

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

### **Decision notice**

**Date:** 28 March 2025

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

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

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1. The complainant submitted a request to the Ministry of Defence (MOD) seeking a copy of the 2017 version of 'JSP 398 - UK Rules of Engagement'. The MOD provided the complainant with a redacted version of this with the material being withheld on the basis of sections 23(1) (security bodies), 24(1) (national security), 26(1)(a) and (b) (defence), 27(1)(a) and (b) (international relations), and 40(2) (personal data) of FOIA.
2. The Commissioner's decision is that the redacted material information is exempt from disclosure on the basis of section 23(1) and sections 26(1)(a) and (b) of FOIA. However, the MOD breached sections 10(1) and 17(1) by failing to respond to the request within 20 working days.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. The complainant submitted the following request to the MOD on 10 November 2023:

"In March 2023, I made a FOIA request to MoD for the 2013 and 2017 editions of JSP 398 (FOI2023 03106).

MoD did not process my request for Part 2 of the 2017 edition of JSP 398 due to cost restraints.

This is a fresh request for the information not processed in that case.

Please provide

1. A PDF copy of JSP 398 (March 2017) Part 2"
5. The MOD responded on 15 March 2024. It provided the complainant with a redacted version of part of 2 of JSP 398. It explained that the redactions had been applied on the basis of the following sections of FOIA: 23(1) (security bodies), 26 (defence), 27 (international relations) and 40(2) (personal data).
6. The complainant contacted the MOD on 6 April 2024 and asked for an internal review. He challenged the application of all of the exemptions cited and also asked for a clearer copy of the document to be provided.
7. The MOD informed him of the outcome of the internal review on 20 January 2025. The review confirmed the MOD's position that the redacted information was exempt from disclosure on the basis of sections 23(1), 26(1)(a) and (b), 27(1)(a) and (b), and 40(2) of FOIA. It also found that section 24(1) applied to the information which had been redacted on the basis of section 26. The only exception to these findings was in relation to a small portion of information which the MOD disclosed to the complainant. The MOD explained that in disclosing this information it had taken into account the Commissioner's findings in decision notice IC-159921-V9L3<sup>1</sup> where it released the information in respect of the redaction contained at paragraph 33, on page 8 of Part 2 of the 2019 version of JSP 398. The MOD explained that it had concluded that it could not continue to withhold the equivalent information at paragraph 32 on page 8 of part 2 of the 2017 version of JSP 398. The MOD also explained that it did not understand the complainant's concerns that the information previously disclosed was "illegible in parts" but if he was more specific about which parts of the document he could not read it would be happy to address the matter separately.

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4024171/ic-159921-v9l3.pdf>

## **Scope of the case**

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8. The complainant contacted the Commissioner on 25 November 2024, ie before the internal review was completed, to complain about the way his request had been handled. More specifically he raised the following grounds of complaint:
  - He wished to challenge the decision to redact information from the disclosed version of the document.
  - He was unhappy with the MOD's delay in responding to the request and its failure to complete the internal review.
  - He wanted the MOD to provide him with a clearer copy of the disclosed document.
9. With regard to the latter point, the Commissioner notes that in its internal response of 20 January 2025 the MOD invited the complainant to provide him with further details so that it could address this issue. The Commissioner recommended to the complainant that he contacted the MOD about this particular point so that this aspect of his complaint could be addressed. The Commissioner understands that his particular issue has now been dealt with to the complainant's satisfaction
10. With regard to the delayed internal review, the Commissioner has addressed this in the Other Matters section of this decision notice.
11. Therefore the decision notice itself deals simply with the complainant's first ground of complaint, ie the MOD's decision to redact information from the requested document, and its delays in initially responding to the request.

## **Reasons for decision**

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### **The redacted information**

12. As the MOD noted in its internal review response, the Commissioner has previously considered a request from the complainant for a different version of the same document which is the focus of this decision notice.

