



Ministry
of Defence

Ref: FOI2021/10876

Defence Business Services Secretariat
Room 6303
Tomlinson House
Norcross
Thornton Cleveleys
Lancashire
FY5 3WP

DBSRES-Secretariat@mod.gov.uk

19 October 2021

Dear

Thank you for your email of 23 September 2021 requesting the following:

“In reference to my AFCS case (2022045), please provide the name and GMC number of the medical advisor.

Secondly, JSP 765 states that “all cases involving mental health problems” will direct a decision maker to seek advice from a medical advisor. Are mental health disabilities/injuries the only type of injury where the claim must be assessed by a medical advisor, stated in JSP 765? Where a decision maker “will routinely seek medical advice” on other issues, gives the assertion that there is a decision process, by a decision maker, on everything apart from mental health injury claims.

Lastly, do decision makers have to follow a medical advisors advice? Can a decision maker ignore the advice of a medical advisor if the dissection maker deems the advice to be wrong or contain mistakes?”

I am treating your correspondence as a request for information under the Freedom of Information Act 2000 (FOIA).

A search for the information has now been completed within the Ministry of Defence, and I can confirm that some information in scope of your request is held.

However, with regard to the first part of your request, which relates to your own personal AFCS case Under section 40(5) the MOD neither confirms nor denies whether it holds any information in scope of your request. Your request asks about your own personal data. Were any of your personal data to be held it would be exempt under section 40(1). However, a release under FOI is assumed to be a release to the public at large. Therefore, admitting to holding or not holding information would be to breach the fair processing principal of the Data Protection Act. In view of this the MOD neither confirms nor denies it holds any information in scope of your request.

Section 40(5) is an absolute exemption and not subject to public interest testing.

The fact that Section 40(5) of the FOIA has been cited should not be taken as an indication that the information you have requested is or is not held by the Department. The terms of this exemption of the FOIA mean that we do not have to consider whether or not it would be in the public interest for us to reveal whether or not the information is held.

Notwithstanding the above, under Section 16 of the FOIA (Advice and Assistance), you do have the right to request access any personal data which may be held by the Department under the Data Protection Act 2018 and as such I have passed your request to the Department's Subject Access Request (SAR) Team who will contact you in order to establish if any such information exists. Further information about submitting a Subject Access Request for personal information to the MOD can be found at the link below:

<https://www.gov.uk/guidance/obtain-information-about-yourself-held-by-mod>

Regarding your second and third points we can confirm the following:

As stated in JSP 765; Decision Makers are trained in making reasoned decisions under the Scheme and are supported by policy advice and guidance. A decision-maker can also seek advice as required from in-house DBS Veterans UK Medical Advisers. The cases where medical advice is routinely sought are:

- those who are most seriously injured ⁵
- all cases involving mental health problems ⁶
- cases where a Supplementary Award is likely to apply (see paragraphs 3.9 to 3.10)
- temporary awards (see paragraphs 3.32 to 3.35)
- reconsideration or appeal cases
- cases that are undergoing an exceptional review (see paragraphs 8.15 to 8.17) or final review (see paragraphs 8.20 to 8.22)
- all cases of multiple injury where zoning applies (see paragraphs 3.40 to 3.41)
- all other cases where the decision-maker judges' medical input would aid their decision-making
- service termination reviews
- Interim Awards (see paragraphs 3.36 to 3.38)
- spanning cases, i.e. where the person has served both before and after 6 April 2005
- worsening cases (see paragraphs 2.15 to 2.20)

⁵ Where an award or awards within tariff levels 1-8 is likely to be made.

⁶ Mental disorders must be diagnosed by a clinical psychologist or psychiatrist at consultant grade.

AFCS is not a medically certified scheme but where medical advice is sought, the advice is followed. As Decision Makers are not medically trained, if they are unclear about the advice provided, they will seek clarification from the Medical Adviser.

JSP 765 can be found at the link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005513/JSP_765.pdf

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 Freedom of Information Act. 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

Defence Business Services Secretariat