in relation to the substantive information request.

Information Request

6. On 26th October 2016, the Appellant wrote to the MOD requesting:

"1. Is there any information held at the MOD in the form of a Regulation that would [authorise] OC Admin in 1993 not to action and cancel my right to see the AOC as per QR52(8), and are there guidelines or a regulation available that approves Minister Freeman's advice in his letter of 11/11/94 to suggest that a Parliamentary Enquiry

[4] Copy at p 165-8
[5] Dated 13.12.1993
[6] P20 bundle
[7] EA/2015/0004

takes natural precedence over my Queen's Regulation 52(8) application and place it in abeyance and deny me my right to orally put my case to the AOC".

2. Is there any information or regulation held at the Ministry of Defence that would authorise Minister Roger Freeman's position of "unable to deal" with my QR1001 of 5 October 1994 and close it off in the manner he chose and not passed onto the appropriate service desk for actioning".

Complaint to the Commissioner

7. The Appellant received no response from the MOD and complained to the Commissioner on 31st January 2017. Initially the ICO declined to investigate the complaint, however following further correspondence the ICO investigated the case and issued a decision notice dated 13th September 2017.

Appeal

8. The Appellant appealed on 8th October 2017, he set out his grounds in an 11 page letter of the same date. His grounds can be summarised as:
   i. The information is for new information and MOD were not entitled to rely on s17(6) FOIA.
   ii. The request is not vexatious as it has a serious purpose:
      a) holding the public body to account on a serious matter - it will demonstrate misconduct in public office.
      b) He has not been provided with all the information on the subject.
      c) He maintains that his service complaints are unresolved due to a corrupt chain of command who consistently obstructed his service rights to redress and misled his MP.
   iii. His new request is unlikely to cause unjustified levels of distress and disruption on the MOD's staff as it is 2 years since the last request and this request is uncomplicated.
   iv. It is 2 years since the last request so the request is not obsessive.

9. The MOD did not apply to be joined to the case and the Commissioner opposed the appeal relying on the terms of her Decision Notice. The Appeal was listed for an oral hearing at which the Appellant attended but the Commissioner chose not to be

represented. The Tribunal was provided with an open bundle of material comprising 217 pages and an additional bundle of 10 documents. The Tribunal has had regard to all the oral and documentary material before it in reaching this decision even when not referred to specifically.

Scope

10. The Appellant has corresponded with the ICO and asked for factual amendments to be made to FS50548527. The Appellant believes that the MOD provided inaccurate information in that case. In her decision notice, the ICO has indicated that she is not able to issue a decision notice on this point as it is outside the handling of a request for information. The Appellant has been written to separately by the ICO who has advised how he should proceed. We are satisfied that the issue concerned is not within the scope of the information request made on 26.10.16 which is the subject of this appeal and it is therefore not within the scope of this appeal.

11. Additionally, at paragraph 45 of the decision under appeal, reference is made to QR1625 rather than QR52(8). The Commissioner accepts that this is a clerical error (although in her view this does not disturb the arguments or conclusion contained in the remainder of the decision notice or response which she continues to rely upon). It is her position that her decision notices cannot be amended once a notice has been finalised and published although the Tribunal is able to substitute the terms of a decision notice. The Tribunal agrees that the clerical error is not material to the decision but accepts that to leave it unamended would be confusing in light of the arguments raised by the Appellant in this appeal relating to whether this request is on a "new" topic. The Tribunal therefore substitutes "QR 52(8)" for "QR 1625" at paragraph 45.

Reliance on s17(6)

12. Section 17 FOIA relates to refusal notices and provides insofar as it is relevant:

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

13. Before the Commissioner the MOD maintained that the request that is the subject of this appeal was vexatious and thus s17(6)(a) FOIA is satisfied. In *Bryce v Information Commissioner and University of Cambridge [2017] UKUT 457 (AAC)* the Upper Tribunal agreed in principle with the view that s17(6) contains a procedural rule only. On this basis s 17(6)(a) is satisfied simply on the basis that the public authority is relying on s14 FOIA rather than the Tribunal having to determine whether the request was in fact vexatious[8].

