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Dear [REDACTED]

FREEDOM OF INFORMATION ACT 2000 - INTERNAL REVIEW

1. I am writing in response to your email of 8 June 2015 asking for an independent internal review under the Freedom of Information Act 2000 (the Act) of this Department's handling of your requests for information which are available on the What Do They Know website at:
https://www.whatdotheyknow.com/request/rmp_sib_reports_on_incident_of_i#incoming-661803

2. I have now completed a full independent review of the handling of your request and the response 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 <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-Section45-code-of-practice.pdf>.

Handling

3. 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 16(1) where it is the duty of a public authority to provide advice 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, request for information to it;

e. Section 17(1) which states that, where it claims that information is exempt, 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 exemption applies;

f. 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;

g. Section 17(3)(b) which states that, where the public interest in maintaining the exemption outweighs the public interest in disclosing the information, the public authority must state the reasons for claiming this.

Request 1 - FOI2015/0727

4. Your request dated 17 January 2015 was worded as follows:

'Please could you provide me with the detailed complete report of the Road Side Bomb (I.E.D) detonated on 14th August 2003 killing 1 x officer and injuring 2 x others investigated by the Royal Military Police (SIB '

Section 10(1) of the Act requires that you receive a response within 20 working days. On 13 February 2013, the Department wrote to you and advised that they held information in scope of your request but considered that the information fell within the scope of the qualified exemption at Section 30 (Investigations), and as such it was necessary for the Department to conduct a test of the public interest. The Act requires public authorities to comply with requests for information within 20 working days following receipt. In cases where a public authority is considering the application of exemptions subject to a Public Interest Test (PIT), the Act requires the authority to reach its decision "within such time as is reasonable in the circumstances". However, the Information Commissioner in his good practice guidance, considers that in cases where the public interest considerations are exceptionally complex it may be reasonable to take longer but that, in his view, in no case should the total time exceed 40 working days, in this case no later than 13 March 2015.

5. The substantive response was provided on 19 March 2015, the letter advised you of your right to appeal and if you remained dissatisfied following the internal review, to appeal to the higher authority of the Information Commissioner in accordance with Section 50(1) of the Act.

6. I find that the Department complied with its statutory obligations under Section 10 and 17 of the Act, although the time taken by MOD to provide the result of the public interest test exceeded the Information Commissioner's guidelines on timeliness, for which I apologise.

7. The substantive response dated 19 March 2015 advised you that that information in scope of your request was held. You were provided with a redacted copy of the Royal Military Police Special Investigation Branch (RMP SIB) report. You were advised that some information within the report fell entirely within the scope of the absolute exemptions provided for at Section 40 (Personal Information) and Section 41 (Information provided in confidence). You were also advised that some of the information fell within the scope of the qualified exemption at Section 30 (Investigations and Proceedings).

8. The annexes to the RMP SIB report considered to be in scope of this request were withheld in their entirety rather than pages of redacted text being provided. I apologise this was not made clear from the outset, as it led to you requesting the annexes in Request 2.

Request 2 – FOI2015/03599

9. Your second request for information dated 31 March 2015 was worded as follows:

*'Thank you for your reply to my initial request although delayed .
Under the Freedom of Information Act can you now supply me with
All Annexes that should be attached to this document including
a) Annexes X and Y
b) Complainants statements
c) Any Witness Statements
d) Expert Evidence statement from the Ammunition Technical Officer
e) any other develop information relevant to this case/ incident
that has been attached or log/ referred to since the completion of
the original SIB report dated 03rd October 2003.*

*In addition the Radio logs for B & C company of 1 QLR Battalion
radio net and company radio net which should have been kept for the
period from 0800hrs 13th August 2003 to 1800 hrs 14th August 2003'*

On 30 April 2015, the Department responded and advised that they held information in relation to your request but considered that the information fell within scope of the qualified exemption at Section 26 (Defence) and as such it was necessary for a PIT to be carried out. They advised that this would take an additional 10 days and that you should expect to receive a response by 14 May 2015.

