

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

### **Decision notice**

**Date:** 2 April 2025

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

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

---

1. The complainant has requested copies of any reports, briefings, readouts and minutes connected to meetings with Elbit from the Home Office. The Home Office disclosed some information but withheld the remainder, citing sections 36(2)(ii)(b) (Prejudice to effective conduct of public affairs), 40(2) (Personal information), 24(1) (National security), 27(1) (International relations), 31(1)(a)(b)(c) (Law enforcement), 41(1) (Information provided in confidence) and 43(2) (Commercial interests) of FOIA. It would also neither confirm nor deny (NCND) holding further information, citing sections 23(5) (Information supplied by, or relating to, bodies dealing with security matters) and 24(2), in the alternative.
2. The Commissioner's decision is that section 36(2)(ii)(b) is properly cited, which relates to all of the withheld information. He also finds that the Home Office was entitled to NCND holding further information.
3. The Commissioner does not require further steps.

#### **Background**

---

4. The Home Office has explained to the Commissioner:

"This request concerns information related to meetings between Home Office ministers and Elbit Systems UK (ESUK).

ESUK is a defence, technology and aerospace company. It is a subsidiary of Elbit Systems Ltd, an Israeli based defence company.

Elbit deliver the Watchkeeper programme for the British Army and support a fleet of over 38 aircraft for the UK MOD Military Flying Training School.

Palestine Action (PA) are a protest group that engage in civil disobedience and direct action to shut down and disrupt multinational arms dealers. They have regularly engaged in criminal activity, and run numerous workshops designed to train individuals on how to carry out direct action involving criminal behaviour. Their stated aim is to shut ESUK down."

"The meeting was held in the context of continuous criminal activity directed towards Elbit Systems Ltd and other organisations. The reason for the meeting was to connect Elbit Systems Ltd with the relevant local and national police stakeholders to share information and concerns and identify areas of improvement, as well as to explore steps the Government could take to improve police's capabilities. The Government was careful to make clear that the police were operationally independent and any decisions were for them to take".

## **Request and response**

---

5. On 10 May 2024, the complainant wrote to the Home Office and requested the following information [numbering revised for clarity]:
  - "1. Please provide PDF copies of all reports, briefings, readouts and minutes related to the following meetings:
    - 1.1 Rt Hon Chris Philp MP Minister of State Home Office Ministerial Briefing on threats to manufacturing at Elbit Systems from protest groups Elbit Systems 19/4/2023
    - 1.2 Rt Hon Priti Patel MP Secretary of State Home Office Meeting to discuss protests and security Elbit Systems 2/3/2022
  2. Please provide a dated list of all Home Office ministerial of [sic] lower level meetings with Elbit, its agents, or its representatives since 19/4/2023 since 2008 [sic] that are not listed in 1 above.
    - 2.1 Please provide all reports, briefings, readouts and minutes related to any meetings listed in response to 2 above".
6. On 13 May 2024, the complainant corrected part (2) of his request saying that it should read:

"Please provide a dated list of all Home Office ministerial OR lower level meetings with Elbit..."

7. On 10 June 2024, the Home Office. It advised that to respond to the request would exceed the cost limit at section 12(1) of FOIA.

8. On 10 June 2024, the complainant refined his request as follows:

"To meet the cost limit please confine the scope of this request to the following:

1. Please provide PDF copies of all reports, briefings, readouts and minutes related to the following meetings:

1.1 Rt Hon Chris Philp MP Minister of State Home Office  
Ministerial Briefing on threats to manufacturing at Elbit  
Systems from protest groups Elbit Systems 19/4/2023

1.2 Rt Hon Priti Patel MP Secretary of State Home Office Meeting  
to discuss protests and security Elbit Systems 2/3/2022".

9. On 8 July 2024, the Home Office advised that it needed more time to consider the public interest test before responding.

10. On 14 August 2024, the Home Office responded. It revised its position regarding the application of section 12 and disclosed some information. In respect of the remaining information it cited the exemptions at sections 36(2)(ii)(b), 40(2), 24(1), 27(1), 31(1)(a)(b)(c), 41(1) and 43(2) of FOIA. It would also neither confirm nor deny (NCND) holding further information, citing sections 23(5) and 24(2), in the alternative.

11. The complainant requested an internal review on 15 August 2024.

12. The Home Office provided an internal review on 4 December 2024. It disclosed further information but maintained reliance on the previously cited exemptions for the remainder.

### **Scope of the case**

---

13. The complainant initially contacted the Commissioner on 24 October 2024 to complain about a lack of internal review from the Home Office. Following provision of the internal review, and after further correspondence, he provided his grounds of complaint on 6 January 2025.

