

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 October 2024

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

Decision (including any steps ordered)

1. The complainant has requested information broadly relating to UAPs (Unidentified Aerial or Anomalous Phenomena) and/or UFOs (Unidentified Flying Objects). The Ministry of Defence (MOD) refused to confirm or deny that it held the requested information, citing sections 23 (security bodies), 24 (national security), 26 (defence) and 27 (international relations) of FOIA.
2. The Commissioner's decision is that the MOD was entitled to rely on section 23(5) and section 27(4) to refuse to confirm or deny that it holds the requested information. No steps are required.

Background (previous request)

3. The request which is the subject of this decision notice follows from a previous request submitted by the complainant to the MOD on 31 August 2023. The previous request read as follows:

"I would appreciate you providing me with information, under the Freedom of Information Act (2000), which refers to the following topics:

1. Any documents, reports, photographs or memos related to UAP/UFO.
2. Any documents, reports, photographs or memos related to the Five Eyes Foreign Material Recovery Program (FMP) with a specific focus on UAP/UFO.
3. Information on the objective, scope, and operational aspects of the FMP in relation to UAP.

4. Any assessments, studies, or analyses conducted by the relevant UK government department regarding recovered foreign materials associated with UAP/UFO.
5. Any communication or correspondence between the relevant UK government department and other Five Eyes alliance members regarding the FMP and UAP/UFO.
6. Any records of encounters with UAP/UFO, including incident reports, witness testimonies, and analysis of potential national security threats.

Here are some key phrases which may help your search:

- Unidentified Flying Objects (UFO)
- Unidentified Anomalous Phenomena (UAP)
- Unidentified Aerial Phenomena (UAP)
- All-Domain Anomaly Resolution Office (AARO)
- Five Eyes (FVEY)
- Five Eyes Intelligence Oversight and Review Council (FIOR or FIORC)
- The information should cover the period 1st January 2009 up until the current date, and can come from any branch of the government, services or any department or sub-department of the MOD.”

4. The MOD responded to the previous request on 26 September 2023. It issued a refusal notice citing section 12 of FOIA on the basis that it would exceed the appropriate limit of 24 hours to answer the request.
5. The complainant requested clarification of the MOD’s response, which was provided on 2 November 2023.

Request and response

6. The request that is the subject of this decision notice was submitted to the MOD by the complainant on 2 November 2023:

“Thank you for your letter of 2nd November 2023 and in particular your helpful analysis of your searches to date. My recommendation to expedite the search within the cost guidelines set out by the FOIA would be as follows; Search only for the following terms:

Five Eyes (FVEY) or Five Eyes Material Programme (FMP)
Unidentified Flying Objects (UFO)
Unidentified Anomalous Phenomena (UAP)
Unidentified Aerial Phenomena (UAP)
All-Domain Anomaly Resolution Office (AARO)

As UAPs are not seen by the MOD as a 'threat' or a 'national security' issue, I think it would be sensible to remove these two terms from the search.

[The request went on to offer a further revision should this be necessary.]

If this still turns up too many responses to investigate within the cost guidelines, then I would recommend the following alternatives (in the following order):

Reduce the search timescale (currently set at 2009-2023 current date) to a 2019-2023 range for example to reduce the number of documents.

Remove Five Eyes (FVEY) or Five Eyes Material Programme (FMP) from the search terms."

7. The MOD responded on 4 December 2023, albeit that it did not require it necessary to adopt the further revision suggested by the complainant in order to deal with the request under the appropriate limit.
8. The MOD refused to confirm or deny that it held information in scope of the request on the basis of sections 23 (security bodies), 24 (national security), 26 (defence) and 27 (international relations) of FOIA.
9. The complainant requested an internal review on 6 December 2023, and the MOD provided them with the outcome of that review on 29 February 2024. The MOD upheld its neither confirm nor deny (NCND) response.

Scope of the case

10. The complainant contacted the Commissioner on 3 March 2024 to complain about the way their refined request of 2 November 2023 had been handled. They also wrote to the MOD to express their dissatisfaction with the MOD's internal review.
11. The Commissioner has considered the MOD's handling of the internal review in Other Matters because it is not a requirement of Part I of FOIA.
12. The decision to use an NCND response will not be affected by whether a public authority does, or does not, in fact hold the requested information. The starting point, and main focus for NCND in this case, will be theoretical considerations about the consequences of confirming or denying whether or not the specific requested information is held.

13. For the avoidance of doubt, the Commissioner has not sought to establish whether the requested information is in fact held in this case. The scope of the case is to consider only whether the MOD was entitled to refuse to confirm or deny that it held the requested information at the time of the request.

Reasons for decision

Section 1(1)(a) – duty to confirm or deny that information is held

14. The general right of access under FOIA is set out at section 1. Section 1(1)(a) provides that a public authority must confirm or deny that it holds information within the scope of a particular request. Section 1(1)(b) provides that the authority must communicate that information to the requester. Both parts of section 1 are subject to exemptions and exclusions.

