

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 2024

Public Authority: Ministry of Defence

Address: Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant requested a range of information from the Ministry of Defence (MOD) about the Army Officer Selection Board. The MOD initially withheld all of the information falling within the scope of the request on the basis of section 26(1)(b) (defence) of FOIA. At the internal review it upheld this position with the exception of one piece of information which it disclosed (albeit, the MOD noted that, at the time of the request this should have been withheld on the basis of section 22 of FOIA (information intended for future publication)).
2. The Commissioner's decision is that information which the MOD continues to withhold is exempt from disclosure on the basis of section 26(1)(b) of FOIA and that in all the circumstances of the request 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 6 January 2024:

- "1) Please provide all the Planning Exercise (PLANEX) scenarios/situations used at AOSB [Army Officer Selection Board] Main Board to assess candidates.
- 2) Please also provide the template/table that candidates are now asked to fill in during the PLANEX assessment phase, to give steers on their proposed plan.
- 3) Finally, please provide the solutions of these PLANEX scenarios/situations, and/or any material directing staff are given to execute the PLANEX discussion, where candidates are tested/critiqued on their proposed Course of Action."
5. The MOD responded on 26 January 2024 and explained that the information sought by the request was exempt from disclosure on the basis of section 26(1)(b) of FOIA.
6. The complainant contacted the MOD on 31 January 2024 and asked it to conduct an internal review of this refusal.
7. The MOD informed him of the outcome of the internal review on 25 October 2024. The review concluded that the MOD was incorrect to apply section 26(1)(b) of FOIA to all parts of the request. Rather this only applied to the information sought by parts 1 and 3 of the request. Furthermore, in relation to part 3, the MOD explained there are no 'solutions' held by the assessors, albeit there was a "framework" utilised which provides for the consistent application of the assessment process. In relation to part 2 of the request, the MOD explained that there was a settled intention at the time the request was made to publish a sample PLANEX Answer Sheet on the Army jobs website. Therefore, the MOD stated this information should have been withheld on the basis of section 22 of FOIA (information intended for future publication). Whilst it was satisfied that this exemption applied at the time of the request, the MOD explained that this information had since been published and it therefore provided the complainant with a link to this information.¹

Scope of the case

8. The complainant initially contacted the Commissioner on 5 April 2024 about the MOD's refusal to disclose information falling within the scope
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¹ <https://a.storyblok.com/f/88791/x/e6e2c63bfd/20231206-generic-answer-sheet-2xa4-ver-4.pdf>

of his request. He was also dissatisfied with its failure to complete the internal review of his request.

9. Following the completion of this internal review, and the disclosure of information falling within part 2 of the request, this decision notice only considers whether the information sought by parts 1 and 3 is exempt from disclosure on the basis of section 26(1)(b) of FOIA.

Reasons for decision

10. Section 26(1)(b) of FOIA states that:

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

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

11. 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

12. In its internal review response the MOD explained that disclosure of the information sought by parts 1 and 3 of the request would undermine the recruitment process including potentially lowering the standard of recruits into Royal Military Academy Sandhurst (RMAS), who without the advantage of this insight might not be successful. The MOD argued that this would have an adverse effect on both the success rate through RMAS and overall recruitment into the armed forces, which could

negatively affect the overall success rate of the Main Board and subsequently the number of appropriate candidates reaching RMAS.

