

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

### **Decision notice**

**Date:** 11 September 2024

**Public Authority:** Ministry of Defence

**Address:** Whitehall  
London  
SW1A 2HB

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

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1. The complainant submitted a request to the Ministry of Defence (MOD) seeking information about a number of defence projects. The MOD provided some of the information requested but sought to withhold the remainder on the basis of sections 24 (national security), 26 (defence) and 27 (international relations).
2. The Commissioner's decision is that the withheld information is exempt from disclosure on the basis of sections 24(1) and 27(1)(a), and that the public interest favours maintaining each exemption.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. The complainant submitted a multi-part request to the MOD on 6 March 2023 seeking information from 'the MOD's March 2022 Major Projects Portfolio Data'. A copy of the request is contained in an annex at the end of this notice.
5. The MOD responded on 31 March 2023 and provided some of the information falling within the scope of the request. However, in respect of the Astute and Dreadnought projects the MOD withheld "the departmental narrative on schedule" and the "project end date" on the basis of sections 24(1) (national security) and 26(1) (defence) of FOIA.

The MOD also withheld parts of the information sought about the Teutates program on the basis of sections 27(1) and 27(2) (international relations) of FOIA.

6. The complainant submitted an informal request for review on 5 June 2023. The MOD informed him that it stood by the position outlined in the refusal notice.
7. The complainant contacted the MOD on 27 June 2023 and asked it to conduct a formal internal review of the decision to withhold information falling within the scope of the request.
8. The MOD informed him of outcome of this on 9 February 2024. It concluded that the withheld information was exempt from disclosure on the basis of sections 24(1), 26(1)(b) and 27(1) of FOIA. The MOD also provided a table summarising the information which had been disclosed in response to the request; this table is also included in the annex to this notice.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 14 March 2024 in order to complain about the MOD's decision to withhold parts of the requested information. He was also dissatisfied with the length of time taken to complete the internal review.
10. During the course of the Commissioner's investigation the MOD explained that in support of the Infrastructure and Projects Authority (IPA) annual report 2022,<sup>1</sup> the MOD provided supporting data concerning the three defence nuclear projects identified by the complainant to the Government's Major Projects Portfolio data, issued in conjunction with the IPA's annual report. The portfolio consists of data presented in columns with pre-set descriptors determined by the IPA, which the department's acquisition and project delivery specialists populated with recorded information on a pro-release basis from pre-existing internal information. The MOD explained that where it had any concerns about providing information to the IPA for publication it was withheld. The MOD noted that the complainant made a request under

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<sup>1</sup> <https://www.gov.uk/government/publications/infrastructure-and-projects-authority-annual-report-2022>

FOIA for recorded information based upon the descriptors of the columns that were not populated.

11. The MOD explained that although it confirmed that it held all of the requested information in its response to the request (both in the refusal notice and internal review), it had since become apparent that it does not hold the departmental narrative on schedule for the Astute and Dreadnought programmes for the IPA reports, as sought by the complainant (part 2 of the Astute information requested; part 3 of the Dreadnought requested). The MOD explained that it would, of course, be possible to have created them at the time of the IPA's annual report but there was no business need to do so for the purposes of populating the major projects portfolio.
12. The MOD explained when it processed this request it was assumed that such information existed, and would have been exempt from disclosure, albeit that technically such information does not exist. The MOD acknowledged that it had therefore incorrectly confirmed under section 1(1)(a) that such information was held.
13. The Commissioner is satisfied by the MOD's explanation as to why such information is not held for the purposes of FOIA, and whilst the previous inaccurate responses, ie both in the refusal notice and internal review, are unfortunate, there are no remedial steps that are necessary to rectify this error. However, the Commissioner has commented on this in the Other Matters section of the decision notice.
14. Therefore this notice considers whether the remaining withheld information which the MOD does hold, namely the project end dates for Astute and Dreadnought, and the various pieces of information withheld in relation to the Teutates project, are exempt from disclosure under FOIA.

