

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

### **Decision notice**

**Date:** 13 November 2023

**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) for a copy of the fifth edition of the 'JSP900: UK Targeting Policy'. The MOD provided the complainant with a redacted copy of this document. It sought to withhold the redacted information on the basis of sections 23(1) (security bodies), 24(1) (national security), 26(1)(a) and (b) (defence), 27(1)(a) and (b) (international relations) and 40(2) of FOIA.
2. The Commissioner has concluded that the redacted information is exempt from disclosure on the basis of sections 23(1), 26(1)(a) and (b), 27(1)(a) and (b), and 40(2) of FOIA.
3. The Commissioner does not require any steps to be taken.

#### **Request and response**

---

4. The complainant submitted the following request to the MOD on 13 January 2022:

"This [is] a request for information under the Freedom of Information Act 2000

1. Please identify the edition number and date of the current edition of JSP 900.

2. Please provide a copy of the current edition of JSP 900.
3. If only the current edition can be considered for release within burden limits, please confine the request to that edition. If it is not overly burdensome, please also provide any other editions of JSP 900 held (disregarding JSP 900 edition 2, September 2015) with priority given to most recent editions. For instance if edition 4 is the current version, please provide it and only then if not too much of a burden please provide a copy of edition 3, and only then edition 1.”
5. The MOD responded on 16 May 2022 and confirmed that the current edition of JSP 900 is edition 5 which was published in July 2021. However, the MOD relied on section 14(1) (vexatious) of FOIA to refuse to provide this edition. This refusal was upheld in an internal review dated 15 July 2022.
6. The complainant submitted a complaint to the Commissioner about this refusal. The Commissioner issued a decision notice on 24 January 2023 which found that section 14(1) did not apply and ordered the MOD to issue a revised response to the request.<sup>1</sup>
7. The MOD did so on 28 February 2023. It provided him with a redacted version of edition 5 of JSP 900 and explained that the redacted information was exempt from disclosure on the basis of sections 23(1) (security bodies), 24(1) (national security), 26(1) (defence), 27(1) (international relations) and 40(2) (personal data) of FOIA.
8. The complainant contacted the MOD on 23 March 2023 in order to challenge the application of all of these exemptions.
9. The MOD acknowledged receipt of the request for an internal review on 6 April 2023, however the internal review was not completed.

## **Scope of the case**

---

10. The complainant contacted the Commissioner on 12 June 2023 about the MOD's failure to complete the internal review and its decision to withhold information falling within the scope of his request.

---

<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4023798/ic-185375-v6r2.pdf>

11. During the course of the Commissioner's investigation the MOD provided the complainant with a small amount of further information which had previously been redacted.
12. The Commissioner considers that the scope of his investigation is to consider whether the exemptions cited provide a basis to withhold the remaining information which has not been disclosed.

## **Reasons for decision**

---

### **Section 26 - defence**

13. The MOD argued that the majority of the withheld information was exempt from disclosure on the basis of sections 26(1)(a) and (b) of FOIA which state that:

"Information is exempt information if its disclosure under this Act would or would be likely to prejudice-

(a) the defence of the British Islands or any colony, or

(b) the capability, effectiveness or security of any relevant forces."

14. In order for a prejudice based exemption, such as section 26, 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; and
- 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. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

### The MOD's position

15. The MOD argued that release of the information withheld on the basis of section 26 would reveal details about the targeting of the full spectrum of defence capabilities in all domains. The MOD argued that this would undermine the options and possible courses of action available to UK

armed forces. Disclosure would provide adversaries, hostile states and enemy combatants with a detailed insight into UK targeting enabling them to change or develop their Tactics, Techniques and Procedures (TTP) to gain an advantage. The MOD explained that these TTPs have not changed significantly over successive editions of the JSP and are likely to be used in the future.

16. The MOD also explained that the JSP outlines the targeting capabilities of UK armed forces. The MOD argued that the in-depth understanding of the targeting capabilities of UK armed forces and how they conduct targeting exercises that would be gained from the release of the TTPs would enable adversaries to adapt or develop their tactics to deter or disrupt UK armed forces operations. The MOD argue that this would prevent the UK from meeting its military objectives and, more importantly, could put UK personnel and those of the nations with whom the UK operate at increased risk. The latter would not only include other forces, but any local security forces and the civilian population.
17. In addition, the MOD provided the Commissioner with further submissions regarding the application of section 26 which referenced the content of the withheld information (and therefore such submissions are not included in this decision notice).