14. The Appellant argues that the information in this request is upon a different subject matter to that in the 2014 request and as such that the MOD were not entitled to rely upon s17(6). His case is that the subject matter of the 2014 case and hence the s17(6) notice was confined to QR1625 (a complaint of medical negligence against the RAF physiotherapist). He argues that this information request relates to his QR 52(8)s and QR 1001 namely unresolved questions for the AOC in documents dated 7.10.1993 and 10.11.1993 which predate the QR 1625 case and are complaints about the mismanagement of his injury in Belize and afterwards at his UK posting at RAF North Luffenham.

15. From the papers before us we are satisfied that on 9.04.2014[9] the MOD informed the Appellant that:
"I have to advise you that the ministry of Defence regards your request dated 26th February 2014 as a vexatious request under section 14(1) of the Act. This means that the department has no obligation to comply with this request or any future request on

[8] However, as was the case in *Bryce* if the Appellant complains to the Commissioner that the request was not in fact vexatious that is a matter that must also be determined on appeal. See paragraph 24 et seq below
[9] P 92 bundle

this subject[10]. *Should you choose to submit further correspondence on* ***this subject*** *you are advised that it will be filed unanswered".*

16. In defining what was objectively meant by "this subject" as relied upon in this letter, the Tribunal has had regard to the preceding paragraphs which indicate that the subject of the 2014 request was defined by the MOD as *"an injury sustained in Belize in 1991 and the subsequent associated Departmental correspondence."*

17. This was placed in the context of a history of multiple previous FOIA requests :
"related to some aspect of your medical negligence cases, there has been significant drift in focus over the course of your requests. Initial queries for policy documents relating to medical negligence have become requests for policy documents on the procedures for drafting Ministerial Correspondence and details of personnel who may have been involved with the drafting process relating to your case…
Additionally, your requests relate to issues covered in the adjournment debate of February 2009".

18. The MOD provided an internal review on 23.05.2014 [11] which summarised the applicability of the s17(6) notice as being under the overarching theme of :
"*an injury sustained in Belize in 1991 and the administration of your medical treatment, accident compensation and Service complaints*.[12]" That letter stated:
"under s17(6) of the Act, where an authority seeks to reply [sic] on the section 14(1) exemption, there is no obligation to issue a further notice stating that we are relying on such a claim if we receive any similar requests from you in the future".
This summary is consistent with the MOD's outlining of the subject matter in the original refusal letter of April 2014 and we are satisfied that the Appellant was therefore on notice of the overarching subject matter that was encapsulated by the s17(6) notice.

19. The Tribunal has now considered whether the request in this case was on the same topic that was the subject of the s17(6) notice. We have had regard to the contents of

[10] Emphasis added
[11] P96 bundle
[12] P98 and 101 bundle

the information request which on the Appellant's own case refer to complaints about the mismanagement of his injury in Belize and afterwards in the UK. Their genesis is the injury sustained in Belize and they specifically relate to the administration of his service complaints. Additionally, from the transcript of the adjournment debate[13] it is apparent to us that they relate to issues covered in the Adjournment debate and this information request therefore falls within the ambit of the s17(6) notice.

20. We have gone on to consider whether it is reasonable for the MOD to rely upon s17(6) pursuant to (c) of that provision. We are satisfied that it was. The notice (and its restatement in the internal review of 23.05.14) was clear and explicit and clearly set out the reasons for the refusal. In our judgment the reasoning relied upon in these letters is equally applicable to the present request and it was set out extremely fully in the internal review which runs to more than 6 pages. It was explicit in the letter that this provision was relied upon in future requests. There is no limitation as to the duration of a reliance upon s17(6) FOIA although we can conceive that the circumstances might arise where sufficient time has elapsed that a requestor may reasonably no longer realise that it is still applicable or that it might be appropriate to review the situation to see if the factual position has changed. In this case although 2 years has passed this is not sufficient (especially in the context of a long running dispute dating back to an incident in 1991) such that it would be reasonable to consider that the Appellant might no longer be aware of the reliance on s17(6) or that there could have been a material change in circumstances such that the situation ought to be reviewed afresh.