## **Reasons for decision**

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### **Section 24 – national security**

15. The MOD withheld the project end dates for Astute and Dreadnought on the basis of section 24(1) which states:

'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security'.
16. FOIA does not define the term 'national security'. However in *Norman Baker v the Information Commissioner and the Cabinet Office*

(EA/2006/0045 4 April 2007) the Information Tribunal was guided by a House of Lords case, *Secretary of State for the Home Department v Rehman* [2001] UKHL 47, concerning whether the risk posed by a foreign national provided grounds for his deportation. The Information Tribunal summarised the Lords' observations as follows:

- 'national security' means the security of the United Kingdom and its people;
  - the interests of national security are not limited to actions by an individual which are targeted at the UK, its system of government or its people;
  - the protection of democracy and the legal and constitutional systems of the state are part of national security as well as military defence;
  - action against a foreign state may be capable indirectly of affecting the security of the UK; and,
  - reciprocal co-operation between the UK and other states in combating international terrorism is capable of promoting the United Kingdom's national security.
17. Furthermore, in this context the Commissioner interprets 'required for the purpose of' to mean 'reasonably necessary'. Although there has to be a real possibility that the disclosure of requested information would undermine national security, the impact does not need to be direct or immediate.

#### The MOD's position

18. The MOD explained that releasing the 'project end date' would, inter alia, involve providing the Planned Assumption Service Entry (PASE) date for the final Astute Class and Dreadnought Class submarine. The MOD argued that releasing PASE dates for Royal Navy submarines would adversely affect the UK's ability to safeguard national security as it would allow a potential adversary to build up a clear picture of the UK's future submarine fleet and could provide information concerning submarine operations. Further, disseminating PASE dates could provide a potential hostile state with information to attempt to track and predict Royal Navy submarine movements. The MOD noted that the Dreadnought Class submarines will continue to deliver the UK's nuclear deterrent which is the apex of the UK's national security strategy.
19. With regard to the complainant's point below at paragraph 22, the MOD explained that it disagreed with this claim. The MOD explained that the respective project end dates for the Astute and Dreadnought submarine programmes detail the specific target date at which the final submarine,

within each respective class, conducts Royal Navy operations. Therefore, providing these dates would provide the PASE date.

20. With regard to the complainant's argument at paragraph 23, the MOD explained that it previously commented on In-Service (ISDs) and Out-of-Service Dates (OSDs) for Royal Navy submarines up until around February 2017. However, the UK's policy to not release Royal Navy submarine ISDs and OSDs was confirmed in an answer to a Parliamentary Question (PQ) on 9 September 2019 (PQ UIN: 284215): "In February 2017, the Ministry of Defence determined that the in and out of service dates for submarines should be withheld as disclosure would, or would be likely to, prejudice the capability, effectiveness or security of the Armed Forces".<sup>2</sup>
21. The MOD explained that this position has not changed and it has not released Royal Navy submarine ISDs and OSDs for national security reasons since this time. The MOD noted that it has been explained to the complainant that the evolving national and international security landscape has a direct impact on its approach to national security policy. The MOD also noted that its public messaging is purposely vague when commenting on programme deliverability. For example, public messaging, both in Parliament and in the media, in relation to Dreadnought has routinely been that "The Dreadnought Class will begin to enter service in the early 2030s".

#### The complainant's position

22. The complainant argued that the MOD's position that providing the end dates for the Astute and Dreadnought programmes would, inter alia, provide the PASE dates for the final submarines of those respective classes is erroneous. He argued that each submarine will go through a protracted series of sea trials before going into service, so the end date of the programme is only loosely related to the in-service date. In his view publication of at least the year of the end dates would present no meaningful risk.
23. He also noted that the government has put in-service years for the first Dreadnought submarine into the public domain in the past and an end date for the Astute programme was published in 2019. If these programmes had kept to their original timetable, these dates would be public knowledge.

