



Policy Legacy FOI Team
Headquarters 38 (Irish) Brigade
British Forces Post Office 825

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Reference: FOI: 2019/09578

Date: 3 October 2019

Dear [REDACTED]

REQUEST FOR INFORMATION – INFORMATION RELATING TO THE DEATH OF CAPT HERBERT RICHARD WESTMACOTT

I can confirm that your request has been considered under the provisions of the Freedom of Information Act 2000 (FOI (A)), and the process is now complete.

You asked for the following:

“Under the Freedom of Information Act (2000), I wish to request copies of the following hard copy documents in relation to the murder of Captain Herbert Richard Westmacott (Army Number 491354) on 2 May 1980 on the Antrim Road in Belfast, County Antrim.

The following reports are requested:

- ***39 (Infantry) Brigade Intelligence Report;***
- ***Correspondence regarding the incident between Commander 39 Infantry Brigade, Brigadier Ramsbotham, and CLF NI, Major-General Glover;***
- ***Northern Ireland Intelligence Report covering the period;***
- ***Military Intelligence Source Reports (MISRs) relating to the incident, dated 1-3 May 1980;***
- ***Weapons Intelligence Report collated by personnel from 39 Infantry Brigade WIS;***
- ***Serious Incident Report covering the whole incident from Initial Report to final clearance,***
- ***Full posthumous MC medal citation for Captain Westmacott relating to operational duties in Northern Ireland between February and April 1980.”***

I can confirm that the MOD holds some information within the scope of your request, attached at Annex A is an extract from an Intelligence Report.

Some of the information you have requested could be exempt under Section 23(1) of the FOI(A), which relates to the bodies dealing with security matters, although it is also possible that the information relates to none of the bodies dealing with security matters. Sections 23(1) and 24(1) are being cited in the alternative as it is not appropriate, in the circumstances of the case, to say which of the two exemptions is actually engaged so as not to undermine national security or reveal the extent of any involvement, or not, of the bodies dealing with security matters. Section 23 is an absolute exemption and, if it were engaged in this material, the MOD would not be required to consider whether the public interest favours disclosure of this information.

Any information that is not exempt from disclosure under Section 23(1) could be exempt under Section 24(1) of the FOI(A), which exempts information from disclosure if its exemption is required for the purpose of safeguarding national security. We cannot say which of the two exemptions is

actually engaged, but to the extent that S24(1) might be engaged. We acknowledge the public interest in openness and transparency, but we consider that there is a stronger public interest in protecting national security.

All Police Service of Northern Ireland (PSNI) cases remain open and if new evidence comes forward the PSNI will reinvestigate. Release of these documents must be carefully considered under Section 31 (Law Enforcement) of the FOI(A).

I have completed this consideration through a public interest test including consultation with the PSNI who have advised that release of some of the information could adversely impact on any investigative process, and may jeopardise any future prosecutorial process. On this basis I am withholding some of the information under Section 31 of the FOI(A).

I appreciate that this incident took place 39 years ago and the passage of time can be a factor in diminishing the applicability of exemptions to information. However, in this instance the passage of time is less relevant as the PSNI continue to investigate Troubles-related murders and the overall balance is in favour of partial exemption.

Some of the requested information falls within the scope of Section 37(1)(b) – the conferring by the crown of any honour or dignity. Section 37(1)(b) is intended to protect from disclosure information which relates to the conferring by the crown of any honour or dignity. Section 37(1)(b) is a qualified exemption, and we have to consider whether the public interest in favour of maintaining the exemption outweighs the public interest in favour of releasing the information.

I recognise that there is a general public interest in the disclosure of information and that the honours and awards process is one in which there is public interest. The public interest lies in the process being transparent and ensuring that the process of award of honours and dignities is clear and open. However, it is not in the public interest to reveal details of individual honours cases. The principle of confidentiality with regard to honours nominations is integral to the good functioning of the honours system and non disclosure of information relating to individual honours cases ensures that those involved in the system can take part on the understanding that their confidence will be honoured and that decisions about honours continue to be taken on the basis of full and honest information about the individual concerned.

In my view, therefore, the balance of the public interest clearly lies in withholding a copy of the citation relating to Captain Westmacott MC.

In addition, some of the information falls within the scope of Section 38 (Health and Safety) of the FOI(A), as its release could endanger the physical or mental health of any individual, or endanger the safety of any individual.

Section 38 is a qualified exemption and we have conducted a public interest test to determine whether the information should be released or withheld. The factors for this public interest have determined that whilst disclosure would demonstrate openness and transparency this is outweighed by the detrimental effect disclosure could have on those mentioned in the documents, or their family members and friends. I have concluded that whilst disclosure may be of historical interest, the health and safety of individuals must be taken into account especially where release would be likely to endanger, the physical or mental health of any individual. Some information has therefore been redacted under Section 38 of the FOI(A).

Additionally, some of the information contained within the disclosure constitutes personal information, such as names and addresses. Under FOI(A) this information is exempt under Section 40 (2) by reason of the first condition under Section 40 (3) (a) (i), as disclosure would contravene data protection principles under the Data Protection Act 2018 (DPA 2018). This is an absolute exemption and does not require a public interest test to be conducted in order for this information to be exempt from disclosure. Therefore, all personal information has been redacted.

If you have any queries regarding the content of this letter, please contact this office in the first instance

If you wish to complain about the handling of your request, or the content of this response, you can request an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.gov.uk). Please note that any request for an internal review should be made within 40 working days of the date of this response.

If you remain dissatisfied following an internal review, you may raise your complaint directly to the Information Commissioner under the provisions of Section 50 of the FOI(A). Please note that the Information Commissioner will not normally investigate your case until the MOD internal review process has been completed. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website at <https://ico.org.uk/>.

Yours sincerely

38 (Irish) Brigade FOI Team

Annex:

A. Verbatim Extract from Document

INTELLIGENCE REPORT

Report Number TO41963

Dated 02/05/1980

Information	A soldier was shot dead by terrorists in the Antrim Road. In the follow up 4 men were arrested, and 4 weapons and ammunition were recovered.
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