14. The complainant wished to challenge the application of all the exemptions cited to refuse the request; he also disagreed with the NCND position. His grounds were as follows:

- "1. Sections 40(2), 41(1), 24(1) (and/or 23 in the alternative), 27(1)(a), 31(1)(a),(b) and (c), 36(2)(b)(ii) and 43(2) of FOIA are not engaged correctly and therefore the withheld information must be disclosed in its entirety. The application of NCND to any other information is also incorrect and therefore all other information if held and within scope of the request must be confirmed and disclosed in its entirety.
2. In the alternative, if any exemptions are found to be engaged, then the public interest in disclosure of the withheld information is of such vital importance to government transparency and accountability that [sic] outweighs any public interest in nondisclosure.
  - 2.1 The already disclosed information raises serious legal and constitutional questions about political interference by government ministers in the operational independence of the police and the CPS when handling legitimate challenges of activists seeking to hold UK based corporations accountable for their unlawful participation in an apparent genocidal military assault by Israel in Gaza and illegal occupation of the whole of Palestine. This follows previous disclosures of attempts by the Israeli government to urge the AGO [Attorney General's Office] to take stronger measures against protest groups and political activists in the UK (as reported in the Guardian newspaper).
3. Where any exemption was correctly engaged and no public interest test was required due to the absolute nature of the exemption, the Home Office has failed to exercise its discretionary powers to disclose the information outside the limits of FOIA where there is a clear public interest in doing so.
4. I act in the role of a public interest watchdog and assert a human right under ECHR Article 10 to access the withheld information to inform the public debate on a matter of intense public interest and debate. The extent to which the UK government has coordinated and politically weaponised the legal system in order to suppress humanitarian dissent against the current genocide in Gaza and the long term illegal occupation of Palestine by Israel [sic] is a matter that must be made public in order that any miscarriages of justice can be rectified and potential future miscarriages prevented".

15. The complainant submitted further grounds on 21 March 2025. These have been taken into consideration by the Commissioner but not reproduced in full. Some of the main points he raised in favour of disclosure are:

“Activists have been potentially unjustly remanded, convicted, and imprisoned as a result of the influence of the then Home Secretary on the policing and prosecutions of political protesters...

The disclosure of the redacted sections on the Home Secretary's suggestions on how to deal with Palestine Action protests are of particular importance in this regard, so that it can be ascertained if the Home Secretary abused her powers and contributed to any potential miscarriage of justice in these cases...

there is an ever growing body of evidence that UK ministers have used their powers to protect the genocidal Israeli government and its supporting Israeli military industries at the expense of the democratic freedom and liberties of protesters in the UK...

concerns raised by international human rights experts over the targeting of UK counter-terrorism powers at protest actionists...

information received suggests that the UK police have exercised significant powers under counter-terrorism legislation despite the absence of a credible connection between the activists' conduct to terrorism as properly defined, and in circumstances where provisions of the ordinary criminal law would strike a more appropriate balance between the rights of the individual and the interests of nation”.

16. The complainant confirmed that he was happy for the names of any non-senior staff to be withheld.
17. The Commissioner will consider the application of exemptions below. He has viewed the withheld information.

### **Reasons for decision**

---

18. The Home Office has confirmed that: “It is our view that this exemption [ie section 36] covers all the remaining withheld information in its entirety. The Qualified Person has provided their reasonable opinion that disclosure would be likely to inhibit the free and frank exchange of views for the purposes of deliberation”.

19. As it has been cited in respect of the withheld information in its entirety, the Commissioner has therefore first considered the citing of section 36(2)(b)(ii).

### **Section 36 – Prejudice to effective conduct of public affairs**

20. Section 36(2)(b)(ii) of FOIA states that information is exempt from disclosure if, in the reasonable opinion of a qualified person, its disclosure would, or would be likely to, inhibit the free and frank exchange of views for the purposes of deliberation.
21. In deciding whether section 36 is engaged, the Commissioner must determine whether the qualified person's opinion was a reasonable one.
22. In determining whether the opinion is a reasonable one, the Commissioner takes the approach that, if the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable.
23. This is not the same as saying that it is the only reasonable opinion that could be held on the matter. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is not reasonable if it is an opinion that no reasonable person in the qualified person's position could hold. Nor does the qualified person's opinion have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.
24. The Commissioner has inspected the two section 36 submissions made to the relevant qualified persons, and their associated opinions. The opinion was first sought on 28 June 2024 and was given on 3 July 2024. A further opinion was sought on 16 October 2024 and was given on 22 October 2024.
25. The Home Office's first submission to the qualified person included a copy of all of the related information for consideration. The second submission included access to some of the information whereas the wording of the Meeting Readouts was summarised rather than shared. As a qualified person had already fully considered the information the Commissioner considers this to be sufficient.
26. As to the subject matter, the Home Office advised that the discussion was held in confidence, with an expectation that its content would not be further disclosed and that:

