

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 October 2024

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

Decision (including any steps ordered)

1. The complainant has requested how many transfers and quantity by weight of special nuclear materials (for purposes other than nuclear threat reduction) had taken place each year since the end of 2014 to the date of the request. The Ministry of Defence (MOD) refused to provide this information, citing section 24(1) – (National Security), section 26(1)(a) and (b) (Defence) and section 27(1) (International relations) of FOIA.
2. The Commissioner's decision is that the MOD cited section 24(1) of FOIA appropriately and that the public interest lies in withholding the requested information. However, the Commissioner has found that the MOD breached section 17(1)(b) of FOIA by relying later on exemptions it had not originally cited when it required extra time to consider the public interest.
3. The Commissioner does not require further steps.

Request and response

4. On 10 October 2023, the complainant wrote to the MOD and requested information in the following terms:

“Under the US-UK Mutual Defence Agreement, how many transfers of the following special nuclear materials have taken

place each year from the US to the UK and vice versa, since the renewal of Article 3 bis at the end of 2014 to date. Please limit this request only to transfers for purposes other than nuclear threat reduction:

- a) Plutonium
- b) Uranium
- c) Other nuclear materials"

5. On 6 November 2023 the MOD refused to provide the requested information, citing section 27 of FOIA but it required extra time to consider the balance of the public interest.
6. The MOD sent its refusal notice on 4 December 2023. It cited sections 24 (National Security), 26 (Defence) and 27 (International Relations) of FOIA.
7. On 9 December 2023 the complainant made another request for information as follows:

"Under the US-UK Mutual Defence Agreement, what quantity, by weight, of the following special nuclear materials has been transferred each year from the US to the UK and vice versa, since the renewal of Article 3 bis at the end of 2014 to date. Please limit this request only to transfers for purposes other than nuclear threat reduction:

- a) Plutonium
- b) Uranium
- c) Other nuclear materials"

I'm aware that precise quantities for these materials may be considered sensitive, so I suggest that this information is given as ranges (ie 0-10 kg, 10-100kg, 100kg-1 ton etc)".

8. The MOD refused to provide this information on 12 January 2024, citing sections 24, 26 and 27 of FOIA.
9. The complainant asked for an internal review regarding both requests on 19 January 2024.

Scope of the case

10. The complainant contacted the Commissioner on 3 May 2024 to complain about the MOD not having conducted an internal review after a significant length of time.
11. The MOD provided its internal review on 17 June 2024 where it maintained its position in respect of both requests. The complainant was not content with the outcome of the MOD's internal review.
12. The Commissioner considers that the scope of his investigation is to establish whether the MOD is entitled to withhold the requested information under the exemptions it has cited. He will also consider any procedural issues that may have occurred.

Reasons for decision

Section 24 – Safeguarding national security

13. Section 24(1) of FOIA states that: "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".
14. 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.

15. The Commissioner's guidance explains that this exemption: "allows a public authority not to disclose information if [it] consider[s] that releasing the information would make the UK or its citizens more vulnerable to a national security threat"¹.
16. Furthermore, in this context the Commissioner interprets "required for the purposes of" to mean "reasonably necessary". Although there has to be a real possibility that disclosure of the requested information would undermine national security, the impact does not need to be direct or immediate.
17. Section 24 of FOIA is subject to the public interest test.

The complainant's position

18. The complainant provided several arguments to the Commissioner as to why they believed that the cited exemptions were not engaged. Firstly, the complainant queried why the MOD did not seem to have "taken into account" the fact that their first request 'suggested that the quantity by weight should be "given as ranges (ie 0-10 kg, 10-100kg, 100kg-1 ton etc)", due to the potential sensitivities of the information' and that this had been "overlooked". Additionally "the number of transfers were broken down by year" which they maintain

"means that no meaningful information would be given about patterns and trends only that more or fewer transfers were made on different years and whether or not quantities transferred over the years in question differed by order of magnitude".

19. They contended that the MOD had failed to - "justify its claims that disclosure would be prejudicial". The complainant stated that

"in some places the reasoning rests on factual errors and in others what appear to be misunderstandings of what information is in the public domain and what additional information could be discerned by disclosure".

Their view is that there is "a much greater level of detail is already in the public domain". The complainant asserts that international legs are by plane transfer which are "trackable on the internet in real time

¹ [Section 24 – Safeguarding national security | ICO](#)

through commercial websites” and provided a link² to the Commissioner. Their view is that “points of origin are also known from flight data”. They argue that within the UK these transfers are “observable by anybody” in “real time”.

