



Neutral citation number: [2023] UKFTT 00455 (GRC)

Case Reference: EA/2021/0035

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

Heard at: Field House

Heard on: 8 March 2022

Decision given on: 31st May 2023

Before

**TRIBUNAL JUDGE LYNN GRIFFIN
TRIBUNAL JUDGE CLARE GOODMAN
TRIBUNAL MEMBER ANNE CHAFER**

Between

CHRIS COLE

Appellant

and

1) INFORMATION COMMISSIONER

2) MINISTRY OF DEFENCE

Respondents

Representation:

For the Appellant: in person

For the First Respondent: did not attend and was not represented

For the Second Respondent: Stephen Kosmin, counsel instructed by the Government Legal Department

Decision: The appeal is Dismissed

Substituted Decision Notice: not applicable

REASONS

1. The Appellant describes himself as “a researcher and campaigner on peace and security issues” and “a recognised authority on the use of aerial unmanned systems, commonly known as drones”. This case concerns a request he made for information about remotely piloted aircraft known as Reaper. The terms ‘drone’, ‘remotely piloted aircraft’ or ‘unmanned aerial vehicles’ have been used by the parties interchangeably and all appear to be accepted terms for the purposes of this appeal. We shall refer to the equipment in question as Reaper.
2. Since 2014 the UK has been participating in operations within Iraq and Syria under the operation name “Operation Shader” which is a US-led military campaign against Daesh. The Reaper’s primary mission is as an Intelligence, Surveillance and Reconnaissance asset providing real time data to military commanders and intelligence specialists. Its secondary mission is to provide armed support to forces on the ground. The Reaper has no automated means of releasing and guiding a weapon.
3. The part of the request in issue that concerns us seeks information about the use of the Reaper outside the context of Operation Shader in 2019.

The request for information

4. On 2 January 2020, Mr Cole (“the appellant”) submitted a request under the Freedom of Information Act 2000 (“FOIA”) to the Ministry of Defence (“MOD”); that request read as follows, with emphasis on the part of the request that concerns this Tribunal.
 - 1) *For each month between October 2019 and December 2019, and broken down between i) Reaper and ii) Typhoon*
 - a) *the total number of missions undertaken by these aircraft on Operation Shader.*
 - b) *the number of those missions entering Syria.*
 - c) *the number of those missions entering Iraq?*
 - 2) *For each month between October 2019 and December 2019, the number of sorties with weapons released by a) Reaper and b) Typhoon and broken down between Iraq and Syria?*
 - 3) *For each month between October 2019 and December 2019, the number and type of weapons released by a) Reapers, and b) Typhoon, broken down between Iraq and Syria?*
 - 4) *The number of UK weapon release events in a) Iraq and b) Syria per month from October 2019 to December 2019, broken down between Reaper and Typhoon?*
 - 5) *Please can you tell me, for each month between October 2019 and December 2019, how many hours have UK a) Reaper and b) Typhoon flown on Operation Shader?*
 - 6) *Please can you detail how many sorties have RAF Reaper aircraft flown outside of Operation Shader during 2019 and, if any, where these sorties occurred?*

5. On 30 January 2020 the MOD responded to the request confirming that the requested information was held by them but that in their view it was exempt from disclosure on the basis of s.26 FOIA and they needed further time to determine whether the balance of public interests fell in favour of maintaining the exemption. A substantive response was provided by the MOD on 17 February 2020. The MOD disclosed the information requested in questions 1 to 5 inclusive. As to question 6 the MOD explained that in their view the information requested was exempt on the basis of sections 26 and 27 FOIA because it would be likely to prejudice the capability, effectiveness or security of any part of the relevant forces and that the public interest fell in favour of maintaining the exemption, thus they refused to disclose the information requested in question 6.
6. In their internal review the MOD said that the initial response had not been correct in its statement of the MOD position of the assessment of the likelihood of prejudice. The internal review stated that it was the MOD position that the level of prejudice for the exemptions is engaged at the higher level of 'would' prejudice rather than 'would be likely to'.
7. On 27 April 2020 the appellant complained to the Information Commissioner ("the Commissioner") arguing that there was a compelling public interest in the disclosure of the information sought in question 6.
8. In her decision notice reference IC-39378-S8W1("the Commissioner's decision") the Commissioner decided that s.26(1)(b) was engaged by the requested information at the higher level of 'would prejudice'. She also decided that in all the circumstances, notwithstanding the significant public interest in disclosure of information about the use of Reaper aircraft, the public interest fell in favour of maintaining the exemption and outweighed that in favour of disclosing the information because of the risk of undermining the capability, effectiveness and safety of British Armed Forces.
9. The Commissioner did not go on to consider the application of s27 given her decision on s26 FOIA.