13. Decision notice IC-159921-V9L3 considered the MOD's decision to withhold parts of the 2019 version of JSP 398.<sup>2</sup> That decision notice concluded that the information redacted by the MOD to that document was exempt from disclosure on the basis of section 23(1)<sup>3</sup> or sections 26(1)(a) and (b).<sup>4</sup> The only exception being the finding referred to in the MOD's refusal notice.
14. The request in this case concerns part 2 of the 2017 version of JSP 398. However, the Commissioner is conscious that the MOD has sought to apply the same exemptions as it did to the request seeking the 2019 version of this document. Therefore, the Commissioner has compared the content of the redactions made to the 2019 version to the content of the redactions made to the 2017 version. The Commissioner has established that the information redacted from the 2017 version, ie the withheld information in this case, is the same as the information which he found to be exempt in the 2019 version, ie his findings in decision notice IC-159921-V9L3.
15. There are two exceptions to this. Firstly, a very small number of passages where the phrasing or wording of a sentence is marginally different, but such differences make no material difference to the content of the information. Secondly, there is a footnote on page 5 of the 2017 version that does not appear in the 2019 version. However, the content of that footnote reflects the material about 'targeting directives' which has been redacted from both the 2019 version at paragraphs 20 and 21 and the same material which is redacted from paragraphs 19 and 20 of the 2017 version.
16. In submissions to the Commissioner the complainant argued that the information contained in figure 1 of the 2017 version of JSP 398 which has been released to him adds weight to the public interest in disclosure. The complainant noted that the letters in this figure "LOAC/PM/CDE" identify the part of a Targeting Directive that refer to the authorisation for use of offensive force. He noted that it was his understanding that LOAC is Law of Armed Conflict, CDE is Collateral Damage Estimate and PM is Prime Minister. He explained that an identical diagram appears in the previously disclosed JSP900 Edition 2, dated 2015. But two years later in the 2019 edition of JSP398, and again in 2021 edition of JSP 900 this part of the diagram appears to say "PGM" instead. However, the complainant argued that as "PM" is not

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<sup>2</sup> That request covered both parts 1 and 2 of JSP 398. The request which is the focus of this decision notice only seeks part 2 of the 2017 version of JSP 398.

<sup>3</sup> See paragraphs 12 to 16 of that notice.

<sup>4</sup> See paragraphs 17 to 44 of that notice.

defined in any of the unredacted text of part 2 of JSP398 2017, or in part 1 that was previously disclosed, there is a clear public interest in disclosing the sections of the redacted information that identify the Prime Minister as "PM". This is because once it is established that authority for use of offensive force has apparently, in his view, been changed from the Prime Minister to another person or entity, further questions can be asked about who or what PGM refers to in the current 2021 targeting policy.

17. Given that the material contained in the redacted 2017 version is essentially the same material as that contained in the redactions applied to the 2019 version, the Commissioner is satisfied that the material redacted from part 2 of 2017 JSP 398 is exempt from disclosure on the basis of sections 23(1) and sections 26(1)(a) and (b) for the reasons set out in decision notice IC-159921-V9L3.
18. In respect of section 26, the Commissioner appreciates that this is a prejudice based and qualified exemption. However, he is satisfied that the circumstances as they existed at the point this request was submitted, ie in November 2023, are no different to those that existed in May 2022, ie when the complainant submitted his request for the 2019 version of JSP 398. That is to say, given the lack of a change in circumstances the Commissioner is satisfied that disclosure of the material in November 2023 would still be prejudicial to defence interests, and furthermore that the public interest factors and balance of the public interest remains the same.
19. In respect of the complainant's submissions above at paragraph 16, the Commissioner has examined the redacted portions of part 2 of the 2017 version and no part of this would assist the complainant with that particular issue.

## **Procedural matters**

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20. Section 1(1) of FOIA states that:

"(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

21. Section 10(1) requires a public authority to comply with the requirements of section 1(1) within 20 working days.

22. If a public authority wishes to refuse a request it needs to issue a refusal notice with section 17(1) of FOIA stipulating that such a notice should also be issued within 20 working days.
23. In the circumstances of this request, the MOD's response of 15 March 2024, in which it disclosed some information and issued a refusal notice to withhold the remainder, was not issued within 20 working days of the request, which had been submitted on 10 November 2023. This delayed response therefore represents a breach of sections 10(1) and 17(1) of FOIA.

## Other matters

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24. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe.<sup>5</sup> 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.<sup>6</sup> In this case the MOD took 9 months to complete the internal review.
25. The Commissioner has issued a Practice Recommendation to the MOD in October 2024 regarding its FOI performance, including its delays in completing internal reviews.<sup>7</sup> As a result of this the Commissioner understands that the MOD has taken a number of steps to ensure that internal reviews in future cases are not subject to such lengthy delays.

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<sup>5</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

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[https://indigoffice.sharepoint.com/sites/CRMDocuments/NoticeWebPublishing/DecisionNotices/2448/a49d6994-29ae-ef11-b86a-0022483ec3f4\\_DNIC-293393-Q1B1.pdf](https://indigoffice.sharepoint.com/sites/CRMDocuments/NoticeWebPublishing/DecisionNotices/2448/a49d6994-29ae-ef11-b86a-0022483ec3f4_DNIC-293393-Q1B1.pdf)

<sup>7</sup> <https://ico.org.uk/media/action-weve-taken/practice-recommendations/4031462/practice-recommendation-fpr0987683.pdf>

## Right of appeal

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26. 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)

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jonathan Slee**  
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