



Ministry
of Defence

Defence Business Services Secretariat
Room 6303
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Thornton-Cleveleys
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Email: DBSRES-Secretariat@mod.uk

Ref: FOI2022/00619

8 February 2022

Dear [REDACTED]

Thank you for your email of 16 January 2022 to the Ministry of Defence (MOD) requesting the following information:

“Please can you confirm whether my wife’s case was one of the two cases where an award was refused due to unknown aetiology, and whether my wife’s case was the one in which “illness beliefs” were taken into consideration.

I should also like to make a new FOIA request, for the same information as in this request but in relation to the remaining claims.”

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 neither confirm nor deny whether the MOD holds the information that you have requested in the first part of your request.

I can advise that Section 40(5) of the Act is engaged for the information you have requested. This is because where any confirmation (or denial) of holding such information would be a breach of the Data Protection Principles as defined by the General Data Protection Regulations (GDPR) and Data Protection Act 2018 (DPA18), then section 40(5) is engaged.

In order not to breach these principles, it is sections 40(5A), the personal data of the applicant, and in respect of any third party data captured by the wording of your request, 40(5B)(a)(i) which apply to your request: Section 40 (5A) -The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1) - (Personal information (1) Any information to 1 General Data Protection Regulation (GDPR) Article 5: <http://www.privacy-regulation.eu/en/article-5-principles-relatinci-to-processinoofpersonal-data-GDPR.htm> which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.) 40(5B)(a)(i) - The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies — (a) giving a member of the public the confirmation or denial that would have to

be given to comply with section 1(1)(a)— (i) would (apart from this Act) contravene any of the data protection principles."

In respect of the above, the first data protection principle under Article 5(1)(a) GDPR is the most relevant, which states that 'Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject'. I find that section 40(5) is engaged, and the Department is unable to confirm or deny whether any information is held in scope of your request.

Notwithstanding the above, under Section 16 of the FOIA (Advice and Assistance), does 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 requests to the Department's Subject Access Request (SAR) Team who will contact her 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 the second part of your request, I can confirm the department has previously complied with this request for information on 8 December 2021, reference FOI2021/15106, up to the cost limit of £600 under Section 12 of the FOIA.

Under the Appropriate Limit and Fees Regulations public authorities are able to aggregate two or more requests where they relate to any extent, to the same or similar information. provided certain conditions are met. These are where the FOI requests:

- are made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
- are received within any period of 60 consecutive working days; and

Under Section 12(4) of the FOI Act, provided these conditions are met, the Department is 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 for the purpose of considering whether complying with the request would exceed the appropriate limit.

We are therefore applying exemption 12(4) to this part of your request for information as it was received within 60 working days of our previous response to your similar request.

It has been estimated that the cost of complying with your requests aggregated under the Fees Regulations as explained above would exceed the appropriate limit and therefore under the terms of Section 12 of the Act, we are not obliged to comply. The appropriate limit is specified in regulations and for central government this is set at £600. This represents the estimated cost of one person spending three and a half working days in determining whether the Department holds the information, locating, retrieving, and extracting it.

Under Section 16 of the FOIA (Information and Assistance) I can advise that if you request the remaining files are searched on or after 4 March 2022, it can be considered again.

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)