#### The Commissioner's position

18. With regard to the first criterion, the Commissioner accepts that the type of harm that the MOD believes would occur if the information was disclosed is applicable to the interests protected by sections 26(1)(a) and (b) of FOIA.
19. With regard to the second criterion, having considered the submissions provided by the MOD the Commissioner is satisfied that disclosure of this information clearly has the potential to harm the capability and effectiveness of UK forces in operations given that it details the TTPs used by UK forces and also outlines their targeting capabilities. That is to say the redacted information has a direct application for operations carried out by UK forces. Furthermore, the Commissioner accepts that it is logical to argue that the disclosure of the UK forces' TTPs and targeting capability would enable adversaries to adapt or develop their tactics to deter or disrupt the operations of UK forces. As a result disclosure of the withheld information clearly has the potential to harm the capability and effectiveness of UK forces. The Commissioner is therefore satisfied that there is a causal link between the potential disclosure of the withheld information and the interests which section 26(1)(b) is designed to protect. In turn, and as a direct result of such a potential outcome, the Commissioner accepts that disclosure of the

information also has the potential to harm the defence of the British Islands or any colony.

20. In relation to the third criterion, the Commissioner is satisfied that the likelihood of prejudice occurring if the withheld information was disclosed is clearly one that is more than hypothetical. Rather, taking into account the MOD's arguments, and considering the content of the withheld information, the Commissioner is satisfied there is a real and significant risk of this prejudice occurring, both to the interests which section 26(1)(a) and section(b) protect. The Commissioner also accepts that the higher threshold of 'would' prejudice is met.
21. The Commissioner has therefore concluded that sections 26(1)(a) and (b) are engaged in respect of all of the information to which the MOD has applied these exemptions to.

### **Public interest test**

22. Section 26 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 sections 26(1)(a) and (b) outweigh the public interest in disclosing the withheld information.

### Public interest in favour of disclosing the withheld information

23. The complainant argued that in considering the public interest arguments in favour of disclosure it was necessary to consider the background to this request. He noted that he had previously submitted a request to the MOD in October 2018 for a copy of edition 2 of JSP 900. The MOD disclosed a redacted version of this edition. The Commissioner issued a decision notice in February 2020 upholding the MOD's application of sections 26(1)(b), 23(1) and 40(2) of FOIA to the redacted information.<sup>2</sup> The complainant appealed this decision and the First-tier Tribunal hearing took place in May 2021<sup>3</sup> but the outcome of the hearing had not yet been issued.
24. The complainant argued that given this passage of time there remained a lack of clarity about the legal framework which the UK justifies its use of lethal force outside armed conflict, or its assistance of US lethal drone

---

<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2020/2617321/fs50838374.pdf>

<sup>3</sup> EA/2020/0125

strikes considered by the unlawful under international human rights by the majority of experts.

25. The complainant argued that in those five years since he made his request in October 2018 other disclosures of versions of CDS Directives on Embedded Personnel, and redacted versions of JSP 398 UK National Rules of Engagement, have only given further weight to concerns that the UK has, without any consultation of Parliament, adopted the US and Israeli interpretations of international law and justifications for use of force in self-defence. The complainant emphasised such interpretations are opposed by the majority of member states of the UN and considered extra judicial executions by human rights experts and NGOs.
26. The complainant argued that given the above there was a clear public interest to bringing the MOD's targeting policy to full account of the democratic process. In the complainant's view the public interest in full disclosure of edition 5 of JSP 900, especially in light of previous disclosures of related MOD documents, is even greater than in the edition 2 case because it shows how UK targeting has developed from the 2015 edition, under the influence of the re-posturing of UK national security strategy, the so-called "Fusion Doctrine"<sup>4</sup> and the new concept of "Integrated Action".
27. The complainant suggested that Integrated Action appears to conceptualise a global strategy of offensive and pre-emptive targeting of the full spectrum of military strategic effects. He noted that this ranged from overt to covert, lethal to non-lethal, physical, and virtual to the cognitive against any "entities" designated a target by officials acting on secret and therefore inscrutable intelligence. The complainant argued that the potential abuse of this power is obvious and must be held to account.
28. The complainant suggested that given what is now known about the UK's full spectrum targeting policy, targets are no longer confined to enemies or threats of armed attack on UK or allied interests. He argued that this expansion of the scope of UK military targeting appears to include entire civilian populations, including the domestic population of the UK. The complainant suggested that the tactics appear to include military technologies that challenge the legal mechanisms regulating biological and chemical weapons. In the complainant's view the targeting of what he referred to as the "cognitive domain" of civilian populations to shape popular consent for State political objectives,