20. The complainant supports their argument further by stating that “Operational trends in the warhead programme are also observable through warhead transport activity” on public roads, again providing a link. Their opinion is that this “provides a much more reliable and detailed picture than the information I have requested³, which amounts to ballpark figures for materials input from only one source (the US – domestic sources also exist), abstracted into annual totals”.
21. They contend that the government publishes “a much more specific picture of warhead operational trends” and provides the examples of the Astrea warhead programme⁴ “or the year of completion of the Mk4A upgrade⁵”. The complainant suggests that -

“Similarly, the status of the UK’s submarine propulsion manufacturing capability is easily discernable from other sources to a much greater degree than could be divined from the information requested. The status of the Core Production Capability project, which is building new facilities for the production of submarine reactor cores and fuel, is the subject of annual updates in the government’s Major Projects Data releases⁶. It was also one of the case studies used in a detailed report by the National Audit Office in 2020.”

The complainant does not accept that the information they have requested could -

“conceivably approach the level of detail provided in these sources, nor could it meaningfully supplement them in such a way as to provide a more meaningful picture that could be exploited by adversaries”.

22. The MOD’s internal review did not “explain how disclosure of the requested information would lead to the posited hypothetical outcome,

² [Layout 1 \(cnduk.org\)](http://cnduk.org)

³ [2006 \(nukewatch.org.uk\)](http://nukewatch.org.uk)

⁴ [The United Kingdom’s future nuclear deterrent: the 2022 update to Parliament - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

⁵ [Delivering the UK’s Nuclear Deterrent as a National Endeavour \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

⁶ See <https://www.gov.uk/government/publications/mod-government-major-projects-portfolio-data-2023>

let alone to a direct or indirect threat to the UK..." its people, other parties/interests covered by section 24 of FOIA.

23. They infer that refusal to release the information "is the fear that it might reveal the UK's current reliance on the US for highly enriched uranium fuel components for its nuclear-armed submarines". The complainant's supposition is that "the UK is acquiring fuel for the submarines from non-domestic sources". Their "request did not differentiate between enriched and non-enriched uranium, let alone enriched uranium of different grades". This is another reason the complainant does not accept that their request would not "substantially contribute" to information already known or that could be inferred from what is already in the public domain.
24. The complainant also addressed the matter of assisting potential adversaries and dismissed it as "not credible" because the information already in the public domain – flight tracking and observable road transports do not provide a plausible causal chain leading to "the posited harm". The movements are protected by the RAF or armed security service members. It would be an act of war for any adversary to interfere with either mode of transport. The complainant's view is that if nuclear weapons function as "the ultimate guarantee of our national security" then they "themselves act as a deterrent and prevent interference in transports". These nuclear materials are only incorporated in weapons or submarines months or years after transportation:

"Even if an adversary could somehow prevent all of them from reaching their destination in perpetuity, it would be several years before this state of affairs placed any constraint on the UK's permanent deployment of nuclear weapons on submarines at sea."

25. The complainant concludes that "withholding the information has not been shown to be reasonably necessary to protect national security" by the MOD.

The MOD's position

26. Conversely, the MOD contends that withholding the requested information is required for the purposes of safeguarding national security.
27. The MOD acknowledges that there has been information released in the past that relates to the transfer of nuclear material. However, it does not accept that this sets "a precedent for future releases of similar information" and that requests are "processed on a case-by-case basis and the information in scope must be assessed against the

circumstances that exist at the time of the request". The report that the complainant references "contains "historical information, given it was published in 2000 and contains information relating to transfers of nuclear materials between the UK and the US between 1960 and 1979". The MOD pointed out to the complainant that "it only publicises UK-US collaboration on nuclear matters in general terms". It does not provide "a more specific, yearly breakdown of the number of nuclear materials transferred and the quantities..."

The Commissioner's view

28. The Commissioner asked the MOD questions based on the complainant's arguments to which it provided more detail that cannot be reproduced here. However, to the complainant's supporting argument that information had been released previously, the MOD responded by saying that this was historic information. More recent information has not and cannot be disclosed into the public domain. To the complainant's view that the US had disclosed more information relating to these matters, the MOD stated that the US had not disclosed information falling within the scope of this request.
29. Although the Commissioner understands the complainant's arguments, some of these are based on supposition and speculation. He is minded to be cautious when assessing the extent to which information would be meaningful enough to assist adversaries and, in this particular instance has had regard to the MOD's expert insight.
30. In cases such as this it is unfortunately inevitable that the Commissioner will be unable to share full details of his investigation given the confidential nature of the information that was requested. However, there was a meeting with the MOD during which there was an inspection of the requested information as part of this investigation. At this meeting the MOD provided further arguments regarding its application of the exemptions cited. These arguments cannot be reproduced in this decision notice (nor in a confidential annex) because of their sensitivity. The Commissioner can confirm though that the level of detail provided by the MOD was sufficient to satisfy him that the exemption at section 24(1) is engaged with respect to all of the requested information.