Section 23 – security bodies

15. Section 23(5) states that the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3).
16. The test as to whether a disclosure would relate to a security body is decided on the civil standard of proof, that is, the balance of probabilities. In other words, if it is more likely than not that the disclosure would relate to a security body then the exemption would be engaged.
17. Section 23(5) provides a class-based, absolute exclusion from the duty to confirm or deny that information is held. If the requested information falls within the scope of section 23(1) (or would do so if it were held) then the public authority is entitled to rely on the exclusion. There is no requirement to consider information in the public domain, the consequences of confirmation or denial, the public interest in confirming or denying, or any other factors.
18. The MOD explained the provision of section 23(5) in its refusal notice and in its internal review letter it advised that:

“...if information of the description you are seeking was held, it is possible that it could have been supplied by, or relate to, one or more of the bodies listed at section 23(3) of the Act.”

19. The Commissioner requested and received further details of the MOD's application of section 23(5). He cannot include details in this decision notice since to do so would defeat the purpose of relying on section 23(5). However he can confirm that the explanation provided by the MOD is sufficient in order for him to be satisfied that the MOD is entitled to rely on section 23(5).
20. The MOD has not argued that all of the requested information, if held, would fall within the scope of section 23(5). Therefore the Commissioner has gone on to consider section 27 with respect to information that, if held, would not fall within the scope of section 23.

Section 27: prejudice to international relations

21. Section 27(1) provides that:

“(1) 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,
- (c) the interests of the United Kingdom abroad, or
- (d) the promotion or protection by the United Kingdom of its interests abroad.”

22. Section 27(4) further provides that the duty to confirm or deny does not arise if, or to the extent that, doing so would, or would be likely to prejudice any of the matters described in section 27(1).
23. The MOD sought to rely on section 27(4) in conjunction with section 27(1)(a) of FOIA. The Commissioner is of the opinion that this exclusion does not necessarily focus on the importance, subject or content of the requested information (whether or not it is held), but on whether the international relations of the UK would or would likely be prejudiced through confirming or denying that the requested information is held.
24. In order for a prejudice based exemption or exclusion, 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 it confirmed or denied that it held the requested information has to relate to the applicable interests within the relevant exclusion;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential confirmation

or denial and the prejudice which the exclusion is designed to protect against. 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 – ie, confirming or denying would be likely to result in prejudice or would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.
25. 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”.¹
26. The MOD set out that confirming or denying that it held information relevant to the request would prejudice relations “not only within FVEY, but also within other alliances, such as NATO, where we are a leading military contributor, contributing to every NATO mission and operation”. The MOD further maintained that confirming or denying could compromise potential intelligence sharing and future operations overseas.
27. FVEY, or “the Five Eyes Security Alliance”, is an intelligence alliance comprising the UK, the United States of America, Canada, Australia and New Zealand.² NATO, or the North Atlantic Treaty Organisation, is a political and military alliance with 32 member countries.³
28. The complainant set out that the UK Government had stated in 2021 that UAPs were not considered a military threat to the UK. Therefore the complainant did not accept that any FOI request involving UAPs should be subject to any of the provisions cited by the MOD.

¹ Campaign against Arms Trade v the IC and MoD (EA/2007/0040):
<https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i205/Campaign%20Against%20the%20Arms%20Trade;%20EA.2007.0040%20.pdf>

² <https://ukdefencejournal.org.uk/the-five-eyes-the-intelligence-alliance-of-the-anglosphere/>
<https://www.bbc.co.uk/news/uk-56284453>

³ <https://www.nato.int/>

29. With regard to the first criterion of the test outlined above, the Commissioner accepts that the prejudice described by the MOD clearly relates to the interests which section 27(1)(a) is designed to protect.
30. With regard to the second criterion, the Commissioner accepts that there is a causal link between confirming or denying and prejudice occurring. Neither FVEY nor NATO is a State in its own right, but the Commissioner accepts that prejudice to relations with FVEY or NATO would necessarily result in prejudice to relations with one or more of the member States concerned.
31. The Commissioner considers that the MOD's arguments indicate that it could also have considered reliance on section 27(1)(b), given that NATO is, and FVEY could be arguably interpreted as, international organisations as defined at section 27(5) of FOIA:

“international organisation” means any international organisation whose members include any two or more States, or any organ of such an organisation.’
32. The MOD provided the Commissioner with more detailed arguments setting out that relationships between the FVEY members are “exclusively based on trust”. The Commissioner is thus persuaded that it is plausible to argue that confirming or denying whether it holds information relating to co-operation between the UK and other members of FVEY or NATO that falls within the scope of this particular request would harm relations between the UK and the other members of FVEY or NATO.
33. The Commissioner is satisfied that the third criterion is met in that there is clearly more than a hypothetical possibility of prejudice occurring if the MOD was to confirm or deny that it held relevant information.
34. On this basis the Commissioner finds that the exclusion at section 27(4) is engaged at the higher threshold in conjunction with section 27(1)(a) of FOIA in this particular case. He has gone on to consider the balance of the public interest.