The appeal proceedings

10. On 29 January 2021 the appellant appealed to the Tribunal and in his grounds of appeal he submitted that the Commissioner had erred in her assessment of the relative strengths of the public interests. He suggested that:
 - a. The Commissioner had not given sufficient reasons in her decision notice to enable him to fully understand the decision not to disclose.
 - b. Limited information could be released such as the number of operational sorties undertaken outside of Operations Shader without details of the locations.

- c. The Commissioner had not considered (and/or given sufficient weight to) that the public interest in release of the information has increased as Peers and Members of Parliament have been unable to exercise democratic oversight of these operations as parliamentary questions seeking information “are being refused”.
 - d. The Commissioner should have determined whether s.27 FOIA was engaged.
11. The heart of his appeal is the contention that s.26 is not engaged and even if it is the public interest falls in favour of disclosure of the information requested in his sixth question.
12. The Commissioner responded to the appeal and maintained her position as set out in the decision notice and further clarified that in her view the information could not be disaggregated so as to allow disclosure of part of the material requested.
13. The MOD was made a respondent to this appeal on 23 March 2021. In their response to the appeal, they supported the position of the Commissioner and outlined their case as follows:
- a. The Commissioner’s Decision articulates sufficient reasons in support of the conclusion that the withheld information is exempt from disclosure on the basis of section 26(1)(b) FOIA. In any event, the First-tier Tribunal (“the Tribunal”) is able to determine the application of sections 26(1)(b), 27(1)(a) and 27(1)(c) FOIA itself, such that any inadequacy in the reasons supporting the Decision should not result in the Commissioner’s conclusion that the withheld information is exempt from disclosure being disturbed.
 - b. The Commissioner’s findings as to the balance of the public interest under section 26(1)(b) FOIA were lawfully made in all the circumstances. Contrary to the Appellant’s submissions, the public interest test falls firmly in favour of the requested information being withheld.
 - c. The MOD recognises that the Commissioner’s findings regarding section 26(1)(b) FOIA were dispositive of the complaint such that it was not necessary for the Commissioner to consider the application of sections 27(1)(a) and 27(1)(c) FOIA in addition.

The hearing and the evidence

14. The hearing took place in person. Part of the hearing was held in closed session but before that part of the hearing the appellant was asked for his suggested topics or questions to be considered. Those questions were addressed in closed session and a gist provided to the appellant setting out as much information as could be released from that closed session.

15. The Tribunal had received an open bundle of documents which included witness statements made by the appellant and Clive Lewis MP on his behalf. For the MOD we received evidence from Group Captain James Beldon, who also gave evidence in the closed session. A bundle of authorities was submitted, and skeleton arguments were provided by both the appellant and the MOD. The Commissioner had submitted a response to the appeal and was content to rely on those written submissions. The appellant also submitted an extract from Hansard from 7 September 2015, during the course of the hearing.
16. I apologise to the parties for the time it has taken to reduce this decision to writing to be promulgated.
17. There is no closed decision or annex to this decision based on evidence that is not in the agreed gist that was provided to the appellant. This decision sets out our reasoning and there is no necessity in this case for a closed decision. We make it clear that nothing in this decision should be taken to indicate the content of the withheld information and in particular nothing should be inferred about the number or location of Reaper sorties outside Operation Shader in 2019 and whether that number is zero or any number greater than zero.
18. The appellant's witness statement explained his activities and research into the use of armed unmanned aerial vehicles ("UAVs") and how he has gathered evidence that has been used for example by MPs, several parliamentary committees and journalists as well as campaigners.
19. Clive Lewis MP made a witness statement. He is a member of the All-Party Parliamentary Group on Drones ("APPG Drones") which is a cross-Party and cross-House Group formed in October 2012 with the objective of examining how governments use UAVs. Along with other MPs and Peers, he has asked a number of questions in Parliament about the UK's use of these systems. Questions were asked in the House of Commons about the use of Reaper outside of Operation Shader to which the government replied "*REAPER is an intelligence, surveillance and reconnaissance platform. We do not comment on intelligence matters, and I am therefore withholding the information as its disclosure would or would be likely to prejudice the capability, effectiveness or security of the Armed Forces.*" Mr Lewis stated that, in his opinion, there was a particular need for transparency and public and parliamentary oversight of the use of UAVs due to their unique capability of enabling 'risk free' use of force. He sets out the arguments that the use of remote piloted air systems is lowering the threshold for the use of force and that the risks of armed combat are being transferred to civilians. He acknowledges the argument, as put forward by the MOD, that the capability, effectiveness or security of the armed forces or that of any forces cooperating with them should not be compromised by disclosing information that would allow the enemy to improve their techniques, tactics and procedures and thus negatively impact the effectiveness of unmanned aerial vehicles. Mr Lewis concludes by stating his opinion that the absence of accurate information about the deployment of unmanned aircraft is preventing an informed public debate and scrutiny of the issues.

