

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 November 2022

**Public Authority:** Ministry of Defence  
**Address:** Whitehall  
London  
SW1A 2HB

#### **Decision (including any steps ordered)**

---

1. The complainant submitted a request to the Ministry of Defence (MOD) seeking a copy of the United Kingdom overview section from the NATO Defence Planning Capability Review 2019/2020. The MOD withheld the information on the basis of the exemptions contained at sections 23(1) (security bodies), 24(1) (national security), 26(1)(b) (defence), 27(1)(b) and 27(2) (international relations) of FOIA.
2. The Commissioner's decision is that the information is exempt from disclosure on the basis of section 27(1)(b) and that in all the circumstances of the case the public interest favours maintaining the exemption.
3. No steps are required.

#### **Request and response**

---

4. The complainant submitted the following request to the MOD on 2 November 2020 seeking:  
  
    'A copy of the United Kingdom Overview section from the NATO Defence Planning Capability Review 2019/2020.'
5. The MOD contacted him on 27 November 2020 and confirmed that it held information falling within the scope of his request but considered this to be exempt from disclosure on the basis of sections 23 (security

bodies), 24 (national security), 26 (defence) and 27 (international relations) of FOIA and that it needed additional time to consider the balance of the public interest in relation to the qualified exemptions.

6. The MOD provided the complainant with a substantive response on 7 January 2021. The MOD explained that the requested information was considered to be exempt from disclosure on the basis of sections 24, 26 and 27(1)(b) of FOIA and that the public interest favoured maintaining each of the exemptions.
7. The complainant contacted the MOD on 10 January 2021 and asked it to conduct an internal review of this decision.
8. The MOD informed him of the outcome of the internal review on 17 August 2021. The review concluded that the withheld information was exempt from disclosure on the basis of sections 24(1), 26(1)(b), 27(1)(b) and 27(2) of FOIA. The review noted that although not referred to in the refusal notice, some of the requested information was also exempt from disclosure on the basis of section 23(1).

### **Scope of the case**

---

9. The complainant contacted the Commissioner on 6 September 2021 in order to complain about the MOD's refusal of his request. In his view the exemptions cited did not provide a basis to withhold the requested information and in any event the public interest favoured disclosure of the information.

### **Reasons for decision**

---

#### **Section 27(1)(b) – international relations**

10. The MOD relied on section 27(1)(b) which states that information is exempt if its disclosure would, or would be likely to, prejudice 'relations between the UK and any international organisation or international court'.

### The MOD's position

11. The MOD explained that the document in the scope of the request is the 'United Kingdom Overview' section of the NATO Defence Planning Capability Review 2019/2020. The MOD explained that this was written by NATO 'International Staff' and is their candid assessment of how they perceive the UK's capability in terms of its support to NATO defence priorities. The MOD further explained that the document is intended for the readership of UK and NATO defence planning staffs and senior leaders and is not a prepared with a view to public release.
12. The MOD argued that release of the information would be likely to prejudice UK relations with allies within NATO and relations with the NATO International Staff. This is because disclosure of NATO information, without NATO's consent to do so, would be seen as a serious breach of the trust by NATO International Staff and by NATO Allies. The MOD emphasised that the document in question was specifically written by NATO International Staff as a classified document. The MOD was therefore satisfied that release of the information would be likely to cause the prejudice envisaged by the Tribunal in case the case Campaign against Arms Trade (CAAT) v the Information Commissioner and Ministry of Defence.<sup>1</sup> This is because it would make relations between the UK and NATO more difficult and there would be a need to be a response to contain or limit damage which would not have otherwise been necessary if MOD had not decided to place this information in the public domain.
13. The MOD noted that in his request for an internal review the complainant had referred to the fact that the equivalent overview document for Denmark is available in the public domain. The MOD explained that the Danish Overview was originally written by NATO as an unclassified document from the start at the request of the Danish Government. In line with other NATO allies, the MOD explained that the UK takes a different approach, requesting a candid assessment of national capability at a NATO classified level that is not intended for public release. Consequently, the MOD explained that in its view the

---

<sup>1</sup> The Information Tribunal in the case Campaign against Arms Trade (CAAT) v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008) suggested that in the context of section 27(1), prejudice can be real and of substance 'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not have otherwise have been necessary'.

publication of the Danish overview document did not constitute a precedent for the UK to follow.

### The complainant's position

14. The complainant argued that the MOD had failed to provide any evidence to support its claim that disclosure of the withheld information would be likely to result in the prejudice it envisaged. He noted that NATO proudly states that it is an alliance of democracies, and in his view NATO staff and allies fully understand that democratic processes sometimes require the public release of official information. The complainant also argued that the UK has a mature 70 year old relationship with NATO and this relationship will not easily be damaged.
15. The complainant disputed the MOD's claim that release of the information would result in a serious breach of trust as Denmark has published the equivalent information.<sup>2</sup> He noted that publication of the Danish overview does not appear to have harmed or undermined Denmark's role or relations with NATO. He also suggested that based on the MOD's description of the withheld information in the internal review it was likely that it followed a similar structure and contained similar material to the Danish document.
16. At the very least, the complainant argued, there should be a partial disclosure of some parts of the document.