---

<sup>4</sup> <https://www.gov.uk/government/publications/national-security-capability-review-nscr>

directly threatens fundamental human rights of human autonomy and freedom of expression, not just legitimate political dissent.

29. Finally, the complainant argued that full disclosure of edition 5 of JSP 900 is vital to inform the public and the wider democratic debate of "the quiet UK adoption of a policy of so called targeted killings of suspected militants around the world". The complainant argued that the protection of civilians from the targeting of novel neuroscience and technology that may bypass established democratic structures of civilian oversight, requires full disclosure.

#### Public interest in favour of withholding the information

30. The MOD argued that the public interest favoured maintaining the exemptions contained at section 26(1) given the impact on the effectiveness of UK forces, and the defence of the British Islands, if the information was disclosed.

#### Balance of the public interest arguments

31. As the Commissioner did in his previous decision notice cited at footnote 2 (see paragraph 38), he recognises the importance of information contained in the JSP 900 document. Furthermore, the Commissioner accepts that there is a significant public interest in the disclosure of the withheld information in order to provide the public with a greater understanding of the targeting policy of UK armed forces. The Commissioner also acknowledges that disclosure of the information could, potentially, address some of the issues raised by the complainant above. In reaching this finding the Commissioner wishes to emphasise that it is not his role to comment on the validity of the suggestions made by the complainant in respect of the UK's targeting policy. However, the Commissioner does recognise that the issues raised by the this policy area are clearly serious ones and ones which deserve public accountability and scrutiny.
32. Nevertheless, as he also found in the previous decision notice, in the Commissioner's view there is a very strong public interest in the defence of the country and its armed forces. This interest attracts additional weight given that the likelihood of prejudice occurring meets the higher threshold of would prejudice rather than simply being likely to prejudice. In addition, in the Commissioner's view the public interest in maintaining the exemption attracts further weight because the policy relates to the targeting of all military operations, rather than specific operations, thus further increasing the prejudicial risks of any such disclosure.

33. In conclusion, whilst the Commissioner accepts that there is significant public interest in the disclosure of the information, in his view this is outweighed by the public interest in ensuring that the prejudice to the UK's armed forces and defence does not occur. The Commissioner is therefore satisfied that the MOD can rely on sections 26(1)(a) and (b) to withhold the information to which these exemptions have been applied.

### **Section 27 – international relations**

34. The MOD sought to withhold some information on the basis of sections 27(1)(a) and (b) of FOIA which state that:

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

- (a) relations between the United Kingdom and any other State
- (b) relations between the United Kingdom and any international organisation or international court.”

#### The MOD's position

35. The MOD explained that some of the information contained within the JSP 900 related to the procedures of the UK's allies. The MOD argued that as a result disclosure of this would adversely affect the UK's relationship with these allies in relation to this area. It also risked having a wider prejudicial impact on broader strategic partnerships between the UK and these allies. The MOD provided the Commissioner with further submissions which referred directly to the content of the withheld information in order to support this position. Given the nature of these submissions the Commissioner has not included these in the decision notice.

#### The Commissioner's position

36. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the MOD relates to the interests which the exemptions contained at sections 27(1)(a) and (b) are designed to protect. With regard to the second and third criteria, having considered the content of the information withheld on the basis of these exemptions, and taken into the MOD's submissions to him, the Commissioner is satisfied that there is a causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the Commissioner is satisfied that the likelihood of such prejudice occurring is one that meets the higher threshold of 'would'. The Commissioner has reached this finding because he is satisfied that there is clear evidence that disclosure of the information would impact directly on the UK's relations with its allies in respect of targeting policy



and also poses a credible risk of having an impact on relations more broadly. Sections 27(1)(a) and (b) are therefore engaged.