20. Mr Lewis exhibited an exchange of correspondence with the Secretary of State for Defence which is dated after the request for information in this case but in which the Rt Hon Ben Wallace MP said in reply:

I agree with you that it is important to be as transparent as possible about UK Armed Forces operations and that parliamentary scrutiny is essential for democratic accountability – I can assure you that the Government is equally committed to this principle. As I am sure you will agree all governments also have a duty to protect the nation against our adversaries and sometimes it is necessary that information is withheld because it could compromise operational or personnel security.

REAPER is not conducting strike operations outside those theatres for which Parliament has approved the deployment of UK Armed Forces. The vast majority of REAPER missions are reconnaissance and surveillance operations and as I am sure you can understand, to reveal where it is conducting those missions would provide valuable information to our adversaries.

All UK weapons systems, whether manned or unmanned, operating from sea, land or air, are used in full accordance with robust Rules of Engagement to ensure that our Armed Forces comply with UK and International Law at all times. The Government has been clear that, where we identify an imminent threat, we will take lawful action to address it. Lethal force is used in accordance with international law and reported to Parliament afterwards.

21. The MOD witness was Group Captain Beldon MBE, at that time serving as Deputy Commander of the Royal Air Force's Intelligence, Surveillance, Target Acquisition and Reconnaissance ("ISTAR") Force, a realm in which he had worked for over 24 years. He explained how Reaper operates and that it should be operated in accordance with the extant Rules of Engagement and Targeting Directives. All Reaper operations are subject to legal scrutiny as described in the UK Joint Doctrine 3-46 'Legal Support to Operations'. Group Captain Beldon stated that the MOD's key concern about the release of the requested information was that it could lead an adversary to infer the absence or presence of UK personnel. In his opinion were the locations to be released or inferred from a combination of requested data and already published material (the "mosaic effect"), there would be an elevated risk to any potential personnel in that location and an increased risk of hostile acts against them. The information could provide an adversary with a better understanding of the operational range of the equipment and the scope of its operations. Insights into the frequency and geographical range of use of Reaper would allow an adversary to develop counter measures or change their behaviour to undermine its effectiveness. Reaper is able to gather information from a distance which means that fewer people are put at risk by being "on the ground" attempting to gather the same information close to the adversary. A reduction in the effectiveness of Reaper due to increased knowledge about its use would increase the risk to personnel who would have to gather the information "on the ground".
22. Furthermore, there would be an increased risk to any nation hosting the Reaper operations as an adversary may target a hostile act at the host nation rather than the

UK which may be a more difficult target. Thereby undermining the UK's relationship with that nation and undermining military operations conducted from that location.

The law

23. Section 1(1) FOIA states

"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."

24. Section 26 FOIA provides a qualified exemption and reads (so far as is relevant):

26. – Defence.

(1) 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.

(2) In subsection (1)(b) "relevant forces" means –

(a) the armed forces of the Crown, and

(b) any forces co-operating with those forces,

or any part of any of those forces.

...

25. Section 26 FOIA is a qualified exemption, if the section is engaged there must be a balancing of the public interests in accordance with section 2(2) FOIA, which provides (so far as is relevant):

"In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) ...