Public interest arguments in favour of confirming or denying that the requested information is held

35. The MOD recognised that there is a strong public interest in knowing more about the UK's relations with its allies within NATO. It acknowledged a similar public interest in knowing more about what information the UK shares and receives under the auspices of FVEY.

36. The complainant argued that their request was in the public interest, "given the clear government statement of no threat of UAPs". They indicated that the request had been subject to "inappropriate over-censorship".
37. The complainant submitted further arguments to the MOD after it provided them with the outcome of the internal review. The complainant reiterated their argument regarding UAPs not being interpreted as a national security threat.
38. They also set out that the other four members of FVEY had confirmed that a meeting took place in May 2023 which comprised a briefing on UAPs. The complainant concluded that there could be no possible grounds for the MOD to maintain its neither confirm nor deny stance in respect of this meeting.

Public interest in maintaining section 27(4)

39. The MOD maintained that there was an overwhelming public interest in protecting the UK's relationships with other States, particularly in respect of intelligence and security matters. The prejudice that would be caused by confirming or denying that information was held, ie loss of trust, would make it more difficult for the UK to protect these relationships and would have a significant impact on the effectiveness of FVEY's future collaboration and co-operation.
40. The Commissioner asked the MOD to address the arguments made by the complainant after the internal review. The MOD acknowledged that the US Department of Defense released a document to an Australian researcher which comprised the agenda of a meeting held in May 2023. This agenda showed that representatives from FVEY member States were invited to a meeting described as the "FVEY Inaugural UAP Caucus Working Group". However the MOD emphasised that the document was not published until June 2024, over a year after the meeting took place. It was not in the public domain at the time of the request.
41. With regard to the complainant's argument about UAPs not being considered a national security threat, the MOD advised that it had clarified to the complainant that the UK and the US adopted different definitions of UAP. The US interpretation, Unidentified Anomalous Phenomena, was significantly broader than the UK interpretation of Unidentified Aerial Phenomena. Accordingly the UK position that there was no evidence of Unidentified Aerial Phenomena being a threat to national security did not necessarily apply to the US interpretation of UAP.

Balance of the public interest

42. The Commissioner acknowledges that there is an enduring public curiosity around UFOs (and by extension UAPs), whether adopting the UK or US interpretation. It is however important to bear in mind that what the public is interested in is not necessarily the same as what is in the public interest, or the public good.
43. In finding section 27(4) to be engaged the Commissioner accepts that confirmation or denial that the requested information is held would prejudice the UK's relations with the States who are members of the FVEY alliance, and those of NATO. When balancing the competing interests the Commissioner must attach appropriate weight to this finding.
44. The Commissioner has carefully considered the complainant's arguments in favour of confirming or denying that information is held. In particular he notes that one document has since been published by the US which, if held by the UK, would be likely to fall within the scope of the request. However the Commissioner is bound to consider the circumstances at the time of the request, or at the very latest, the time for response. The original request was submitted in August 2023, three months after the meeting referred to at paragraph 39 above. The refined request which is the subject of this decision notice was submitted on 2 November 2023, some seven months before the information was published. Accordingly the Commissioner is unable to use its publication in order to inform his decision in this case.
45. The Commissioner cannot make a decision as to whether or not the MOD would be required to disclose the information referred to at paragraph 39, assuming of course that it holds it. Nor can the Commissioner make a decision as to whether the MOD would be required to confirm or deny that it held any other recorded information. The Commissioner is limited to observing that the MOD would be bound to take it into account if the complainant made a fresh request, since it is required to consider all the circumstances at the time of the request.
46. With regard to the request that is the subject of this decision notice, the Commissioner is of the opinion that there is 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 the UK does not act in a way that would damage trust. In the Commissioner's view it would be firmly against the public interest if the UK's relations with FVEY or NATO members were impacted following the UK's confirmation or denial that the requested information was held.

47. The Commissioner has given particular consideration to the consequences, set out by the MOD, of harming relations with other States in the context of security and intelligence matters. The Commissioner accepts the MOD's specific representations to him on this case.
48. For the reasons set out above, the Commissioner finds that the public interest in maintaining section 27(4) outweighs the public interest in confirming or denying that the requested information was held at the time of the request.
49. Since the Commissioner is satisfied that the MOD is entitled to rely on section 27(4) in respect of any information that would not, if held, fall within the scope of section 23(5) he has not dealt with the MOD's reliance on the other exclusions claimed, namely sections 24 and 26 of FOIA.

Other Matters

50. Although it does not form part of the decision notice the Commissioner has considered the complainant's dissatisfaction with the internal review. Specifically the complainant calculated that the MOD took at least 57 working days to complete the review.
51. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice recommends that such reviews should be completed within a reasonable timeframe.⁴
52. 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.⁵ In this case the MOD clearly exceeded 40 working days.

⁴ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

⁵ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

53. The Commissioner shares the complainant's concern about the time taken to complete the internal review. Furthermore he is disappointed that the internal review letter neither acknowledged nor explained the reason for the delay. The Commissioner would expect, as a matter of good practice but also customer service, that a public authority taking longer than 20 working days to complete an internal review would explain to the requester why additional time has been necessary.

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
Website: 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.

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