

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

### **Decision notice**

**Date:** 3 May 2023

**Public Authority:** UK Space Agency  
**Address:** Polaris House  
North Star Avenue  
Swindon  
SN2 1SZ

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

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1. The complainant requested from the UK Space Agency (UKSA) information regarding the technical report prepared by the UKSA relating to the purchase of OneWeb. The UKSA withheld the information under section 43(2) (commercial interests) and section 41 (information provided in confidence) of FOIA.
2. The Commissioner's decision is that the UKSA was entitled to withhold the information under section 43(2) of FOIA and the public interest favours maintaining the exemption. Therefore, the Commissioner does not require the UKSA to take any steps as a result of this decision.

#### **Background information**

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3. The UKSA informed the Commissioner that OneWeb is a global communications company with a network powered by a constellation of 648 low Earth orbit (LEO) satellites. The UKSA stated "OneWeb's ambition is to provide high-speed broadband access for governments, businesses and communities around the world."
4. The UKSA also explained that in May 2020, OneWeb filed for bankruptcy as it failed to secure adequate investment from investors. The UKSA said "following discussions with HM Treasury, an investment of up to \$500m in equity was being considered by UK government to co-finance the purchase of OneWeb from US Chapter 11 bankruptcy proceedings. His Majesty's Government (HMG) announced in July 2020 that it would invest in OneWeb. The National Security Strategic Investment Fund

(NSSIF) sought professional financial advice on the company's prospects on the Government's behalf and the UKSA was asked to procure a separate independent technical assessment."

5. The UKSA confirmed to the Commissioner that the information requested is for a document – the independent technical assessment for OneWeb, which was created by The Aerospace Corporation (TAC). The UKSA said this document "details the significant technological and administrative challenges that OneWeb would have to overcome in order to grow into a successful company."
6. The complainant submitted a request for information to the UKSA on 17 September 2020. The request was for a copy of the technical report referred to in a letter. This letter was from Sam Beckett, (previous Acting Permanent Secretary and Accounting Officer) and addressed to the Secretary of State at Department for Business, Energy & Industrial Strategy (BEIS).
7. The complainant also asked for "any reports considering the health impacts of using electromagnetic radiation/radiofrequency radiation from satellites on humans, animals, pollinators and trees."
8. The UKSA responded and withheld the information under section 41 (information provided in confidence) and section 43 (commercial interests) of FOIA. The complainant took no further action at this point.

## **Request and response**

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9. On 29 November 2022, the complainant again wrote to the UKSA and requested information in the following terms:

"This request is for a copy of the technical report referred to in the letter above."
10. The complainant notified the UKSA that the response in 2020 from the UKSA addressed the Financial Model rather than the Technical Report. She therefore asked the UKSA to disclose information regarding the Technical Report.
11. On 30 November 2022 the UKSA responded. It advised the complainant it would be treating this as a new request for information due to the time between its original response and the complainant's response.
12. On 2 December 2022 the complainant asked the UKSA not to treat this as a new request but as an ongoing request from the original one in September 2020. The complainant disputed it was a new request.

13. On 5 December 2022 the UKSA responded. It noted the complainant's dissatisfaction with its original response, and directed her to the ICO guidance<sup>1</sup> regarding requests for an internal review. The UKSA considered it was not appropriate to treat this as an internal review of its original response, and said it would therefore handle this as a new request for information.
14. On 23 December 2022 the UKSA responded to the request. It reiterated its previous response where it advised the complainant that "given the significant amount of time between the requests and due to the movement of people", it would treat this as a new FOI request. The UKSA confirmed it held the requested information but withheld it under section 43(2) and section 41 of FOIA.
15. On the same day the complainant asked the UKSA for an internal review, and specified her request for the "technical report prepared by the UK Space Agency relating to the purchase of OneWeb." On 27 February 2023 the complainant chased the internal review response.
16. On 15 March 2023 the UKSA provided its review response and maintained its position to withhold the information requested under sections 43(2) and 41 of FOIA.

### **Reasons for decision**

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17. This reasoning covers whether the UKSA is entitled to rely on sections 43(2) and 41 of FOIA to refuse to provide the requested information – the technical report relating to the purchase of OneWeb.

### **Section 43 – commercial interests**

18. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.

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<sup>1</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

19. The UKSA relied on this exemption for withholding the information requested, as it considers disclosure would harm one business which would disrupt market competition. Within its response to the complainant, the UKSA referred to the ICO guidance<sup>2</sup> which states under the 'Competition' section; "there is a public interest in protecting the commercial interests of individual companies and ensuring they can compete fairly".
20. The UKSA provided the Commissioner with a copy of the withheld information, and advised on what the technical assessment contains: details of OneWeb's business model i.e. operation information, mission planning, technical risks and a description of OneWeb's Generation System. It also informed the Commissioner of what OneWeb are currently undergoing and the expected time for the outcome. The UKSA considers the disclosure of the technical information could undermine the shareholder's confidence in OneWeb's business model or competitive advantage in the market.
21. The UKSA said releasing the information will put OneWeb's competitors (that are currently developing their services) at an advantage, and knowing details of OneWeb's specifications would benefit competitors. The Commissioner acknowledges that the withheld information contains details of OneWeb's business structure, technology assessment and planning. Giving competitors an advantage over OneWeb would likely to result in prejudice to its commercial interests.
22. Within its submissions to the Commissioner, the UKSA further highlighted why disclosure of the withheld information would likely prejudice its commercial interests. However, the Commissioner cannot reproduce the arguments here without undermining the exemption, but he accepts that the UKSA have demonstrated that there is a causal link to be drawn between disclosure and harm.
23. The UKSA also believes that it is not in the public interest to use information that could put a company at a commercial disadvantage to benefit their competitors. The UKSA stated, "where disclosure of information would do so, it is important public bodies treat this information with care and discretion."