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information".

26. Having identified the applicable interests within the exemption, there are three steps in analysing whether s.26(1)(b) is engaged:

a. whether the relevant harm would or would be likely to occur if the withheld information were disclosed.

b. whether there is a causal relationship between the potential disclosure and the prejudice against which the exemption is designed to protect;

c. whether disclosure would or would be likely to result in prejudice.

27. If the three stages above are satisfied in the affirmative, then s.26(1)(b) will be engaged and the Tribunal will go on to consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
28. In considering the third part of the three steps above, the Tribunal must consider whether prejudice to the capability, effectiveness or security of any part of the relevant forces “would” or “would be likely to” occur if the information requested was released under FOIA. Disclosure under FOIA is regarded as being to the world in general. See Hogan and Oxford City Council v Information Commissioner [2011] 1 Info LR 588.
29. When considering whether disclosure ‘would be likely’ to prejudice the capability, effectiveness or security of any part of the relevant forces the Tribunal has regard to the following
- a. The word “likely” connotes a very significant and weighty chance of prejudice to the identified public interest. The degree of risk of that prejudice occurring need not be more likely than not but must be such that there may very well be prejudice to the identified interest. See R (Lord) v Secretary of State for the Home Department [2003] EWHC 2073 (Admin).
 - b. The prejudice must be real, actual or of substance, see Department for Work and Pensions v Information Commissioner [2014] UKUT 0334 (AAC).
30. In the context of s27 FOIA, in the case of All Party Parliamentary Group on Extraordinary Rendition (APPGER) v Information Commissioner and The Ministry of Defence [2011] UKUT 153 (AAC) the Upper Tribunal held, inter alia, that appropriate weight should be attached to evidence from the executive branch of government about the prejudice likely to be caused by disclosure in particular circumstances. This is because the executive are likely to be better informed and have more experience in assessing the consequences of disclosure. This approach was repeated with approval in Savic v Information Commissioner, Attorney General’s Office and Cabinet Office [2016] UKUT 535 (AAC).
31. We agree with the observations of a previous composition of this Tribunal in Chris Cole v ICO and MOD (EA/2013/0042 & 0043), which held at paragraphs 53-54:
- “53. The public interest in maintaining the exemption in section 26(1)(b) is exceptionally weighty. There is an exceptionally strong public interest in preventing harm to the UK’s capabilities in an ongoing armed conflict. The security and safety implications carry very strong public interest weight.*
- 54. We agree with the Commissioner that there would need to be very weighty countervailing considerations to outweigh a risk to security and safety of the forces which was of sufficient severity to have engaged section 26(1)(b).”*

32. We note that former compositions of this Tribunal have recognised that where an issue arises as to whether an exemption is engaged that deals with defence or national security such as s.26, they may adopt a similar approach to that set out above as regards s.27. In doing so the Tribunal acknowledges the institutional competence of the public authority that made the assessment of the potential damage that could be caused by disclosure. Furthermore, if the exemption in s.26 is engaged there would need to be a particularly strong public interest to outweigh the public interest in maintaining the exemption.
33. If the Commissioner is satisfied that the public authority is entitled to refuse the request for information on the basis of one exemption there is no requirement for her to go on to consider other exemptions, see Information Commissioner v Malnick & AOCBA [2018] UKUT 72 (AAC).
34. The powers of the Tribunal in determining this appeal are set out in s.58 of FOIA, as follows:
- “If on an appeal under section 57 the Tribunal considers -*
- (a) that the notice against which the appeal is brought is not in accordance with the law,*
 - or*
 - (b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,*
- the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner, and in any other case the Tribunal shall dismiss the appeal. On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.”*

The issues

35. We turn to the three grounds of appeal raised by the appellant, and as we have noted above, the heart of his appeal is the contention that s.26 is not engaged and even if it is the public interest falls in favour of disclosure of the information requested in his sixth question.
36. The grounds of appeal were set out as follows:
- a. The Commissioner had not given sufficient reasons in her decision notice to enable him to fully understand the decision not to disclose.
 - b. Limited information could be released such as the number of operational sorties undertaken outside of Operation Shader without details of the locations.
 - c. The Commissioner had not considered (and/or given sufficient weight to) that the public interest in release of the information has increased as Peers and Members of Parliament have been unable to exercise democratic oversight of these operations as parliamentary questions seeking information “are being refused”.