### The Commissioner's position

17. In order for a prejudice based exemption, such as section 27, to be engaged the Commissioner believes that three criteria must be met:
  - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption.
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance.

---

<sup>2</sup> <https://www.fmn.dk/globalassets/fmn/dokumenter/aarsrapporter/nato/-nato-defence-planning-capability-review-2019-2020-.pdf>

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure 'would be likely to' result in prejudice or disclosure 'would result' in prejudice. The higher level 'would' means the possible harm caused by release is more probable than not. In other words, there is a more than 50% chance of the disclosure causing the prejudice, even though it is not absolutely certain that it would do so. Case law has determined that the lower level of prejudice 'would be likely to' means that the chance of harm being suffered is more than a hypothetical or remote possibility. That is to say, there must still be a real and significant risk even if it is less likely.
18. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the MOD believes would be likely to occur if the information was disclosed is applicable to the interests protected by section 27(1)(b).
  19. With regard to the second and third criteria, the Commissioner accepts that effective international relations depend upon trust and confidence between partners. In this context the Commissioner accepts that NATO did not intend, and would not expect, the withheld information to be published. In the Commissioner's opinion this is evidenced by both the classification of the material and MOD's explanation that it was written not for public release but only for UK and NATO defence planning staffs and senior leaders. In light of this the Commissioner accepts that disclosure of the document, without NATO's permission or authorisation, would be likely to impact on relations between the UK and NATO and furthermore that such an outcome would meet the description of prejudice described by the Tribunal in the CAAT case cited above. That is to say, disclosure would be likely to make relations more difficult and/or require a particular damage limitation exercise. The Commissioner is therefore satisfied that there is a real and significant risk of prejudice occurring and that such prejudice is clearly one of substance.
  20. In reaching this conclusion, the Commissioner appreciates that the equivalent NATO document in respect of Denmark is in the public domain. However, the Commissioner accepts that the different origins of each document, as described by the MOD, mean that its case for relying on section 27(1)(b) is not undermined. That is to say, the Danish document was specifically written with the intention that it would be placed in the public domain whereas the UK document was not. Furthermore, for similar reasons the Commissioner does not consider the possibility that the UK version of the document may follow the same format or contain similar analysis to the Danish version to undermine the application of the exemption. Again, this is because the likelihood of

prejudice arising derives from expectations as to how the document would be treated as well as from its contents.

21. Finally, in view of his conclusions above, the Commissioner is satisfied that disclosure of even parts of the document would still be likely to result in the prejudice envisaged by the MOD.

### **Public interest test**

22. Section 27 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption contained at section 27(1)(b) outweighs the public interest in disclosing the information.
23. With regards to the public interest in disclosure, the complainant suggested that the MOD and government sources regularly assert that NATO membership is an essential element of UK defence policy. Therefore, the complainant argued that it was important for the public to understand what NATO requires from the UK and whether the UK's contribution to NATO matches the alliance's needs, and how NATO's views shape UK military policies and spending.
24. Furthermore, the complainant argued that as defence equipment programmes are often expensive and have long lead times, scrutiny of this area will also help in understanding whether MOD's procurement programmes are giving value for money. He argued that there is a strong public interest in allowing Parliamentarians, policy makers, and the public to have an understanding of the UK capabilities and practices which the UK's allies consider to be valuable contributions to the NATO alliance to ensure that money is directed appropriately in future defence budgets.
25. The MOD acknowledged that there was some public interest in the release in the information in the interests of openness and transparency as disclosure would improve the public's understanding about the UK's contribution to the NATO. However, the MOD argued that any such benefits had to be balanced against the prejudice that would likely to arise between the UK and NATO if this information was disclosed. The MOD concluded that in its view there was a greater public interest in maintaining strong, trusting relations with the NATO allies and preserving the UK's own position within the NATO organisation itself.
26. The Commissioner agrees that there is clear public interest in the disclosure of information that would increase public understanding of NATO's assessment to the UK's contribution to the alliance. Disclosure of the withheld information would directly meet this purpose and the public interest in disclosure of the information should not be underestimated.

However, in the Commissioner's view there is greater public interest in ensuring that the UK's relationship with the NATO, and its reputation within the alliance, are not undermined. In his view the public interest therefore favours maintaining the exemption contained at section 27(1)(b).

27. In light of this decision the Commissioner has not considered the other exemptions cited by the MOD.

## Right of appeal

---

28. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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 .....**

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**