21. The Appellant argues that the s17(6) notice was made in reliance upon various mistakes and misrepresentations by the MOD. In particular he relies upon assertions by the MOD that:
    - A named civil servant did not administer his case directly (when they are named in 4 documents that have been disclosed to the Appellant under Subject Access Requests).
    - The DGMS had reviewed the appellant's case and confirmed that there was no good reason to support the accusation of medical negligence against the

[13] P31-36 bundle

physiotherapist[14], but subsequently the DGMS has stated that he did not in fact review the Appellants case himself (by letter 17.12.13)[15]

- The history of his case was mis-represented by the Minister in the Adjournment Debate.

We conclude that none of these undermine the validity and reasonable reliance upon the s17(6) notice.

22. In assessing this argument, we take into consideration that the Appellant has raised these issues with the MOD in other correspondence and that they are tangential to the issues in dispute. Although the Appellant considers the named civil servant was the *"controlling mind and drafter of my ministerial correspondence*" we agree with the MOD position that it is the Minister who signs the letter who is responsible for the contents of any letters issued.[16] In oral representation the Appellant was not prepared to consider that any of these discrepancies could have arisen by mistake rather than because of a conspiracy, cover up or bad faith. In concluding that none of these undermine the validity and reasonable reliance upon the s17(6) notice we take into consideration the passage of time. From the documents before us it appears that:

    - the MOD assertion relating to the named civil servant was based on that civil servant's own recollection 20 years later.[17]
    - The DGMS' recollection was sought in 2013 after he had long retired from service.

    The Appellant took the Tribunal to the passages in the Adjournment Debate which he considered misleading. Whilst the Tribunal accepts that they are abridged, do not include all the detail that the Appellant would wish and do not adhere to a strict chronology with dates; having regard to the correspondence and source documents that appear in the bundle we do not accept that these passages are materially incorrect.

23. We are satisfied therefore that there was no need to issue a refusal notice and the MOD were entitled to rely upon s17(6) subject to our being satisfied that the MOD were entitled to rely upon s14(1) on the facts of this case.

[14] Letter 11.11.1994
[15] Referenced at p 130
[16] P147

Whether s14(1) is applicable to this request

24. Section 14 provides that:

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

25. The Tribunal observes that the Appellant's ground iv) and reliance on the 2 year gap since his last request appears more applicable to s14(2) in relation to repeat requests. This is not relied upon by the MOD who do not suggest that this is a "repeat" request for information that has already previously been requested.

26. Parliament has expressly declined to define the term "vexatious". The issue was considered in detail in *Dransfield v Information Commissioner and Devon County Council [2015] EWCA Civ 454* which quoted at length and with approval from the Upper Tribunal decision in the same case. The Upper Tribunal in *Dransfield* took as its starting point that a request was not vexatious simply because it was annoying and irritating. It had also to be without justification:
"*the key question is whether the request is likely to cause distress, disruption or irritation, without any proper or justified cause" provides a useful starting point, so long as the emphasis is on the issue of justification (or not).*"[18] They analysed the definition of "vexatious" by reference to four broad issues:
a) The value and serious purpose of the request,
b) The present or future burden on the public authority,
c) The motive of the requestor,
d) Whether the request caused harassment or distress to staff.

[17] Email of 31.8.16 at p 147
[18] Para 26 UT decision

27. The Tribunal considers these factors to be a helpful framework to structure its consideration of whether the request was vexatious but has had regard to the fact that it is not intended to be an exhaustive definition or a checklist for determination of this issue. Additionally, it is not necessary to meet all the criteria identified in *Dransfield* to be vexatious.

28. The factors above are considered in the context that the Court of Appeal held that "*vexatiousness primarily involves making a request which has no reasonable foundation, that is, no reasonable foundation for thinking that the information sought would be of value to the requester, or to the public or any section of the public".*[19]

<u>The value and serious purpose of the request,</u>

29. The Appellant submitted 2 grievances pursuant to QR 52(8)[20] dated 7.10.93 and 10.11.93 (which contained 25 questions). This permits an airman to state his case orally to the AOC[21] and he had an appointment dated 2.12.93 with the AOC for this purpose. The Appellant had contacted his MP in August 1993 and as a consequence a Parliamentary enquiry was underway. He was told by the Wing Commander OC Admin that he could not see the AOC as he had "gone to the Minister"[22] and as such his QR 52(8) was not processed further and his right to see the AOC was cancelled. The basis for this was stated in a letter from MOD Minister Roger Freeman dated 11.11.94 that *"This application was placed in abeyance because the circumstances were already the subject of a Parliamentary Enquiry which naturally took precedence".*

    He told the Tribunal he had accepted what he was told on this point at the time (because he had no legal advisor).