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<sup>2</sup> <https://questions-statements.parliament.uk/written-questions/detail/2019-09-02/284215>

### The Commissioner's position

24. Having considered the MOD's submissions above, the Commissioner is satisfied that disclosure of the project end dates would, in effect, reveal the PASE dates. This is on the basis that the programmes detail the specific target date at which the final submarine, within each respective class, will conduct Royal Navy operations. Therefore, whilst the Commissioner appreciates the complainant's argument at paragraph 22, he is satisfied that disclosure of the project end dates would still provide the UK's adversaries with a direct insight into submarine operations.
25. With regard to the complainant's arguments at paragraph 23, the Commissioner acknowledges the MOD's arguments at paragraphs 20 and 21, ie that whilst information of the nature requested may have previously been published, it has not been for some time. Furthermore, that recent public messaging in respect of end dates has been deliberately vague. In addition, the Commissioner accepts the rationale of the MOD's position that any release of information about end dates has to take account of the changing national security landscape, and that as a result, information which it may previously have determined could be released, may now need to be withheld as a result of such changes.
26. Taking the above into account, in respect of the specific information withheld here, the Commissioner is satisfied that there are grounds to argue that this should be withheld in order to protect national security. He accepts the MOD's position that providing such information could allow a potential adversary to build up a clear picture of the UK's future submarine fleet, including the operations of that fleet, and furthermore this could assist an adversary's attempts to attempt to track and predict Royal Navy submarine movements. Given the role that Royal Navy submarines play in protecting the UK, in particular the Dreadnought Class submarines which provide the UK's nuclear deterrent, the Commissioner is satisfied that an impact on the effectiveness of the submarine fleet as envisaged by the MOD would represent a clear risk to the UK's national security.
27. Section 24(1) is therefore engaged.

### **Public interest test**

28. Section 24 is a qualified exemption. Therefore, the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing that information.

29. With regard to the public interest in disclosure, the MOD acknowledged that there is a public interest in ensuring major defence programmes are delivered on time and to budget. The MOD noted that Defence programmes are subject to Parliamentary scrutiny and that it issues Accounting Officer Assessments (AOAs) to the Public Accounts Committee which are published online.
30. The complainant argued that the public interest in this data does not rest solely on a demonstration of openness. Rather, the interest also lies in enabling proper scrutiny and providing assurance about the management of very substantial amounts of public funds, by demonstrating that the timetable of these programmes is not being extended without the appropriate amount of public and parliamentary accountability. Furthermore, the complainant argued that the MOD's arguments for withholding the information, namely the centrality of the UK's nuclear capability to its national security strategy, actually add weight to the public interest for disclosure: if this is the case then the public should be made aware of any delays to the build schedule of these submarine programmes.
31. The Commissioner recognises that there is a clear public interest in understanding the progress of defence programmes, and whether these are being delivered in budget and on time. The Commissioner agrees with the complainant that the sums of money involved for the projects in question, and the fact that they are key to the UK's national security, add considerable weight to the public interest in disclosure of the information. However, in the Commissioner's view it would be firmly against the public interest to disclose information which would undermine the effectiveness of the UK's submarines fleet, including the UK's nuclear deterrent, and in turn national security. As result, the Commissioner has concluded that the public interest favours maintaining the exemption contained at section 24(1) and withholding the information.

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

32. The MOD withheld a range information about the Teutates program on the basis of section 27(1)(a) of FOIA.<sup>3</sup>

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<sup>3</sup> In 2010 the UK and France signed the Joint Radiographic/Hydrodynamics Treaty which confirms agreement to deliver and operate a Hydrodynamics research facilities under a joint programme called 'Teutates'.

<https://assets.publishing.service.gov.uk/media/5a7c9619e5274a0bb7cb809b/8289.pdf>



33. Section 27(1)(a) of FOIA provides that information is exempt information if its disclosure would, or would be likely to, prejudice relations between the UK and any other State.
34. 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; 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.
35. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which 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'.<sup>4</sup>

#### The MOD's position

36. The MOD explained that the information shared between the UK and French governments on Teutates, including information on costs, is shared in confidence for the purposes of managing the programme. More specifically, the MOD argued that disclosure of information about costs for the Teutates programme have not been released as it would be a breach of the Teutates Treaty 2010.<sup>5</sup> As result disclosure of the information which has been withheld on the basis of section 27(1)(a) would severely damage the UK's relationship with France.

