

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 March 2013

Public Authority: Government Actuary's Department
Address: Finlaison House
15-17 Furnival Street
London
EC4A 1AB

Decision (including any steps ordered)

1. The complainant requested information from the Government Actuary's Department (GAD) relating to the Gurkha Offer to Transfer exercise.
2. The Commissioner's decision is that, on the balance of probabilities, GAD does not hold further information within the scope of the request. He requires no steps to be taken.

Request and response

3. On 16 February 2012, following earlier correspondence, the complainant requested information from GAD of the following description:

"I believe that roughly 1,000 Gurkhas who retired between 1997 and 2007 opted to transfer from GPS to AFPS 75 under GOTT. To help us better understand how the calculations were done, I would be most grateful if you could supply the following information under the Freedom of Information Act 2000:

1. *I now understand that the Service Credits were calculated using assumptions relevant to each particular rank and that these assumptions were derived from experience data, input from MOD SP Pol (Pensions) and Gurkha Policy and from models that you use to determine the cost of AFPS to the MOD. Please provide copies of the different assumptions that were relevant to each particular rank?*
2. *Please explain why the relative values of the GPS and AFPS vary by rank at retirement?*

3. *What was the reason for using the same longevity assumptions for Gurkhas as were used for the armed forces as a whole? Were you instructed to do this by the MOD? Did you have any supporting data to validate this assumption?*
 4. *Those Gurkhas who were offered a transfer under GOTT were required to make their minds between November 2007 and 29 February 2008 whether to transfer to AFPS, on the basis of the information given to them. As they had no knowledge of any of the assumptions that were used by GAD in the calculation of the Service Credits or the projections provided by the MOD, do you think that they had sufficient information at their disposal to make an informed decision?*
 5. *Please provide all correspondences from MOD SP Pol (Pensions), Gurkha Policy and all other MOD establishments in relation to exchange rates for the calculation of Service Credits and for the two comparisons of GPS v AFPS 75 Pension Benefits when retiring in 1986 and 1994.*
 6. *Regarding exchange rates, as the sample period was from 1 October 2006 to 1 September 2007 inclusive, how were you able to state in your letter 'Gurkha Offer to Transfer – Pre 1 July 1997 Service Credits' dated March 2007, "The exchange rates used were 85 Indian Rupees to the £ sterling and 136 Nepalese Rupees to the £ sterling"?*
 7. *In Note 1 of the Comparison of FPS v AFPS Pension Benefits when retiring in 1986 and 1994, you state "The figures in the table compare the pension payments received under GPS against the pension payments that a Gurkha would have received under the AFPS 1975". We were not aware that Gurkhas who retired in 1986 and 1994 were entitled to AFPS 75 pensions. Could you please explain this? Was this merely a hypothetical comparison? Would the comparison have been different had you applied Service Credits, as all the service was before 1 July 1997? What were the exchange rates used for the 1986 comparison?"*
4. (The terms 'GPS', 'AFPS 75' and 'GOTT' refer to the Gurkha Pension Scheme, the Armed Forces Pension Scheme 75 and the Gurkha Offer to Transfer respectively).
 5. GAD responded on 7 September 2012. With respect to points (1), (5) and (7) it provided information within scope of the request, some of it in redacted form. With respect to parts (2), (3) (4), (6) and (7) of the request, GAD answered, or provided explanations to, the points raised by the complainant.

6. The complainant requested an internal review on 11 September 2012. In that correspondence he asked for clarification of a number of points. With respect to the documents originated by GAD, he acknowledged that the name of the GAD Actuary and MOD recipient had been redacted "*in accordance with your usual policy*". However, he noted that in the emails originated by the MOD:

"most of the text has been redacted and in one case, the entire message is redacted".

7. GAD sent him the outcome of its internal review on 11 October 2012 upholding its original position. It clarified that the redacted information was either withheld by virtue of section 40(2) (personal information) or because it was not relevant to his request. GAD apologised that this was not made clear in its original response.

Scope of the case

8. The complainant contacted the Commissioner on 31 October 2012 to complain about the way his request for information had been handled. He acknowledged that, as a result of GAD's responses, he had "*a much clearer understanding of the procedures and mechanisms used in the Gurkha Offer to Transfer (GOTT) exercise*".
9. The complainant did not complain about the application of section 40(2) (personal information) to the emails within the scope of part (5) of his request. However, in relation to that part of the request he told the Commissioner:

"I am not convinced with the explanation given ... regarding the redactions made to emails emanating from the MOD on the subject of exchange rates.... By heavily redacting the text of the messages to such an extent that they are incomprehensible, the MOD gives me the impression that they are trying to conceal their actions in relation to the use of exchange rates".

10. Also in that respect, he questioned the extent of the information provided to him, telling the Commissioner:

"I do not believe that the documents released to me so far represent the sum total of all the correspondence on this subject".

11. The Commissioner considers the scope of this case to be to determine whether the complainant has been provided with all the information held by GAD within the scope of part (5) of the request. He has also considered whether GAD correctly applied the redactions to the non-

personal data it holds within the scope of that part of the request – specifically with respect to the text of the emails emanating from the MOD on the subject of exchange rates.

Reasons for decision

Section 1 general right of access

12. Section 1(1) of FOIA creates a general right of access to information held by public authorities. It states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

13. The complainant questioned whether the documents provided to him in relation to part (5) of his request represent the sum total of all the correspondence on the subject.
14. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
15. Accordingly, in order to determine the complaint in this case, the Commissioner must decide on the balance of probabilities, whether, at the time of the request, GAD held any further correspondence falling within the scope of that part of the request.
16. In deciding where the balance lies, the Commissioner will consider the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any evidence that further information is held, including whether it is inherently unlikely that the information so far located represents the total information held.
17. During the course of the Commissioner's investigation, GAD said:
- "There is a business and professional need for GAD to hold and maintain files relating to advice provided to clients. The main*

purpose of those records is to be able to trace previous advice when that is required to support ongoing advice to clients”.

18. It went on to confirm that the correspondence it had provided to the complainant represented all the information it held within the scope of part (5) of the request. In doing so, it provided the Commissioner with details of the searches it had carried out.
19. For completeness, it confirmed that it had also considered part (1) of the request when conducting its searches.
20. Despite the complainant’s belief that there may be further relevant information, the Commissioner is satisfied that, on the balance of probabilities, no further information falling within the scope of part (5) of the request is held. In reaching this conclusion, the Commissioner accepts that GAD has undertaken reasonable searches to check for further relevant information.

Redactions

21. In correspondence with the Commissioner, the complainant said:

“If the email dated 6 July 2012 is as innocuous as is suggested, why was it necessary to redact it entirely?”

22. Responding to his questions about its use of redactions in general, and that email in particular, GAD told the Commissioner:

“our view is that the redactions relate to personal information or to information which is not related to the enquiry”.

23. The Commissioner has considered GAD’s application of redactions to the non-personal information it holds within the scope of part (5) of the request. Having viewed the withheld information, the Commissioner is satisfied that the redactions, including those applied to the content of the email of 6 July 2012, have been applied to information that is not relevant to the request.

Conclusion

24. The Commissioner is satisfied that GAD responded appropriately to the request. He requires no steps to be taken.

Right of appeal

25. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

26. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
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