10. A substantive response was not issued until 4 June 2015, some 48 days working days after you submitted your request. Clearly, as discussed in paragraph 3, this is beyond the Information Commissioner's guidelines on timeliness for those cases where a PIT is required where in no case should the total time exceed 40 working days. The substantive response advised you of your right to appeal and if you remained dissatisfied following the internal review, to appeal to the higher authority of the Information Commissioner in accordance with Section 50(1) of the Act.

11. I find that the Department complied with its statutory obligations under Section 10 and 17 of the Act, although the time taken by MOD to provide the result of the public interest test exceeded the Information Commissioner's guidelines on timeliness, for which I apologise.

12. The substantive response dated 4 June 2015 provided you with redacted copies of the radio logs in scope of your request; information within the radio logs had been withheld under the absolute exemption at Section 40(1). You were advised that the qualified exemption provided for at Section 30(1) (Investigations and Proceedings) had been

applied to some information contained within the report released in response to Request 1, this included the information within the annexes that you had requested within this Request (Items a to d).

13. You were also advised that a report had been withheld under the qualified exemption at Section 38 (Health and Safety), I apologise that the Department failed to specify that this exemption applied to a Forensic Pathology Services Report to Coroner dated 1 September 2003.

Substance

14. As part of this internal review, I have looked at the information held within the scope of both requests and considered the application of exemptions from first principles. For clarity, I have provided a list of the information in scope of your requests and any exemptions that have been applied at Annex A.

Use of Section 41 (Information Provided in Confidence)

15. Section 41 provides that information is exempt from release if (a) "it was obtained by the public authority from any other person" and (b) "the disclosure of the information to the public by the public authority holding it would constitute a breach of confidence by that or any other person." The Information Commissioner sets a high bar for the application of this exemption '*Disclosure of the information would give rise to an actionable breach of confidence. In other words, if the public authority disclosed the information the provider or a third party could take the authority to court*'. The aggrieved party must have the legal standing to take action.

16. The Section 41 exemption was applied to the witness statements within the annexes to the Summary Report. Whilst witness statements made to the RMP are given in confidence, the expectation is that they will not be kept strictly confidential but released to certain individuals as part of the investigative process. Having reviewed the information in scope, I have determined that these statements are not covered by Section 41, since they were not supplied in circumstances where those providing the information expected it to be kept strictly confidential. Release would not result in an actionable breach of confidence. However, since the information was provided as part of the investigative process of the RMP, certain expectations were made by its providers regarding its use, therefore I find Section 41 to have been incorrectly applied. However, as the statements are withheld under Section 30(1)(Investigations) and Section 40(2)(Personal Information) under the Act, no additional release of material will be made.

Use of Section 38 (Health & Safety)

17. Section 38(1) was applied to the Forensic Pathology Services Report to Coroner dated 1 September 2003. Section 38(1) provides that information is exempt if its disclosure under the Act would, or would be likely to:

- a. endanger the physical or mental health of any individual or
- b. endanger the safety of any individual.

As Section 38 is a qualified exemption, a PIT was conducted and it concluded that although the release of the information would demonstrate openness and transparency and frank provision of information to the public, there is a general recognition that it is in

the public interest to safeguard the general public and in particular family members of the deceased from any information that would cause distress. The balance of public interest was found to lie in favour of withholding the Pathology report as it relates as it would be likely to endanger the physical or mental health of individuals, in particular to the family of the deceased, if this was released into the public domain.

18. The Information Commissioner has stated¹ that Section 38 is only engaged if disclosure of the information in question would 'endanger' an individual and he has usefully clarified that 'endangerment' in this context, in his view, amounts to a prejudice test, and that there should be evidence of "a significant risk to the physical or mental health or safety of an individual for the exemption to be engaged". In order to engage the exemption the public authority must demonstrate that disclosure of the information in question would, or would be likely to, have a detrimental effect upon the physical or mental health of any individual, which is more than trivial or insignificant. The Commissioner has further advised that: "To demonstrate a danger of mental health under this Section, clinical evidence of a psychiatric condition is not necessary, but *'the effect of the disclosure upon any individual's mental health must go beyond stress or worry'*."

19. Whilst it is highly probable that a public release of the Pathology report detailing the injuries sustained by the deceased would cause undue upset to the family, it is unlikely that the effect of the disclosure of this report would go beyond stress or worry. I therefore find that the exemption at Section 38(1) should not be engaged. However, as detailed below, the Pathology Report is withheld under Section 32 (Information contained in Court Records) of the Act, this material will not be disclosed.