- d. The Commissioner should have determined whether s27 FOIA was engaged.
37. As to the first ground that the Commissioner had not given sufficient reasons in her decision notice to enable him to fully understand the decision not to disclose. Any inadequacy in the Commissioner's reasons supporting her decision would not lead to the Commissioner's conclusion that the withheld information is exempt from disclosure being reversed. In any event the Tribunal gives its own reasons in accordance with its duty to decide independently and afresh. This decision sets out those reasons.
38. As to the fourth ground that the Commissioner should have determined whether s27 FOIA was engaged there is no need for us to consider this ground given our decision below.
39. The remaining issues to be determined, as they appear to us are:
- a. Whether pursuant to s.26(1)(b) the disclosure of the information requested in the sixth question, "would or would be likely to, prejudice the capability, effectiveness or security of any relevant forces". Under this issue we will consider the appellant's suggestion that the MOD provide a range of numbers and a geographical region as opposed to the words of his request.
 - b. If s.26(1)(b) is engaged, whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information requested in the appellant's sixth question.

Analysis and conclusions

40. On the central issue of the engagement of s.26(1)(b) and the facts on which we will consider the balance of the public interests, we have accepted the evidence given in open and closed sessions, of Group Captain Beldon who we found to be a measured and credible witness with significant experience gained in this type of military operation. Having considered all the evidence and reminded ourselves of the principles and approach outlined in APPGER and Savic, see above, we conclude:
- a. The Reaper is a strategic asset that fulfils a number of different missions for the UK military. It is used as a surveillance and reconnaissance asset, as well as strike asset. Its use is well documented in the public domain. The processes for authorising a Reaper operation are identical to those applicable to other aircraft. The same legal standards are applied.
 - b. Reaper has previously been confirmed as operating in the Middle East as part of Operation Shader. There are strategic advantages to disclosing information in that context, including messaging to the enemy of the threat to them, managing interactions with allies and those operating in Iraq and Syria and contributing to the Global Coalition in that regard.

- c. The effectiveness of operations conducted using Reaper outside Operation Shader in future depend, in part, on a greater degree of ambiguity as to the employment of Reaper in order to be successful. It is important to retain a degree of ambiguity regarding the full extent of Reaper operations now in order to maintain this flexibility in the future.
- d. Small amounts of information, which do not appear to be damaging, can be combined by adversaries with other sources and also information already held by them. This can be described as a mosaic effect; the combination of small sections of information which, when combined, reveal the bigger picture.
- e. The mosaic effect in this case is not illusory as suggested by the appellant but poses both a short term and long term risk to the protection of UK forces and forces cooperating with UK forces, the relevant forces as defined in section 26(2) FOIA, because:
 - i. Reaper operations are frequently associated with wider military operations. Reaper is only employed where it will maximise strategic effect. Disclosure of the requested information would be suggestive of the employment of broader military capabilities. This would provide an adversary with indications and warning of wider UK military activity and/or UK military presence.
 - ii. Future use of Reaper and similar capabilities will be affected by adversaries' understanding of Reaper operations. The utility of Reaper is in part dependent on the adversaries' uncertainty of not only its capabilities but also how the UK employs them.
 - iii. Through both information publicly available about the UK's input to Operation Shader and other capacities available to adversaries in the region, it is highly likely that some adversaries have a general understanding of Reaper's operating profile.
 - iv. For those adversaries currently without a complex understanding of Reaper, the additional information requested would result in an improvement in the accuracy of and confidence in their understanding and assessment of UK operational capabilities. The additional information would enhance their understanding and ability to limit their exposure to the UK's Reaper operations.
 - v. Additional information entering the public domain on how frequently and where the Reaper capability is or may be employed will allow a sophisticated adversary to improve its understanding of the capabilities of the platform and the UK's Tactics, Techniques and Procedures and that adversary's improved understanding would enable it to take steps to develop countermeasures.

