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4 September 2024

Dear [REDACTED]

Thank you for your letter dated 7 August which included a request for the following information:

*The authority which enables a member of your staff to adopt such an action [considering an individual vexatious].*

I am treating this request within your correspondence as a request for information under the Freedom of Information Act (FOI) 2000. A search for the information has now been completed within the Ministry of Defence, and I can confirm that the information in scope of your request is held. [REDACTED]

I can advise that some of the information in scope of your request falls entirely within the scope of the exemption provided for at Section 40 (Personal Data) of the FOIA and has been redacted. Section 40(2) has been applied to some of the information provided at Annex A below, in order to protect personal information as governed by the Data Protection Act 2018.

Section 40(2) requires the Department to conduct a balancing exercise, this exercise involves balancing the rights and interests of individuals against the legitimate interests in disclosure, this is not the same as carrying out the public interest test associated with certain exemptions in FOIA. The balancing exercise is carried out in order to decide whether the absolute exemption in section 40(2) is engaged. In particular, there is no assumption of disclosure in the legitimate interests test, as there is with qualified exemptions. The outcome of the balancing exercise lay in withholding the third-party personal data identified in the attached information.

Under Section 16 of the Act (Advice and Assistance) you may find it helpful to note that the 2023 Defence Instructions and Notices (DIN) from which the extract is taken below is an update to the 2015 DIN which contained similar paragraphs and is mentioned in the Vexatious Correspondence guidance provided below.

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

Pers Leader B  
Army Policy and Secretariat

## Extract from 2023DIN01-094

### Persistent Complaints (Vexatious Correspondence)

36. Some correspondents may persist in complaining even after the fullest possible answer has been given several times. When this occurs, it is possible to list the person as a writer of vexatious correspondence. This means that any further correspondence from them on the same subject need not be answered. If it is considered necessary to register correspondence as vexatious, the correspondence must be reviewed and, the decision taken at B2/OF5 level or equivalent. A final letter should be sent to the correspondent, explaining that no further action will be taken. Reference can, in most cases, be made to the limited staff resources available to respond fully to the volume of correspondence received as well as carrying out staff's other tasks of serving Ministers and the public. Reference may also be made to the fact that staff have been instructed not to reply to any more correspondence from the complainant on the subject, due to the disproportionate diversion of resources. The final letter should contain the sentence:

“No further purpose will be served by continuing this correspondence.”

37. The Parliamentary Clerk should be provided with copies of the correspondence on the topic and the Department's responses along with the final letter that was sent to the correspondent advising them that no further purpose would be served in continuing the correspondence. This is to ensure fairness and impartiality and that the action taken is appropriate and commensurate with the Departmental and Cabinet Office guidance on handling correspondence.

38. Since correspondence is defined as the same person writing about the same topic, the lead policy branch should keep a record of vexatious correspondence in their area, as no central register of vexatious correspondence is held. If further correspondence is received via the Ministerial Correspondence Unit (MCU) in the Parliamentary Branch, the lead branch needs to decide whether this is vexatious and advise the MCU who will mark the letter as vexatious on eCase. Further information on listing writers of vexatious correspondence can be obtained from the Parliamentary Branch at: 20130610-Vexatious Correspondence Guidance.docx.

39. Any further correspondence from the individual on the same subject may be filed unanswered, **except:**

- a. Any letter sent to the Department on the individual's behalf by an MP, solicitor, or person of comparable standing. This should be answered through the intermediary, if necessary, with a covering note explaining the situation,
- b. Any letter from the correspondent on another subject. This should be answered in the usual manner; and
- c. Any letter from the correspondent which contains a request for information covered by the Freedom of Information Act 2000, parallel Environmental Information Regulations (EIR)) or requests under the DPA18 (e.g. Subject Access Request (SAR)), even if the correspondent has previously been listed as vexatious in accordance with this DIN and the request for information concerns the topic which gave rise to the listing. Individual requests for information may be refused under FOI, SAR or EIR if they are vexatious or manifestly unreasonable, but each request must be assessed separately.

40. Further guidance on vexatious correspondence can be sought from Strategic Hub Planning or the MCU in the Parliamentary Branch.

## Vexatious Correspondence [Guidance]

1. External correspondence can reach a stage where a correspondent persists in writing about a particular subject - even though the fullest possible answer has been given on more than one occasion. Where this occurs, it is possible to 'list' the correspondence so that any further correspondence from the same person on the subject in question is intentionally not answered.

If listing is considered necessary, 2015DIN05-017 should be followed ensuring that the relevant correspondence is reviewed at Pay Band B2 (Grade 7) level.

2. When a decision has been made to list correspondence, the Head of the CCU should be consulted. Please provide copies of the correspondence on the topic and the Department's last few responses along with a draft of the final letter that you plan to send to the correspondent advising them that no further purpose would be served in continuing the correspondence. This is to ensure fairness and impartiality and that the action taken is appropriate and commensurate with the Departmental and Cabinet Office guidance on handling correspondence.

3. If listing is approved, a final letter should be sent which explains that no further information is available, and which also contains the sentence "No further purpose will be served by continuing this correspondence".

4. Any further correspondence from the individual on the same subject may be filed unanswered, EXCEPT:

- any letter on the listed subject sent to the Department on the individual's behalf by MPs, solicitors or persons of comparable standing should be answered through the intermediary - if necessary, with a covering note explaining the situation;
- any letter received from the correspondent on another subject should be answered in the usual way;
- any letter received from the correspondent, his/her immediate family or legal representative which is, or could be taken as a Subject Access Request under the Data Protection Act, must be handled in accordance with DPA 98.

5. Correspondence on a listed subject, which is received by a branch other than the one that listed the correspondent, should be forwarded to the original branch for retention.

6. The CCU will mark the correspondence as vexatious on its Persistent Correspondence database. If further correspondence is received via the CCU, the lead branch needs to decide whether this is vexatious and advise the CCU who will mark the letter as vexatious on the eCase database.

POCs

Head of CCU



CCU Clerk