[19] Paragraph 68 C of A decision
[20] QR 52(8) states insofar as it is relevant:
"If an officer or airman desires to bring any grievance to the notice of the inspecting officer he is to be afforded an opportunity of doing so…any officer or airman who wishes to bring any grievance to the notice of the inspecting officer [should] apply to his CO. C.Os are to forward all such applications to the AOC giving particulars of the grievance in each case: as soon as the exigencies of the Service allow, the AOC is to give any officer or airman who has so applied an opportunity of stating his case orally to him…This regulation does not preclude an officer or airman submitting, at any time, a statement of grievance in accordance with para 1000 or 1001."
[21] Air Officer Commanding
[22] P76

30. In the absence of answers to the two QR52(8), he exercised his right as advised at QR 52(8) and submitted the same questions as a general right complaint under QR 1001[23] on 5.10.94[24]. This he sent to his MP for the Attention of Lord Henley which was passed on to Minister Roger Freeman to deal with. He responded:

"The attachment to your letter would appear to be the original of a general application from him which I am unable to deal with. You will see from the enclosed copy of paragraph 1001 of QR (RAF) that considerable information on this procedure is already available to your constituent. This is supplemented by separate administrative procedures. In these circumstances SAC Stuart should therefore address any redress to his station management in the first instance as Ministers are unable to intervene…"[25].

31. His case is that the purpose of the request is:

- to show that the cancellation of his right to see the AOC to discuss service issues in accordance with QR52(8) had no legal authority and there was no legal basis for asserting that it could be placed under abeyance.
- To get answers to the 25 questions in QR52(8) 7.10.1993 and 10.11.1993 which remain unanswered.
- To hold the public body to account on a matter of defying Queen's Regulations in 1993 and 1994 (maladministration).
- To advance the case to petition the sovereign and possibly apply for a public enquiry as he is not the only person who has been impacted by service complaint failures of this type.

32. Regulation 52 is silent as to the status of a Parliamentary Enquiry but the Appellant was told orally and in the letter of 11.11.1994 that the MOD view was that it takes natural precedence over QR 52(8) The Tribunal observes that the first part of this request is limited to asking for a <u>regulation</u> which underpinned the OC Admin's actions. These are publicly available and accessible to the Appellant and he has already formed the view from his own research that there is no such regulation. On

[23] P132 to take the case to the Airforce Board
[24] P75
[25] P77

one view he is asking for legal advice as to the interpretation of the law, on another he is asking for confirmation of a negative. We are not satisfied that there is a value to the Appellant or a serious purpose in the request in light of the information available to the Appellant and in the public domain.

33. The second limb of part 1 of the request asks whether the assertion that the Parliamentary Enquiry took precedence is based on guidelines or a regulation. The Tribunal repeats its observations as set out in the preceding paragraph relating to the request for regulations. In terms of whether there were guidelines the Tribunal has sought to understand what the value would be in knowing the source of the Minister's belief.

34. The Appellant in his submissions to the Tribunal accepted that the contents of the QR 52(8)s although never answered were in effect resubmitted as part of another QR 1001 submitted in 1995. During the redress proceedings relating to that QR 1001 in 1995 the Appellant was asked to provide further information within 14 days in default of which the case would be considered closed. The Appellant responded to say that he had presented his case and did not submit any further information. His evidence to the Tribunal was that he understood his QR 1001 to be closed after that point. He sought to reopen it a year later but was told by Air Command Secretariat that they had been correct to close it. There has been subsequent correspondence in this regard in 2006 and it was discussed in the 2009 adjournment debate. The MOD's view appears to be that the Appellant acquiesced with the closure of this QR 1001. However, the Appellant's case is that it was a breach of regulations[26]. It is not a matter for the Tribunal to determine the validity of the closure of that QR 1001 however, we are satisfied that the significance of the original QR 52(8)s and the 1994 QR 1001 sent to but not actioned by the Minister have effectively been superseded by the subsequent 1995 QR 1001.

