

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 September 2024

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 some previously withheld parts of a report produced in 2000 into Unidentified Aerial Phenomena. The MOD withheld the requested information on the basis of sections 24(1) (national security), 26(1)(b) (defence) and 27(1)(a) (international relations) of FOIA.
2. The Commissioner's decision is that the withheld information is exempt from disclosure on the basis of section 27(1)(a) and that in all the circumstances of the case the public interest favours maintaining the exemption.
3. The Commissioner does not require further steps.

Request and response

4. The complainant submitted the following request to the MOD on 17 September 2023:

"[Name of third party redacted] and I were recently informed by the Defence Records Management Policy Team that a complete, original copy of the Condign Report was been discovered..."

...Please might it hence be possible for the MOD to consider releasing the information which is currently redacted within the following sections?

In Volume 2:

Page 3

Page 6-4

Working Paper No.9 Contents Page (page 82 overall, I believe)

Page 9-1

Page 9-5

Page 9-8¹

5. The MOD responded on 16 October 2023 and confirmed that it held the requested information but it considered this to be exempt from disclosure on the basis of sections 24, 26, 27 and 40 (personal data) of FOIA.
6. The complainant contacted the MOD on 18 October 2023 and asked it to conduct an internal review of this refusal.
7. Although the MOD has acknowledged receipt of this request for an internal review, the review has not been completed.

Scope of the case

8. The complainant contacted the Commissioner on 16 March 2024 to complain to the MOD's decision to withhold the information falling within the scope of his request. He is also dissatisfied that an internal review has not been completed.

¹ Project Condign was a study undertaken by a legacy unit within Defence Intelligence, known as DI55. DI55's work centred on the Department's interest in Unidentified Flying Objects (UFO), which culminated into a 460-page report, produced in December 2000, titled: "DI Technical Memorandum 55/2/00 Unidentified Aerial Phenomena in the UK Air Defence Region", but is sometimes known as the 'Project Condign' report. A partially redacted version of the report can be found here:

<https://webarchive.nationalarchives.gov.uk/ukgwa/20121110115249/http://www.mod.uk/DefenceInternet/FreedomOfInformation/PublicationScheme/SearchPublicationScheme/UapInTheUkAirDefenceRegionVolume2.htm>

9. During the course of the Commissioner's investigation the MOD confirmed its reliance on various exemptions cited to withhold the information sought by this request. The only exception to this is the text redacted on page 3, volume 2 on the basis of section 40(2). The MOD noted that on the copy of the report itself this has been marked as not relevant, albeit that the redacted text (namely "AD") had previously been released under FOIA and was therefore not considered to be exempt from disclosure.

Reasons for decision

Section 27(1)(a) – international relations

10. The MOD argued that all of the withheld information was exempt from disclosure on the basis of section 27(1)(a) of FOIA.
11. 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.
12. 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.
13. 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'.²

The MOD's position

14. In its refusal notice the MOD explained that this exemption had been applied to information where the sensitivities surrounding detection capabilities and safeguarding the UK's relations with the US were critical. More specifically, the MOD explained that the withheld information concerned areas such as aerodynamics, propulsion, structures, instrumentation and atmospheric studies which still remain sensitive and classified to this day. The MOD argued that despite the passage of time, disclosure of this information could still provide adversaries with an insight into the developments of US/UK aircraft technology, compromising the military capabilities of US partners, and the UK's own air force assets. In view of this the MOD argued that disclosure of this information would be likely to, ie the lower threshold of prejudice, result in prejudice to the UK's relationship with the US, and more specifically hinder defence cooperation between the two countries.
15. The MOD elaborated on these arguments in submissions to the Commissioner which referenced the content of the withheld information itself.

The complainant's position

16. The complainant questioned whether, given the passage of time, there must be parts of the withheld information that could be released without the prejudicial effects envisaged by the MOD (be it those relating to section 27, or the other exemptions cited).

The Commissioner's position

17. With regard to the first criterion of the three limb test above at paragraph 12, 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.
18. With regard to the second and third criteria, the Commissioner is satisfied that it is logical to argue that disclosure of this information has the potential to harm the UK's relations with the US given that the material, concerning US capabilities and technology, was sensitive and

² Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008)

classified when the report was produced. The Commissioner notes the MOD's position that such information remains both sensitive and classified despite the passage of time. Having considered the content of the information the Commissioner has no grounds on which to dispute this position. As a result, he accepts that it is reasonable for the MOD to argue that if such information was disclosed there is a real and genuine possibility that the UK's relations with the US would be harmed, particularly taking into the account the threshold for such prejudice as identified by the Tribunal in the above case.

19. The withheld information is therefore exempt from disclosure on the basis of section 27(1)(a) of FOIA.

Public interest test

20. Section 27(1)(a) is a qualified exemption and 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.
21. The MOD acknowledged that disclosure of the withheld information could increase public understanding and confidence in UK-US relations. However, the MOD argued that there was a greater public interest in protecting the relations between the two countries in order not to hinder defence cooperation between the UK and US.
22. The Commissioner accepts that there is a public interest in the disclosure of this information as it has the potential to add to the public's understanding of the issues considered in the Condign Report, including as the MOD suggests, UK-US relations in this context. However, the Commissioner considers there to be a significant public interest in ensuring that the UK maintains effective relations with other states. In his view it would be clearly against the public interest to disrupt such relations with the US to the extent that the UK's ability to effectively cooperate on matters of defence with a key ally is impacted. The Commissioner has therefore concluded that the public interest favours maintaining this exemption.
23. In view of his decision in relation to section 27(1)(a), the Commissioner has not considered whether the same information is also exempt from disclosure on the basis of sections 24(1) or 26(1)(b).

Other matters

24. 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.³ 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.⁴ In this case, as noted above, the MOD failed to meet these timescales and indeed at the point the complainant contacted the Commissioner, some six months after requesting an internal review, this remained outstanding.

³ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

⁴ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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.

Jonathan Slee
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