Public interest test

31. Although the Commissioner has found that section 24(1) is engaged, he has gone on to consider whether the public interest factors in favour of maintaining the exemption outweigh those in favour of disclosure.

Public interest factors in favour of disclosing the information

32. The MOD's internal review considered the public interest factors in favour of disclosure. It acknowledged that,

"Release of the information would demonstrate the Department's commitment to openness and transparency, particularly in relation to the UK's continued collaboration under the 1958 Mutual Defence Agreement (MDA)."

33. The MOD accepted that releasing this information "would also improve understanding of the frequency of movement of nuclear materials and the quantities transferred in and out of the UK".
34. The complainant's view is that they had framed their requests "in order to elicit information that it would be in the public interest to disclose without providing any information to adversaries of the UK". They believe that, "The information is of substantial public benefit, as it is directly relevant to debates on the independence of the UK's nuclear weapons programme, and the US-UK 'special relationship'... by showing the level of dependence or reciprocity in that relationship."

Public interest factors in favour of maintaining the exemption

35. In its refusal notice the MOD did not accept that the release of the "number of transfers of special nuclear materials between the UK and the US under the Mutual Defence Agreement (MDA)" was in the public interest as it "would allow potential adversaries to identify trends in nuclear material shipments and develop a greater understanding of UK nuclear capabilities".

36. The MOD argued that -

"Effective deterrence relies on a level of deliberate ambiguity about our nuclear policy and nuclear capabilities, and there is no wider public interest in reducing the effectiveness of the nuclear deterrent which is the ultimate guarantee of our national security."

The balance of public interest therefore lay in withholding the requested information.

37. The internal review added further public interest arguments as to why those in favour of maintaining the exemption outweighed the arguments in favour of disclosure. The MOD decided that releasing the number of transfers and the weight of the transferred material "would go some way to assist in potential adversaries to (sic) build up a detailed picture of the UK's nuclear warhead operational trends and/or nuclear propulsion manufacturing capability".

38. The MOD stressed that revealing these details represented a “heightened risk as it could contribute to providing potential adversaries with a detailed picture of the transfer of nuclear materials and any patterns that could be exploited”. Any disruption to the transportation of these materials would “adversely impact” on the UK’s ability to maintain its “Continuous At Sea Deterrent (CASD)”. The MOD described the nuclear deterrent as “the ultimate guarantee of our national security” and reducing its effectiveness would not serve the public interest. The internal review concluded that if the requested information was disclosed, it “could result in an increased threat to the safety of the UK” and the balance fell in favour of withholding the requested information.

The balance of public interest

39. For completeness and in the interests of fairness, the Commissioner also put the complainant’s arguments to the MOD. While these responses cannot be reproduced here, they were sufficiently detailed to assure the Commissioner that the MOD had properly considered all the circumstances of the case.
40. The Commissioner has reached his decision from his viewing of the withheld information, responses to the questions he posed to the MOD, and the complainant’s arguments for disclosure. The Commissioner is satisfied that the information falling within scope of section 24(1) is exempt from disclosure. He is unable to provide detailed argument about how he reached this decision for reasons of confidentiality but the complainant’s public interest arguments regarding transparency and what information is already available in the public domain are not persuasive enough to risk the safeguarding of national security.
41. As section 24(1) of FOIA was applied to all the withheld information and the Commissioner has decided that it should not be disclosed, he has not gone on to consider the citing of sections 26(1)(a) and (b) or section 27(1) of FOIA.

Procedural matters

42. The MOD responded to the complainant’s first information request on 6 November 2023 explaining that it needed more time to consider the public interest test but solely citing section 27(1) of FOIA. When it provided its refusal notice, two more exemptions were cited – sections 24(1) and 26(1)(a) and (b) of FOIA. Therefore the MOD breached section 17(1)(b) of FOIA as it had not cited all the exemptions it later relied on.

Other matters

43. The section 45 code of practice⁷ recommends that public authorities complete the internal review process and notify the complainant of its findings within 20 working days, and certainly no later than 40 working days from the receipt of a review request.
44. In this case, the complainant asked for an internal review for both requests in January 2024 but the MOD did not provide an internal review until June 2024, three months beyond the maximum recommended timeframe.

⁷ [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

Right of appeal

45. 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

46. 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.
47. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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