35. To the extent that the request can be considered to encompass the Appellant seeking an understanding of why his QR 52(8)s were not progressed, he has already been provided with this information from the letter of 11.11.94. The Appellant argues that

[26] The letter from his MP indicates that she and the British Legion support him in this view.

knowing whether the decision was underpinned by guidelines or a regulation or not "would" provide evidence of:

- perverting the course of justice,
- conscious obstruction of a service complaint to avoid accountability, and
- misconduct in public office.

36. The Tribunal observes that from his arguments advanced at the oral hearing that to further the case as envisaged by the Appellant the answer would have to be that there were no guidelines or regulations underpinning the decision. The Tribunal is not satisfied that even a negative response would demonstrate any of the things alleged by the Appellant as the absence of guidelines or a regulation would not be enough to attribute motive. Additionally, the Appellant has limited himself to guidelines and regulations rather than asking more generally for the basis of the decision. He has not, considered the possibility that the information is no longer held, or may be based on, for example, privileged legal advice, custom or an individual's interpretation of the law.

Request 2:

37. The Appellant's request asks for any **information** or **regulation** that would authorise Minister Roger Freeman's position in his letter of 11.11.94[27]. The value of the information to the Appellant was that in his view it would demonstrate the deliberate attempts to block his attempts to have his service complaints progressed and investigated.

38. The Tribunal repeats its findings relating to the availability of the Queens Regulations to the public. In terms of "any information" the Tribunal is satisfied that the Appellant is asking for any recorded information that would explain why Mr Freeman had adopted that position. At the hearing, the Appellant accepted that under QR1001 it is not the Minister who actions it and that in effect by sending it to the Minister he was sending it to the wrong department. As such the response that he was "*unable to deal"* with it is self evident and there is no value to the Appellant in that request being answered.

[27] P77

39. In terms of the Minister closing off the request in the manner he did, the Appellant accepts that he had been sign posted as to the appropriate way to conduct his claim, pointed to the text of the regulations and put on notice that the Minister was not dealing with it. As such it is not apparent to us that the Appellant has been prejudiced by this action or prevented from having his service complaint examined . In our judgment the reasoning behind the Minister's letter would not further any of the Appellant's stated aims.

40. In terms of the Minister's failure to *"pass it on to the appropriate service desk for actioning*" the Appellant accepted that the normal process was for a QR 1001 to go to Station HQ OC Admin who would pass it up the chain of command. However, the Appellant's view was that even though he accepted that it was not the Minister's job to deal with it himself, the Minister has the power to order the appropriate person to action his case. He was not prepared to consider whether ordering someone to action his case could be viewed as inappropriate political interference and we note that at the time of writing this was not a case where the QR1001 had been initiated through appropriate channels but not progressed such that there would be any reason for Ministerial involvement.

The Motive of the Requestor

41. The Appellant's motive is bound up with the perceived value of the information. The Appellant disputes the conclusion of the Minister in the adjournment debate that *"there is no way forward*" in relation to the issues he raises. He argues that the information in both limbs of the request is necessary for him to secure outstanding remedies:

    i. whilst he has accepted a final settlement for his personal injury claim which prohibits him from taking further compensatory action against the MOD, he maintains that this does not apply to unresolved service complaints that the MOD did not process properly and that litigation is still a possibility. Additionally, he has never had an apology which he still seeks.

    ii. Following the adjournment debate in February 2009 Kevan Jones the then Veteran's Minister said that he would meet the Appellant and his MP if "new evidence" was put forward. The Appellant submitted 6 witness statements but

was told that "*nothing has been submitted beyond that which was already known by the MOD"*[28] The Appellant argues that this is not true as the MOD could not have "known" about these statements previously because he had not yet collated and sent them in. The thrust of his argument was that if he is able to provide "new" information he will be able to have his case re-examined at Ministerial level.

iii. With this information he would go back to his MP to see what course to take next.

iv. He is considering petitioning the Sovereign.