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<sup>4</sup> Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008)

<sup>5</sup> The MOD noted that it has answered a Parliamentary Question on this point which had confirmed this position: <https://questions-statements.parliament.uk/written-questions/detail/2022-09-20/51433>



37. Furthermore, the MOD argued that as a consequence of such a breach of confidence if information regarding the programme was released, the UK's relationships and trust with other international partners would also be damaged. It noted that the building, operating and dismantling costs of facilities which are the subject of the Treaty will be shared equitably between the UK and France and therefore to reveal the UK's costs would be to reveal those of France as well, which would be in breach of the international agreement.
38. In view of the complainant's point below in paragraph 40, the Commissioner asked the MOD which specific part of the Treaty, or related agreement, prevents the disclosure of cost information about the Teutates program. In response, the MOD explained that the Treaty is very clear on this point and provides so at Article 12:
- "12.2 - As regards information in which intellectual property rights exist, nothing in this Treaty shall authorise or govern the release, use, exchange or disclosure of information, whether classified or not, in which intellectual property rights exist, until the specific written authorisation of the owner of those rights has been obtained, whether the owner is a Party to this Treaty or a third party."
39. The MOD argued that disclosure of the cost information would not only go against the Treaty but also cause severe damage to UK-French relations.

#### The complainant's position

40. In response to the MOD's position, the complainant argued that no such provision, as described by the MOD in paragraph 36 appears in the treaty. The complainant noted the Treaty says that detailed financial arrangements are in a separate classified agreement. He acknowledged that such an agreement may include such a provision, but this is not what the MOD response in relation to the request had said. He also argued that the Parliamentary Question being cited did not, as the MOD suggested, actually reaffirm the point.

#### The Commissioner's position

41. With regard to the first criterion of the three limb test above at paragraph 34, 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)(a) of FOIA.
42. With regard to the second and third criteria, given the wording of the Treaty and the confidential basis upon which the UK and France exchange information about the programme, the Commissioner accepts that it is reasonable to argue that disclosure of both the costs

information, and the other information sought by this part of the request which has been withheld, would be against the expectations of the French government. As a result, the Commissioner is satisfied that there is a real and significant risk of prejudice occurring to the UK's relations with France if such information was disclosed under FOIA. In reaching this finding the Commissioner has taken into account the threshold for such prejudice as identified by the Tribunal in the above case.

43. The Commissioner is satisfied that section 27(1)(a) is therefore engaged.

### **Public interest test**

44. Section 27 is a qualified exemption. Therefore, the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing that information.
45. With regard to the public interest in disclosure, the MOD acknowledged, as it did in relation to the Astute and Dreadnought information, that there is public interest in openness around defence programmes. More specifically, it accepted that there is a legitimate public interest in scrutinising the Teutates programme to ensure it is delivered on time and to budget.
46. The complainant argued that the Teutates programme represents a substantial outlay of public money. He acknowledged that disclosure of parts of the information about departmental narratives may prejudice relations with France if they were to disclose problems with the project, but in his view it was not in the best interests of the public for them not even to be told how much UK money is being spent on this project on an annual basis and in total.
47. As noted above, the Commissioner recognises that there is a clear public interest in understanding the progress of defence programmes, and whether these are being delivered in budget and on time. Again, he recognises the complainant's point that the money involved in the Teutates programme is significant. Furthermore, he accepts that considerable and notable weight should be given to the argument that there is a public interest in the disclosure of information regarding annual costs of such programmes, including Teutates, in order to increase transparency and governance. The Commissioner also accepts that there is a public interest in the disclosure of the wider withheld information falling within this part of the request in order to provide insight into the progress of the programme. Disclosure of the withheld information would, in the Commissioner's opinion, contribute directly to this.

48. However, the Commissioner considers there to be a significant public interest in ensuring that the UK maintains effective relations with other states. In the context of this request, this means ensuring that it has effective relations with France with regard to an ongoing defence project. In the Commissioner's view it would be firmly against the public interest if the UK's relations with France were impacted following the disclosure of this information.
49. On balance, the Commissioner has concluded that the public interest favours maintaining this exemption given that disclosure of the information represents a direct risk of harming relations with a close ally in the context of an ongoing defence project. Nevertheless, in reaching this finding he wishes to emphasise that he is not seeking to overlook the public interest arguments in disclosure. In particular, in his view the public interest balance in respect of the costs information is closely balance, albeit that this still favours withholding such information.