Section 32 (Information contained in Court Records)

20. Section 32(1) provides that information held by a public authority is exempt information if it is held only by virtue of being contained in-

- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
- (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter,

The information contained in the Pathology report was commissioned by HM Coroner for proceedings in relation to the deceased and is only held by MOD as a result of those proceedings and for no other purpose. I therefore find that the information in the report is exempt under section 32 of the Act. Section 32 is an absolute exemption and does not require a public interest test.

Use of Section 30 (Investigations and Proceedings)

21. Section 30(1) provides an exemption from the duty to disclose information that a public authority has held at any time for certain investigations or proceedings. As long as the other requirements of the exemption are satisfied, the exemption will apply to information even if it was not originally obtained or generated for one of those purposes and it will continue to protect information even if it is no longer being used for the specified investigation or proceeding. It is only necessary for the information to have been held at some point for those purposes.

¹ DN FS50418798 issued, April 2012

22. Section 30 is a qualified exemption and as such is subject to a test of the public interest. I can confirm that a PIT was carried out. In favour of release is the general presumption of openness within the Act. Additionally, the release would allow a greater understanding of, and confidence in, the work of the RMP. In incidents where Service personnel have suffered death or serious injury, there is a significant public interest in ensuring investigations are carried out thoroughly. Against release is the public interest in maintaining the confidentiality of RMP investigations, to allow fair proceedings and allow decision making to take place in confidence on the strength of the best advice available. Publication of information may hinder future investigations, and make witnesses reluctant to come forward and give evidence if they believe this may be disclosed outside of the investigative arena at a future date. Within an investigation there is a need for good decision making based on the best advice available and the RMP investigators may feel hindered in the provision of advice if it were believed that their communications were published after the event. The balance of the public interest was found to lie in withholding this information.

23. In addition, there is a public interest in not prejudicing the outcome where information relates to investigations still ongoing at the time, or recent enough that there is a potential that they could be reactivated. Taking into account the passage of time and the nature of an investigation, it may sometimes become appropriate to release material at a certain point; however such decisions must be made on a case by case basis. In this case, although the investigations in scope are not recent (around twelve years old) and there are currently no further lines of enquiry; no one has yet been prosecuted in relation to this incident and this evidence would still be required to aid a future prosecution; a public release would prejudice any potential trial. I therefore find that Section 30(1) was correctly applied and that the balance of the public interest lies strongly in favour of withholding information covered by this exemption. I should also advise that some information contained within the Witness Statements is subject to other exemptions under the Act and as outlined in this internal review.

Use of Section 40 (Personal Information)

24. Some of the information within the report is also exempt under Section 40 (2) of the Act. This provides an exemption for personal data of which the applicant is not the subject. Section 40 is an absolute exemption which provides that personal information is exempt from disclosure where release would contravene the Data Protection Principles set out within the Data Protection Act 1998. I have reviewed the information in scope and can confirm that elements do constitute the personal data of third parties and was therefore correctly withheld.

25. Section 40(1) of the Act provides exemption for information which constitutes the personal data of the Applicant. As you have also since notified us via the WhatDoTheyKnow website that you were one of the injured parties, I must advise that some of the information is also exempt under Section 40(1) as it constitutes your personal data. Section 40 is an absolute exemption and no PIT is required.

Battalion Radio Logs

26. The Department has supplied you with the information in scope of Request 2, the '*Radio logs for B & C company of 1 QLR Battalion radio net and company radio net*', however, within your email requesting an internal review, you also requested:

'Please could you forward me the information requested, including the BATTALION radio net logs for the period of time indicated on the request'

Technically, this could be considered to be a new request for information as you have now requested the whole Battalion radio logs in addition to the specified Company logs. However, as part of this review I have requested a further search to cover all Battalion radio logs covering the period from 0800 on 13 August 2003 to 1800 on 14 August 2003. Copies of the remaining radio logs covering the Battalion are attached with this review. Please note that third party personal data has been removed under Section 40 (1) and (2) of the Act.

