

From Andrew Tranham



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CIO-CI-Information Access Review

AIT: - 05-01-2012-103911-00

5 March 2012

Our Ref: D/CIO/3/18/1/615

Dear Mr Cole,

FREEDOM OF INFORMATION ACT 2000 INTERNAL REVIEW

1. I am writing in response to your email of 10 February 2012 in which you requested an internal review of the MOD's processing of your request for information concerning Reaper Unmanned Aerial Vehicles (UAVs) Weapon Launches in Afghanistan, under the Freedom of Information Act 2000 (the Act).

2. I have now completed a full independent review of the handling of your requests and the substance of the responses you received. The purpose of the internal review is to consider whether the requirements of the Act have been fulfilled. The scope of the review is defined by Part VI of the Code of Practice under s.45 of the Act, which can be found: <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>.

Handling of the requests

3. In conducting my review of the handling of your requests, I have focussed on the following requirements of the Act:

- a. Section 1 (1)(a) which, subject to certain exclusions, gives any person making a request for information to a public authority the entitlement to be informed in writing by the public authority whether it holds information of the description specified in the request;
- b. Section 1 (1)(b) which, subject to certain exemptions, creates an entitlement to receive the information held by the public authority;
- c. Section 10(1) which states that, subject to certain provisions allowing extensions of time, the public authority must comply with the requirements of section 1(1) promptly, and in any event not later than the twentieth working day following the date of receipt;
- d. Section 16(1) where it is the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, request for information to it;
- e. Section 17(1) that requires a public authority which is relying on an exemption(s) in the Act to state that fact, to specify the exemption(s) and to state, (if not otherwise apparent) why that exemption applies;

- f. Section 17(3)(b) which states that where the public interest in maintaining the exemption outweighs the public interest in disclosing the information, the public authority must state the reasons for claiming this.

4. This review is in respect of a request for information received on 5 January 2012. You received an acknowledgement on 5 January 2012 in which you were advised to expect a response within 20 working days, in this case no later than 2 February 2012. You received a full substantive response on 11 January 2012.

5. I find that your request was handled in a timely manner and met the statutory timescale for responding as set out in section 10(1) of the Act. You were informed of your rights to appeal, and in other aspects your review was handled in accordance with the Act.

Substance of the reply

6. Your request of 5 January 2012 requested the following information:

- a. *The date and province within Afghanistan of each weapon launched from British Reaper unmanned aircraft.*
- b. *Whether a damage assessment had been carried out after each weapon launch.*

7. In respect of b above, PJHQ confirmed that a post-strike assessment is made of every UK weapon released from a Reaper UAV. However, I find that the MOD did not meet its responsibilities under Section 1 (1)(b) of the Act - had it done so, it would have avoided you having to make the request for the same information again which you did as part of your later FOI request (AIT reference 10-02-2012-133549-009). I apologise for this.

8. In respect of the first part of the request, PJHQ confirmed that the information was held but advised that it was exempt from disclosure under the exemptions at a and b below, because the balance of the public interest lay in favour of withholding the information

- a. Section 26(1)(b) – Information which would, or would be likely to, prejudice the capability, effectiveness or security of the armed forces of the Crown and forces co-operating with them.
- b. Section 27(1)(a) – Information which would, or would be likely to, prejudice the relations between the United Kingdom and any other State.

9. In accordance with MOD's responsibilities under section 17 of the Act, PJHQ's response gave a brief explanation of why these exemptions applied and the reasons why they considered the balance of interest lay in withholding the information. I find that PJHQ properly withheld the requested information and I set out more fully below why the Department was justified in coming to this conclusion.

10. There is a public interest in assuring public confidence in and understanding of operational issues associated with UAV weapon launches in Afghanistan. However, the public interest in release is outweighed by the risk to the lives of UK service personnel and those of our allies. Release of this information would give an insight into the circumstances under which Reaper weapon systems are used to engage enemy forces with lethal force, and the limitations placed on this use of force. This would allow assessments to be made about where and how they might be deployed in future operations. Releasing the location and date of weapon launches would indicate where the weight of UK UAV assets are focussed in Afghanistan, and potentially the type of activity conducted. Enemy forces may use this information to vary their techniques, tactics and procedures in order to more effectively attack UK forces. I find that the balance of the public interest lies strongly in withholding this information under Section 26 (1)(b) of the Act.

11. Whilst there is a public interest in the nature of our relationship with other states where Reaper UAVs are concerned, information about the use of UAVs is shared between collation partners on a strictly 'need to know' basis. Any unilateral release of information could harm relations between the UK and other States involved and might inhibit other State's willingness to participate or share information about the deployment of UAVs with the UK in future. I therefore find that the balance of the public interest lies in withholding this information under Section 27 (1)(a) of the Act.

12. The information you cite as an example of that regularly released by the RAF differs from the information in scope of your request of 5th January 2011 in a number of ways. Released information refers only to 'strikes' rather than specific weapon launches, and, for the reasons explained above, the release of the latter would give much more of an insight into the tactics employed. In providing information on operations carried out over the course of a week, specific dates of strikes are not published - nor does this information specify a particular region of Afghanistan in which a weapon launch was carried out.

Conclusion

13. In summary, I find that:

- Your request was handled in a timely manner and in accordance with section 10(1) of the Act.
- The information in scope of your request is exempt under Section 26(1)(b) and Section 27(1)(a) of the Act and was correctly withheld because the balance of the public interest is in favour of non-disclosure
- PJHQ provided appropriate efforts in compliance with the Department's responsibilities under section 16 (advice and assistance) of the Act.

14. If any aspect of this review is unclear, I should be happy to explain it. If you are dissatisfied with the review, you may make a complaint to the Information Commissioner under the provisions of section 50 of the Act. Further details of the role and powers of the Commissioner can be found on his website at: www.ico.gov.uk. His address is: Information Commissioner's Office, Wycliffe House, Water Lane, WILMSLOW, Cheshire, SK9 5AF. Fax 01625 524 510.

Yours sincerely,