## Other matters

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50. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe.<sup>6</sup> The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated requests, reviews should be completed within a total of 40 working days, unless there are legitimate reasons why a longer extension is necessary.<sup>7</sup> In this case the MOD took over six months to complete the internal review, a period of time which the Commissioner does not consider to be reasonable in this case.
51. Given the issues discussed at paragraphs 10 to 12, the Commissioner wishes to highlight the importance of public authorities establishing exactly what recorded information it holds in the scope of a request both when a request is initially processed and at the internal stage.

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<sup>6</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

<sup>7</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

## **Right of appeal**

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52. 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)

53. 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.
54. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jonathan Slee**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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## Annex

Copy of request submitted on 6 March 2023:

"I would like to request the following details from the MOD March 2022 Major Projects Portfolio Data from these projects:

For the Astute Boats 1-7 project:

1. The project end date
2. The departmental narrative on schedule

For the Core Production Capability:

1. The Financial Year Baseline
2. The Financial Year Forecast
3. The Financial Year Variance
4. The Departmental narrative on budget/forecast variance for 2021/22
5. The total baseline whole life costs
6. The Departmental Narrative on Budgeted Whole Life Costs

For Dreadnought:

1. The project start date
2. The project end date
3. The departmental narrative on schedule
4. The Financial Year Baseline
5. The Financial Year Forecast
6. The Financial Year Variance
7. The Departmental narrative on budget/forecast variance for 2021/22
8. The total baseline whole life costs
9. The Departmental Narrative on Budgeted Whole Life Costs

For the Mensa, Pegasus and Teutates projects:

1. The description/aims
2. The IPA delivery confidence assessment
3. The SRO delivery confidence assessment
4. The departmental commentary on actions planned or taken on the IPA RAG rating.
5. The project start date
6. The project end date
7. The departmental narrative on schedule
8. The Financial Year Baseline
9. The Financial Year Forecast
10. The Financial Year Variance
11. The Departmental narrative on budget/forecast variance for 2021/22
12. The total baseline whole life costs
13. The Departmental Narrative on Budgeted Whole Life Costs

I am aware that the above information is listed as being exempt under various sections of the Freedom of Information Act, but as far as I am aware, these major project data releases are not made in response to requests

under the act, and I am not aware that these exclusions have been properly justified, with the public interest in disclosure having been taken into account, hence this request. Additionally, I would like to know the current status of the Nuclear Warhead Capability Sustainment Programme, and if it has ended the project end date and total whole life cost of the project.”

### Summary of information released by MOD as stated in internal review response:

FOI2023/02909: I would like to request the following details from the MOD March 2022 Major Projects Portfolio Data from these projects:	Released under FOIA Y or N
For the Astute Boats 1-7 project:	
1. The project end date	N
2. The departmental narrative on schedule	N <sup>8</sup>
For the Core Production Capability:	
1. The Financial Year Baseline	Y
2. The Financial Year Forecast	Y
3. The Financial Year Variance	Y
4. The Departmental narrative on budget/forecast variance for 2021/22	Y
5. The total baseline whole life costs	Y
6. The Departmental Narrative on Budgeted Whole Life Costs	Y
For Dreadnought:	
1. The project start date	Y
2. The project end date	N
3. The departmental narrative on schedule	N <sup>9</sup>
4. The Financial Year Baseline	Y
5. The Financial Year Forecast	Y
6. The Financial Year Variance	Y

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<sup>8</sup> As per paragraphs 10 to 12 of the decision notice such information was in fact not held by the MOD at time of the request, albeit this was only established after the internal review was issued.

<sup>9</sup> See footnote 8.

7. The Departmental narrative on budget/forecast variance for 2021/22	Y
8. The total baseline whole life costs	Y
9. The Departmental Narrative on Budgeted Whole Life Costs	Y
For Project Mensa:	
1. The description/aims	Y
2. The IPA delivery confidence assessment	Y
3. The SRO delivery confidence assessment	Y
4. The departmental commentary on actions planned or taken on the IPA RAG rating.	Y
5. The project start date	Y
6. The project end date	Y
7. The departmental narrative on schedule	Y
8. The Financial Year Baseline	Y
9. The Financial Year Forecast	Y
10. The Financial Year Variance	Y
11. The Departmental narrative on budget/forecast variance for 2021/22	Y
12. The total baseline whole life costs	Y
13. The Departmental Narrative on Budgeted Whole Life Costs	Y