Section 16 (Advice and Assistance)

27. Any release under the Freedom of Information Act is considered to be a public release, therefore your personal data has been correctly withheld under Section 40(1). However, I can advise that the Data Protection Act 1998 provides access for living individuals to personal data that may be held about them by an organisation, otherwise known as a Subject Access Request (SAR). If you wish to request any personal information held about you in relation to this incident, you may complete the forms available via the MOD website <https://www.gov.uk/requests-for-personal-data-and-service-records>. Any information which constitutes your personal data will not be released by MOD to a public website such as What Do They Know”


Conclusion

28. In summary I find:

- Both requests were not handled in a timely manner and the Department failed to meet the statutory timescale for responding as set out in Section 10(1) and Section 17 of the Act.
- Information was incorrectly withheld under Section 41(1) (information provided in confidence).
- Information was incorrectly withheld under Section 38(1)(a)(Health and Safety) as it is unlikely that the effect of the disclosure of the Pathology Report would go beyond stress or worry.
- The Pathology report is withheld from disclosure under the absolute exemption at Section 32(1) (Information contained in Court Records)
- Information is correctly withheld under Section 30(1) (Investigation and Proceedings) and Section 40(2) (personal data) of the Act.
- Your personal data has been withheld under Section 40 (1) of the Act.
- Section 16 (Advice and Assistance) has been provided in relation to obtaining copies of your own personal data that may be held under the subject access provisions of the Data Protection Act.
- Additional Battalion radio logs have been included with this review

If any aspect of this review is unclear, I would be happy to explain it. If you are dissatisfied with the review, you may wish to 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.org.uk. His address is: Information Commissioner's Office, Wycliffe house, Water Lane, WILMSLOW, Cheshire, SK9 5AF. Fax 01625 524510.

Yours sincerely,


Reference Number	Request	Description of Information in Scope	Outcome at Review	Exemptions Applied
FOI2015/0727	<i>'Please could you provide me with the detailed complete report of the Road Side Bomb (I.E.D) detonated on 14th August 2003 killing 1 x officer and injuring 2 x others investigated by the Royal Military Police (SIB) '</i>	Alleged Murder Service Police Final Report dated 3 October 2003	Partial Release	Section 40 (1) and (2)
FOI2015/03599	<i>'Annexes X and Y'</i>	Alleged Murder Service Police Final Report dated 3 October 2003 – Annex X and Y	Withheld in Full	Section 30 (1) Section 40 (1) and (2)
	<i>'Complainants statements'</i>	Alleged Murder Service Police Final Report dated 3 October 2003 – Annexes B and C	Withheld in Full	Section 30 (1) Section 40 (1) and (2)
	<i>'Any Witness Statements'</i>	Alleged Murder Service Police Final Report dated 3 October 2003 – Annexes D to W	Withheld in Full	Section 30 (1) Section 40 (1) and (2)
	<i>'Expert Evidence statement from the Ammunition Technical Officer'</i>	Alleged Murder Service Police Final Report dated 3 October 2003 – Annex AA	Withheld in Full	Section 30 (1) Section 40(2)
	<i>'Any other develop information relevant to this case/ incident that has been attached or log/ referred to since the completion of the original SIB report dated 03rd October 2003'</i>	Forensic Pathology Services Report to Coroner dated 1 September 2003	Withheld in Full	Section 32(1) Section 40(2)
	<i>'In addition the Radio logs for B & C company of 1 QLR Battalion radio net and company radio net which should have been kept for the period from 0800hrs 13th August 2003 to 1800 hrs 14th August 2003'</i>	CCoy Corunna 1QLR Radio Logs BCoy 1QLR Radio Logs 1 QLR Coy Ops Room 1 QLR Coy Net Camp Ali Baba	Partial Release	Section 40 (1) and (2)

Internal Review	<i>'BATTALION radio net logs for the period of time indicated on the request'</i>	1 QLR BN Radio Log Telic 2 13-14 Aug 03 1 QLR BN Watchkeepers Log1 Telic 2 13-14 Aug 03 1 QLR BN Watchkeepers Log2 Telic 2 13-14 Aug 03	Partial Release	Section 40 (1) and (2)
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