"Releasing information that is received in confidence would undermine trust in the Home Office and reduce the departments' ability to hold free and frank discussions in the future. The

information we hold includes the free and frank exchange of views for the purpose of deliberation around the tackling of a controversial protest organisation and was held with an organisation directly impacted by them. Disclosure of this information would be likely to inhibit the free and frank exchange of views, as key stakeholders may be reluctant to share their views in the future, which would have a detrimental effect on our deliberations on key issues. This is a live and sensitive issue that continues to exist today and it is highly likely that future meetings of a similar nature will need to be held for further deliberation."

27. In its submissions to the Commissioner, the Home Office added that:

- The withheld information contains detailed discussions and information shared between government, the police and ESUK regarding security arrangements and responses to criminal activity. These discussions are part of ongoing deliberations about protecting defence sites and critical infrastructure from violent protest activity.
- The nature of these discussions requires participants to be able to share sensitive operational details, vulnerabilities, and concerns without reservations. This includes police responses and resource allocations, challenges with the criminal justice system's approach, assessments of risks and threats, and proposed countermeasures and their potential effectiveness.
- Disclosure would be likely to inhibit similar future discussions because stakeholders would be less willing to share detailed information around this issue, including operational challenges and tactics, if they believed this information could be made public. This would significantly impact the Government's deliberation on this, and similar issues.
- Given the impact release of these documents could have on the commercial interests of ESUK and linked organisations...it is highly likely that ESUK would not share any future information with the Government, severely hindering the deliberation process in the future.

28. Having had sight of the withheld information, the Commissioner considers that it was reasonable for the qualified persons to reach the conclusions described by the Home Office. He is further satisfied that each gave the opinion that the exemption was engaged.

29. Consequently the Commissioner finds section 36(2)(b)(ii) is engaged in respect of the withheld information. Since this is a qualified exemption, the Commissioner must consider whether, in all the circumstances of the



case, the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

### **Public interest arguments in favour of disclosure**

30. The complainant's views are summarised in paragraphs 14 and 15 above.

31. When refusing the request, the Home Office argued:

"The Home Office recognises that there is a general public interest in transparency and openness in government. It is acknowledged that disclosure of the documents recording the meeting between the then Home Secretary and the Minister for Crime, Policing and Fire and Elbit Systems Ltd could improve public understanding of the government and the police approach to public order which is an area of interest to many. The right to protest is a fundamental part of our democracy, so particular consideration ought to be made with respect to discussions which relate to the exercise of this right".

32. In correspondence with the Commissioner it added:

"We recognise that there is a general public interest in openness and transparency in government, which may serve to increase public trust.

At the time of the request, conflict involving Israel was taking place in the Middle East (and political demonstrations against Israeli action were taking place in the UK). Bearing in mind that ESUK is a subsidiary of an Israeli-based defence company – plus, the media interest in the public order policing – it is accepted that there is a public interest in meetings that took place between Home Office ministers and ESUK at this time".

### **Public interest arguments in favour of maintaining the exemption**

33. When refusing the request, the Home Office argued:

"The information within scope relates to discussions held between both the Home Secretary and Minister for Crime, Policing and Fire with Elbit Systems Ltd. The discussion, and associated documents, included the free and frank exchange of views for the purposes of deliberating on the handling of protests within a specific context relating to a particular organisation.

It is important that those who deal with sensitive issues of this nature can share their views freely as part of the deliberation



process without fear that these views will be shared publicly. This is especially the case in circumstances where the issue being discussed is a live and sensitive issue, relating to protests which often involve criminality against a particular target. This issue, and those like it, will necessarily require further deliberation from key stakeholders, including the police and other third-party organisations.

Should this information be disclosed, it would be likely to inhibit the free and frank exchange of views for the purpose of deliberating on similar issues facing organisations. Individuals would be aware that any views they share during the process of deliberation may be shared publicly, resulting in them being reluctant to do so in the future. This would not be in the public interest given the sensitive nature of public order policing.

Appropriate consideration has also been given to the fact that a qualified person, in this case a Minister of State, has given the opinion that some of the information engages this exemption, and this has been given a measure of respect during public interest considerations”.