### **Public interest test**

37. 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 exemptions contained at sections 27(1)(a) and (b) outweigh the public interest in disclosing the withheld information.

#### Public interest in favour of disclosing the withheld information

38. The complainant's public interest arguments are set out above.
39. For its part the MOD acknowledged that disclosure would increase public understanding and confidence in the relations the UK has with other international states in its assistance with operations.

#### Public interest in favour of withholding the information

40. The MOD argued that it was against the public interest to disrupt the UK's relations with its allies in this area as to do so would harm the UK's ability to protect its interests abroad and risked having a wider impact on partnerships with trusted allies.

#### Balance of the public interest arguments

41. As discussed above, the Commissioner accepts there is a clear public interest in the disclosure of the withheld information from the JSP 900. The information withheld on the basis of section 27 could, as the MOD suggest, provide useful insight into the UK's relations with key allies in respect of targeting policy.
42. However, the Commissioner recognises the importance of ensuring that such relations are effective ones in order to support the UK's targeting policy. As a result he accepts that disruption to these relationships would be firmly against the public interest. Furthermore, the Commissioner acknowledges that disclosure of the information could also have a wider impact on the UK's relations with such allies and in turn further undermine the UK's ability to protect its interests abroad, an outcome which would be firmly against the public interest. Taking these factors into account the Commissioner has concluded the public interest favours maintaining the exemptions contained at sections 27(1)(a) and (b).

### **Section 23(1) – security bodies**

43. The MOD redacted some parts of the JSP 900 on the basis of section 23(1) of FOIA which states that:  
  
"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)."
44. To successfully engage the exemption at section 23(1), a public authority needs only to demonstrate that the relevant information was directly or indirectly supplied to it by, or relates to, any of the bodies listed at section 23(3).
45. This means that if the requested information falls within this class it is absolutely exempt from disclosure under FOIA. There is no requirement on the public authority to demonstrate that disclosure of the requested information would result in some sort of harm.
46. The Commissioner has examined the information which the MOD has sought to withhold on the basis of section 23(1) of FOIA and he is satisfied that it was either supplied by, or relates to, the security bodies listed in section 23(3) of FOIA. Such information is therefore exempt from disclosure on the basis of section 23(1) of FOIA. The Commissioner cannot elaborate on this finding without revealing the content of the information which has been withheld on the basis of this exemption.
47. Section 23(1) is an absolute exemption which means that it is not subject to the public interest test.

#### **Section 40 – personal data**

48. The MOD applied section 40(2) of FOIA to a very small amount of information which constituted the contact details of junior staff members.
49. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
50. In this case the relevant condition is contained in section 40(3A)(a).<sup>5</sup> This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the

---

<sup>5</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').

51. The MOD explained that its policy is that the names and contact details of officials below the Senior Civil Service (1\* or equivalent), should be withheld under section 40(2), unless an individual is in a public facing post and their name and contact details are already in the public domain.
52. The Commissioner accepts that it is common practice for a public authority to argue that the names of junior officials, along with their contact details, are exempt from disclosure under FOIA on the basis of section 40(2) as disclosure would contravene the principles set out in Article 5 of the GDPR. Furthermore, unless there are very case specific circumstances, the Commissioner accepts that such information is exempt from disclosure on the basis of section 40(2) of FOIA. This is in line with the approach taken in the Commissioner's section 40 guidance.<sup>6</sup> Therefore, in this case the Commissioner adopts the reasoning set out in these previous decision notices which found that the names of junior officials were exempt from disclosure on the basis of section 40(2) of FOIA.<sup>7</sup>
53. The Commissioner has not considered the MOD's reliance on section 24(1) in this notice as he is satisfied that all of the redacted information is exempt from disclosure on the basis of the exemptions which have already been considered in this decision notice.

---

<sup>6</sup> [https://ico.org.uk/media/for-organisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf) see page 12

<sup>7</sup> IC-114449-B7P7 - <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022310/ic-114449-b7p7.pdf> Paragraphs 49-71 and IC-110922-T9R1 <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022447/ic-110922-t9r1.pdf> paragraphs 39-62.

## Right of appeal

---

54. 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)

55. 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.
56. 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**