13. The MOD explained that, fundamentally the ultimate success of the AOSB relies on ensuring that the candidates' behaviours are authentic and genuine for each phase of the assessment, and that the candidates are not pre-prepared through 'practise' of any elements of the scenarios or situations prior to their attendance at the Main Board. The MOD also explained that the PLANEX exercise is a key assessment of potential officers' intelligence and their ability to apply that intellect under pressure and particularly time pressures.
14. The MOD emphasised that the scenarios that form the PLANEXs are complex and require fast assimilation of a large amount of information, followed by decision-making based on that information. It argued that if an individual had sight of the scenarios prior to undertaking Main Board, they would have a significant advantage over other candidates and the assessment would not then test their conceptual problem solving abilities appropriately. Furthermore, the MOD explained that there is a risk that if candidates are already aware of the scenarios or situations that are presented, in tackling them they may not demonstrate the best of their abilities in the way the assessment is designed, which could result in individuals failing to pass the AOSB Main Board standard and subsequently not be selected for RMAS Officer Training.
15. In addition, the MOD argued that releasing detailed information about how British Army Officers are selected would give the UK's adversaries an invaluable insight into individual capabilities and could allow them to exploit any perceived weaknesses.
16. In its submissions to the Commissioner, the MOD highlighted that this request was very similar to two previous recent requests that he had considered which also sought information regarding how candidates at AOSB were assessed. In fact the MOD noted that the 'framework' document which fell within the scope of part 3 of this request also fell within the scope of the requests considered in these previous decisions, and that the Commissioner had concluded that such information was exempt from disclosure on the basis of section 26(1)(b) and that the public interest favoured maintaining this information.²

² IC-254887-T3N9

<https://ico.org.uk/media/action-weve-taken/decision-notice/2024/4028942/ic-254887-t3n9.pdf>

The complainant's arguments

17. The complainant questioned the MOD's position that the disclosure of the information would be prejudicial for the reasons set out above. In support of this position he argued that:

- The information requested is of a general nature and is unlikely to provide adversaries with any significant tactical or strategic advantage.
- The MOD failed to consider whether a redacted version of the requested information could be disclosed with specific details that might pose a security risk redacted.
- Similar types of information have been released in the past and as a result there is a precedent for release of such information.

The Commissioner's position

18. With regard to the information sought by part 3 of the request, as noted above, the Commissioner has previously determined that disclosure of this under FOIA would prejudice the interests which section 26(1)(b) is designed to protect. Whilst he notes the arguments advanced by the complainant, he does not consider that these alter his previous decisions. He therefore adopts the analysis and findings set out at paragraphs 18 to 21 of decision notice IC-254887-T3N9 in finding that the information sought by part 3 of the request is exempt from disclosure on the basis of section 26(1)(b). For ease of reference the Commissioner has quoted these below:

"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 section 26(1)(b) of FOIA.

19. With regard to the second criterion, the Commissioner accepts that there is a logical connection between the disclosure of the withheld information and an impact on the effectiveness of the ASOB recruitment process. This is because disclosure of the information would provide candidates with a detailed and genuine insight into the assessment process, and in particular how their performance across all aspects of this would be scored. In turn, the Commissioner accepts that it is plausible to argue that such an outcome could have a wider

detrimental effect on the effectiveness of Armed Forces if it interferes with the recruitment process.

20. With regard to the third limb, the Commissioner is satisfied that the likelihood of such prejudice occurring is clearly one that is more than hypothetical. Moreover, he is satisfied that the higher level of likelihood, ie "would" prejudice, is met. He has reached this conclusion given the detailed nature of the information that has been withheld and the ways in which prejudice would occur. It is clear to the Commissioner that candidates to the AOSB process who had access to this material, prior to the assessment process, could use this to change their behaviour during the process. This could result in candidates being able to use such material to their advantage. Although disclosure of information under FOIA is disclosure to the world, and therefore in theory all candidates would have access to such material, the Commissioner accepts that on a practical level only a small number of candidates may, at least initially, take advantage of a disclosure in response to this request.

21. Conversely, access to the material may also result in candidates changing their behaviour to the extent that they perform worse than they may have done without sight of this material and therefore fail to provide a full or natural representation of themselves or their potential. In either scenario, the Commissioner is satisfied that the effectiveness of the assessment process would be materially undermined. Whilst the Commissioner acknowledges the complainant's point that similar information has been disclosed by other public bodies, the circumstances of each case must be considered on its own merits. For the reasons set out above the Commissioner is satisfied that the disclosure of information in this case would be prejudicial and therefore he accepts that section 26(1)(b) is therefore engaged."