42. The Appellant argues that there is a public interest in holding the RAF to account and ensuring that they investigate accidents, provide adequate medical care and progress complaints appropriately. However, he recognises that there is now an Ombudsman to provide redress in recent and future cases (his case is too old and he is prohibited from bringing his case by legislation). We are satisfied that any public interest relating to lessons learnt from his particular case is now historic and has been overtaken by the creation of the role of Ombudsman.

43. The Tribunal makes no observations as to whether the terms of the Appellant's settlement with the MOD would allow a future claim but notes the speculative nature of the Appellant's perception of a way forward. When pressed by the Tribunal as to the value of the specific information requested he conceded that he did not know and that he would take advice. The Tribunal repeats its observations as to the limited value of the information requested in this case and observes that the Appellant is failing to distinguish between more evidence in support of existing points raised rather than "new" evidence. The Tribunal accepts that the Appellant's motive for requesting the information is based on a genuine sense of grievance and a belief that this is of public interest. The Tribunal recognises that the issues raised by the Appellant are of great significance to him: he suffered a career ending injury whilst in service and does not believe that he was supported appropriately at the time and his service complaints were not progressed as he believes they should have been. He believes that there is a public interest in holding those he holds responsible to account. However, we are not

[28] P42

satisfied that the information would be of value to him in pursuing his grievances, or to the public or any section of the public and the Appellant's use of FOIA to further this motive is now disproportionate.

The present or future burden on the public authority,

44. The Appellant accepts that his request may be annoying but in his view public officials need to accept requests to expose possible or actual wrongdoing which does not mean his request is vexatious. He argues that as the MOD have been neither candid nor co-operative their oversights have contributed to the request being generated

45. Having reviewed the history of the correspondence, the Tribunal is satisfied that it demonstrates that the Appellant is unlikely ever to be satisfied with the MOD's response. We agree with the Commissioner that providing a response to the request is likely to prolong correspondence because (as is set out above at paragraphs 29 et seq) the answers are not determinative of any issue and any information provided is likely to lead to more questions. We take into account that this request is in the context of extensive correspondence with MOD Ministers, a Parliamentary Enquiry, an adjournment debate in 2009, Subject Access requests under DPA and 14 previous FOIA[29]requests under FOIA. We agree that this level of correspondence over so many years, which shows no sign of abating, places an unfair burden on the MOD which would be disproportionate to the information requested.

Whether the request caused harassment or distress to staff.

46. Whilst the terms of the request were moderate and polite, the nature of the Appellant's correspondence on this topic with the MOD has been to make personal attacks upon the integrity of named members of staff and that he has contacted some of those who have had involvement in his case directly by telephone, email and in one case by letter to their home address as they were retired. He did not accept that this could constitute harassment or be distressing for the staff involved but argued that it was probing in light of the MOD's unwillingness to action his redresses. In particular he considers that a named civil servant who was involved in the administration of his Parliamentary Enquiry made a conscious decision to cover up medical mistreatment of his injury in

[29] See schedule at p 103 of bundle

the drafting of a letter sent by Viscount Cranbourne[30]. At the hearing he was taken by the Tribunal to the source document from a Doctor[31] which is clearly reflected in the Ministerial correspondence that he believes this civil servant drafted. Whilst he agreed that he did not know how senior this civil servant was in 1993 and that they were not in a position to contradict a Doctor, his view was that it was put in deliberately in the knowledge that it was wrong.

47. The Tribunal is satisfied that it is likely that staff would find this level of personal accusation and direct contact to be harassing and distressing and that the request would be considered to be a continuation of this course of conduct. This is particularly so as the genesis of the request was to challenge the rationale of named individuals (and by implication their advisors if any).

Conclusion

48. For the reasons set out above the Tribunal upholds the Commissioner's Decision in relation to her finding that the MOD were entitled to rely upon s14(1) FOIA and were not required to issue a refusal notice in reliance of s17(6) FOIA.

49. The Tribunal nevertheless substitutes "QR 52(8)" for "QR 1625" at paragraph 45 of the Decision Notice for the reasons set out in paragraph 11 above.

Dated this 15th day of May 2018

Fiona Henderson

Judge of the First-tier Tribunal

[30] P178-9

[31] P138-9