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<sup>2</sup> <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-43-commercial-interests/>

24. The UKSA informed the Commissioner it had considered providing a redacted version of the requested document in order to be as transparent as it could be. However, the UKSA said given the majority of the information is commercially sensitive, any removal of this information would lead to a less meaningful information for the readers. It also said that the document does contain caveats restricting its disclosure even in a redacted format.
25. The UKSA considered the precedent with two previous requests for similar information which resulted in complaints to the ICO, and the UKSA referred these to the Commissioner. One of the complaints was a similar request for information to another public authority, and a decision notice<sup>3</sup> was issued. The Commissioner upheld the public authority's position to withhold the information – the independent technical assessment and he found that the exemption (section 43(2) of FOIA) was engaged in that case.

### **The Commissioner's decision**

26. Having considered the submissions provided by the UKSA and viewed the withheld information, the Commissioner is satisfied that the harm the UKSA envisages relates to the commercial interests of OneWeb. Secondly, the Commissioner accepts that a causal link exists between disclosure and commercial prejudice. He agrees that competitors and potential investors would benefit from the information which would result in prejudice to OneWeb's commercial interests.
27. The Commissioner therefore finds that the UKSA was entitled to apply section 43(2) of FOIA to the withheld information.

### **Public interest test**

28. Section 43(2) of FOIA is a qualified exemption and is subject to the public interest test set out in section 2(2)(b) of FOIA. The Commissioner has considered whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure.

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<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/4017810/ic-64176-m6f6.pdf>

29. The UKSA said there is a clear public interest in understanding the use of taxpayer's money as well as allowing for scrutiny of Government decisions. The UKSA recognises that releasing the information would help the public understand how decisions made by Government influence their lives, promote openness, and in certain situations, enable the public to participate in such decisions. It also said that releasing the information would provide greater transparency in the Government's decision to invest in OneWeb.
30. However, the UKSA believes that there is a public interest in allowing businesses to compete competitively by not disclosing commercially sensitive information into the public domain. It considers the release of the technical report would, or would be likely to, prejudice OneWeb's interests by revealing market-sensitive information, which could be used by their competitors.
31. The UKSA stated it is important companies have confidence that, when sharing commercially sensitive information with the Government, this information will be treated with the appropriate care to ensure companies do not suffer unnecessary damage to their commercial interests.
32. The UKSA argued reasons for withholding the information would be in the public interest, and stated the following:
  - OneWeb's interests are likely to be harmed by disclosing information which is market-sensitive and /or useful to its competitors.
  - The UKSA explained how crucial it is for businesses and the government to be able to communicate privately about commercially sensitive information. This will help government formulate policies, understand the difficulties businesses face and think through solutions.
  - The UKSA further explained that businesses must also be confident the Government will protect their commercial interests and opportunities; that the government would handle the information with the required care to prevent unnecessary harm to businesses' economic interests and opportunities for fair competition in the market.

33. The complainant strongly disagrees with the arguments made by the UKSA, and the Commissioner acknowledges her concerns. The complainant argued that the UKSA has a wide remit which is not only to do with the astronomy community's assessment of interference issues. As they are rocket scientists, she said they are aware of the impact of radiation on their satellites (the sun being a radiation generator).
34. The complainant further argued that the UKSA know the effect of radiation, particularly from 5G, on humans, animals, pollinators and trees. She said the UKSA "would have studied such information in detail to be aware of the harm their equipment would be causing to those sensitive to radiation."
35. The complainant does not accept the UKSA's response. She objects to its reasons for withholding the information requested, on the basis that disclosure is likely to prejudice the commercial interests of OneWeb. She said "the competitors would have been granted this information also in order to prepare their bids."
36. In balancing the public interest arguments, the Commissioner accepts that disclosure would to some extent help to increase openness and transparency. The public would be better informed about the Government's decision to invest in OneWeb. The Commissioner is also aware of how topical matters are relating to broadband satellite and the effect of radiation from 5G technology. However, given the level of likelihood that commercial harm would occur should the requested information be disclosed, and the arguments from the UKSA, the Commissioner finds that the balance of public interests favours maintaining the exemption.

## **Conclusion**

37. The Commissioner considers the public interest in disclosure of the withheld information is outweighed by the public interest in maintaining the exemption. Therefore, section 43(2) of FOIA is engaged and the UKSA was entitled to rely on this exemption.
38. Having found the exemption to be engaged and the public interest favours withholding the requested information, the Commissioner has not gone on to consider the application of section 41 of FOIA.

## Right of appeal

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39. 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: 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)

40. 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.
41. 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

**Joanna Marshall**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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