19. With regard to the information sought by part 1 of the request, the Commissioner is also satisfied that such information is exempt from disclosure on the basis of section 26(1)(b) of FOIA. In terms of the three criteria set out above, the Commissioner accepts that the first criterion is again clearly met.
20. Furthermore, in terms of the second and third criteria, as with the withheld framework document, in the Commissioner's opinion the MOD's submissions above provide a compelling case to support the view that there is a logical connection between disclosure of the PLANEX scenarios or situations used at AOSB Main Board to assess candidates and an impact on the effectiveness of the ASOB recruitment process. In the Commissioner's view it is clearly reasonable to argue that sight of scenarios or situations prior to the assessment could place candidates at an advantage; they would in effect be provided with the questions

before sitting the exam. Furthermore, the Commissioner also accepts the MOD's point that being 'read in' to the questions prior to the assessment also risks preventing some candidates from demonstrating their best abilities based on unforeseen scenarios. The Commissioner accepts that either scenario would directly undermine the effectiveness of the AOSB processes, which in turn presents a direct risk to the effectiveness of officer recruitment, and as a result risks the effectiveness of the armed forces more broadly.

21. In reaching this conclusion the Commissioner appreciates that the complainant has suggested that information could be disclosed in redacted form. However, in his view, given the content and structure of the PLANEX scenarios questions, this would not be possible, as disclosure of even limited parts is likely to still be prejudicial. With regard to the previous disclosure of similar information, the Commissioner is not aware that such information has been officially disclosed by the MOD. Therefore he does not accept that there is a precedent for the disclosure of the information sought part 3 of the request. Whilst the Commissioner does recognise that on non-government or non-official websites there are some examples of such questions – it is not clear to the Commissioner whether these are genuine 'past papers', or theoretical examples of the types of questions that candidates may face. In any event, in the Commissioner's view the availability of such information does not undermine the MOD's position that disclosure of the current PLANEX scenarios would be prejudicial for the reasons set above.

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 section 26(1)(b) outweighs the public interest in disclosing the information.
23. The complainant argued that there was a clear public interest in the transparency of the recruitment process for public services, including the military. He argued that this was crucial for maintaining public trust and accountability.
24. Furthermore the complainant argued that in his view providing general information about the types of exercises and assessments used does not necessarily translate into a security risk but rather would promote a better understanding of the rigorous standards maintained by the AOSB. He noted that the civil service also releases information on how it recruits in the fast stream, and provides assessment information too.

25. The MOD acknowledged that in addition to fulfilling the MOD's commitment to openness and transparency, release of the withheld information would provide the general public with a greater insight into the British Army's selection process for officer training at the RMAS.
26. However, the MOD argued that there was a clear public interest in ensuring that the effectiveness of the AOSB selection process was not undermined as this would impact on overall recruitment into the armed forces.
27. The Commissioner has considered the arguments advanced by the complainant, but in relation to the information sought by part 1 of the request, his position remains as set out in the previous decision notices that the public interest favours maintaining section 26(1)(b) and withholding this information, namely:

"The Commissioner accepts that there is a public interest in the MOD being open and transparent about its recruitment processes. Disclosure of the withheld information would provide a direct, and detailed, insight into how candidates at AOSB are assessed. However, the Commissioner agrees with the MOD that this has to be balanced against the need to ensure that the assessment process remains effective. In the Commissioner's view given the significant risk to the effectiveness of the process that disclosure would result in, the public interest favours withholding this information."³

28. With regard to the information sought by part 3 of the request, the Commissioner considers that very similar considerations apply. As a result, he is also satisfied that the public interest favours withholding the PLANEX scenarios.

Other matters

29. 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.⁴ 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

³ Paragraph 26 of decision notice IC-254887-T3N9.

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

days.⁵ In this case the MOD took 9 months to complete the internal review.

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

Right of appeal

30. 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

31. 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.
32. 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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