34. In correspondence with the Commissioner it added:

“... it is our view that disclosure of the information would show the discussions between participants on sensitive live security issues where stakeholders need to share views candidly. This would be likely to prejudice the free and frank exchange of views because stakeholders would be less inclined to express themselves openly, honesty [sic] and completely when discussing sensitive topics if there was a risk that this information would be disclosed as a result of an information request. If stakeholders were reticent to offer their views, this would impair the quality of deliberation (and ultimately decision-making) which would not be in the wider public interest. Disclosure would be likely to undermine the safe space required for ministers and stakeholders to debate, and exchange views on matters to do with policing and security, and inhibit future frank discussions on similar sensitive matters, which is not in the wider public interest.

There is also a clear international aspect to this request and the Home Office needs to be cautious of breaching the confidence of international partners...

We accept there is a public interest in this matter: this is precisely why we took a considered and nuanced approach when handling this request. Rather than adopting a blanket approach, we instead

disclosed some information both at FOI and Internal Review stage. However, for the reasons above, we conclude that the overall balance of the public interest lies in maintaining the exemption to withhold the remaining information”.

### **Balance of the public interest**

35. The Commissioner is mindful that the exemptions at section 36 of FOIA are engaged on the basis of the qualified person’s opinion. Accordingly, the Commissioner will take account of the weight of that opinion in applying the public interest test. In addition, the Commissioner is himself also satisfied that the identified prejudice or inhibition would be likely to occur if the information were to be disclosed into the public domain. This adds to the weight afforded to the qualified person’s opinion as part of the public interest balance.
36. The Commissioner has also carefully considered the extent to which disclosure of the withheld information in this case would serve the public interest. He accepts that it would more fully inform the public about discussions between the parties concerned and he acknowledges that this is an emotive subject area. However, the Commissioner is not persuaded that the specific withheld information in this case would necessarily fully inform the public in respect of the matters that the complainant is seeking to reveal.
37. In conclusion, the Commissioner acknowledges that the public interest in openness and transparency would be served if the information was disclosed. However, having regard to the content of the information in question, and all the circumstances of the case, he finds that the public interest in maintaining the exemption at section 36(2)(b)(ii), and in protecting the Home Office’s ability to have confidential exchanges with stakeholders about highly sensitive matters, is sufficiently strong to outweigh the public interest in disclosure.
38. As this exemption has been cited to cover all of the information that the Home Office has confirmed holding, it is not necessary for the Commissioner to consider the other exemptions cited.

### **Neither confirm nor deny (NCND)**

39. Section 1(1)(a) of FOIA requires a public authority to inform a requester whether it holds the information specified in the request.
40. 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 most cases,

will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held.

41. A public authority will need to use the NCND response consistently, over a series of separate requests, regardless of whether or not it holds the requested information. This is to prevent refusing to confirm or deny being taken by requesters as an indication of whether or not information is in fact held.
42. The Home Office has taken the position of neither confirming nor denying whether it holds any further information in its entirety, citing section 23(5) and section 24(2) in the alternative. The issue that the Commissioner has to consider is not one of disclosure of any requested information that may be held, it is solely the issue of whether the Home Office is entitled to NCND whether it holds any further information of the type requested by the complainant.
43. The Home Office has said that if any further information were held it would be fully exempt from disclosure by virtue of sections 23(5) or 24(2) of FOIA.

### **Section 23 - Information supplied by, or relating to bodies dealing with security matters**

44. Section 23(5) provides an exemption from the duty imposed by section 1(1)(a) to confirm or deny whether information is held if to do so would involve the disclosure of information, whether or not recorded, that relates to or was supplied by any of the security bodies listed in section 23(3). This is a class-based exemption, which means that if the confirmation or denial would have the result described in section 23(5), this exemption is engaged.
45. The argument from the Home Office on this exemption was that if, for the sake of argument, further information did exist, it is very likely that it would have come from, or be related to, a section 23(3) body. Were it the case that absolute certainty of the connection with a section 23(3) body was required, this might mean that the possibility, however slim, of the Home Office holding relevant information that was not related to, or supplied by, a section 23(3) body would undermine its reliance on section 23(5).
46. This point was addressed in the Tribunal case *The Commissioner of Police of the Metropolis vs Information Commissioner (EA/2010/0008)*, where the argument was advanced that it was highly likely that any information held by the public authority that fell within the scope of the request would have been supplied to it by a section 23(3) body and, therefore, section 23(5) was engaged. The counterargument was made

that only certainty as to the source of the information would be sufficient. The Tribunal rejected this counterargument and stated:

“[The evidence provided] clearly establishes the probability that the requested information, if held, came through a section 23 body.” (paragraph 20)

47. The approach of the Commissioner on this point is that he accepts the Tribunal view that the balance of probabilities is the correct test to apply. This means that for section 23(5) to be engaged, the evidence must suggest to a sufficient degree of likelihood (rather than certainty) that any information held that falls within the scope of the request would relate to, or have been supplied by, a body specified in section 23(3).
48. In this case, the Commissioner considers it clear that the subject matter of the request is within the area of the work of bodies specified in section 23(3). He also accepts that it is likely that, if further information described in the request did exist, it would have been compiled with input from outside the Home Office, including from a security body.
49. The Commissioner accepts that, on the balance of probabilities, any further information held by the Home Office falling within the scope of the complainant's request would relate to, or have been supplied by, a body or bodies listed in section 23(3). His conclusion is therefore that section 23(5) is engaged.
50. As this conclusion has been reached on section 23(5), it is not strictly necessary to go on to also consider any other exemptions. However, as the Home Office also relied on section 24(2) in the alternative, the Commissioner has gone on to consider that exemption.

## **Section 24 – National security**

51. Section 24(2) provides an exemption from the duty to confirm or deny where this is required for the purpose of safeguarding national security. Consideration of this exemption is a two-stage process. First, the exemption must be engaged due to the requirement of national security. Secondly, this exemption is qualified by the public interest, which means that the confirmation or denial must be provided if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.
52. The Commissioner has already accepted when finding that section 23(5) is engaged that revealing whether or not information is held within the scope of the request would reveal information relating to security bodies. The Commissioner also accepts that disclosure that touches on the work of the security bodies would consequentially undermine national security. For that reason section 24(2) is also engaged as

exemption from the duty to confirm or deny is required for the purposes of national security.

53. This can be further evidenced by arguments which the Home Office presented in respect of some information which it confirmed holding that was withheld under section 24(1) - it was not necessary for the Commissioner to consider that exemption as it was also exempt under section 36(2)(b)(ii). The related argument provided by the Home Office explained to the complainant:

“...the information within the scope of your request relates to an organisation that supports the British Armed Forces and have been the subject of targeted activity, often of a criminal nature. Some of the information includes Home Office analysis and intelligence. The release of this information would reveal the Government’s methodologies and techniques, as well as any gaps in their knowledge. It would permit protestors to change behaviours and pursue less detectable methods, which would prejudice the safeguarding of national security”.

54. Turning to the balance of the public interest, the question here is whether the public interest in safeguarding national security is outweighed by the public interest in the provision of the confirmation or denial. Clearly, the public interest in safeguarding national security carries very great weight. In order for the public interest to favour provision of the confirmation or denial, it will be necessary for there to be public interest factors in favour of this of at least equally significant weight.

### **Public Interest Test**

#### **Public interest arguments in favour of confirming or denying that information is held**

55. The Home Office has argued:

“Confirming or denying if the Home Office holds the additional information requested would enhance the openness of government and help the public understand the background and nature of this issue. These issues naturally concern civil liberties and human rights. Confirming would serve to inform and educate the public about an issue related to national security. There is an interest in the public understanding issues around public order”.

## **Public interest arguments in favour of maintaining the exemption from confirming or denying that information is held**

56. The Home Office has argued:

“Confirming or denying if the Home Office holds the additional information requested could put national security at risk. The additional information requested, which may or may not exist, may need to be protected in the interests of national security. Any disclosure that would prejudice national security would be contrary to the public interest”.

## **The Commissioner’s decision**

57. The view of the Commissioner is that there is some valid public interest in confirmation or denial in response to this request. It could increase public knowledge of the breadth of any discussions between the Home Secretary, the Minister for Crime, Policing and Fire and Elbit, which could improve public understanding of both the government and police approaches to public order which is an area of interest to many.
58. The Commissioner considers it to be clearly the case, however, that this public interest does not match the weight of the public interest in safeguarding national security. This means that his conclusion is that the public interest in the maintenance of the exemption provided by section 24(2) outweighs the public interest in disclosure of the confirmation or denial.
59. In view of this finding and that above on section 23(5), the Commissioner’s decision is that the Home Office was not required to confirm or deny whether it held any further information in respect of this request.

## **Other matters**

---

60. Although it does not form part of this notice the Commissioner wishes to highlight the following matter.

## **Internal review**

61. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of FOIA. However, the Commissioner has issued guidance in which he has stated that, in his view, internal reviews should take no longer than 20 working days to complete, and even in

exceptional circumstances the total time taken should not exceed 40 working days.

62. In this case, the internal review was not completed in accordance with that guidance. The delay will be logged for monitoring purposes.



## Right of appeal

---

63. 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)

64. 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.
65. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Carolyn Howes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**