- vi. Maintaining ambiguity in how the Reaper is operated enables others, such as adversaries, tacitly to ignore activities of the UK, if any, without being forced to respond (potentially in an escalatory way). This allows all sides freedom of manoeuvre to avoid unnecessary confrontation. This is an important consideration in being able to manage and avoid unnecessary military risk to relevant forces. It is unwise to place an adversary into a position where they are bound to act in order to deflect criticism that would flow from perceived inaction.
 - f. Withholding the requested information protects UK interests and personnel by denying adversaries confirmed knowledge about the activities of the relevant forces. If the adversaries are provided with the requested information this may directly or indirectly in combination with other information allow adversaries to engage the relevant forces more effectively.
 - g. These factors compromise the operational security and safety of the relevant forces and increases the risk of harm to the relevant forces.
41. We have concluded that the disclosure of the requested information would prejudice the capability, effectiveness or security of any relevant forces in the ways described above. These are real and substantial prejudices which would occur were the information to be disclosed and thus the exemption in s.26(1)(b) is engaged. We have decided that disclosure would pose a risk to the life of relevant forces.
42. The appellant suggested that he could be provided with the region of operation rather than the location or country and also with a numerical range, but these were not the requests he made to the MOD in question 6 with which we are concerned and in which the appellant asked how many sorties there had been in 2019 outside Operation Shader and where those sorties occurred.
43. However, we have considered whether it is possible to disaggregate the information requested and if this alters or reduces the risk of prejudice. We have decided that there would be no change to our assessment of the level of risk or the prejudice that would be caused because:
- a. Revealing the number of sorties by Reaper, if any, outside Operation Shader would reveal the frequency of use and degree of coverage which alone or in combination with other information would result in the prejudice already identified above. This is so even if a range rather than specific number is provided.
 - b. Locational information, even if by region, would expose the presence or potential presence of relevant forces on the ground allowing adversaries to adapt their behaviour tactics and counter-surveillance activities by confirming

their understanding. This would compromise the relevant forces as set out above.

44. Having decided that the exemption in s.26(1)(b) is engaged we turn to consider the balance of the public interest and whether the public interest in disclosure of the information outweighs the public interest in the maintenance of the exemption.
45. The public interests in favour of disclosure relied upon by the appellant can be summarised as follows:
 - a. The public interest in transparency, scrutiny and accountability of government and military in the use of the Reaper system and/or the deployment of UK armed forces. In particular with regard to
 - i. The alleged use of Reaper outside of Operation Shader may be associated with controversial operations in areas of armed conflict.
 - ii. The use of such equipment is “lowering the threshold for the use of armed force” by enabling the use of force without risk to UK personnel and thereby increasing the frequency with which force is used.
 - b. The public interest in increasing public understanding about the operation of Reaper.
 - c. The public interest in increasing public confidence and trust in the overseas operations of UK forces.
46. We acknowledge that there is an important public interest in transparency, scrutiny and accountability of not only the use of Reaper but the armed forces generally.
47. The public interests relied upon by the appellant in favour of disclosure of the information, under (a) above, are premised on a lack of adequate oversight of the use of the Reaper system. However, we do not accept that the premise is accurate, and we find that the processes for the authorisation of Reaper operations are identical to other aircraft. Decisions taken to use the Reaper system in a military context are informed by legal advice (from MOD Legal Advisers and military lawyers in each service who provide advice to military commanders) as well as policy advice and direction. This ensures that the legal aspects are considered throughout the conception, planning and execution of military operations consistent with the UK’s aim to operate to higher standards than those required by law. We accept the oral evidence of Group Captain Beldon MBE and find that the position as set out in the Secretary of State for Defence’s letter is accurate with respect to the position at the time of the response to this request by the MOD:

... All UK weapons systems, whether manned or unmanned, operating from sea, land or air, are used in full accordance with robust Rules of Engagement to ensure that our Armed Forces comply with UK and International Law at all times. The Government has been clear that, where we identify an imminent threat, we will take lawful action to address it. Lethal force is used in accordance with international law and reported to Parliament afterwards.
48. The appellant also directs our attention to the controversy that has surrounded the potential use of Reaper for targeted killing operations that he described as

controversial and which he contrasted with potential uncontroversial uses such as for training or testing the equipment. However, it should be remembered that the information requested is the number and location of sorties undertaken by the Reaper in 2019 outside of Operation Shader. The requested information will not reveal anything about the purpose of those sorties and thus will not inform the debate or resolve the controversy about the purpose for which they were used, if at all.

49. There is nothing in the nature of the requested information, of itself, that could gainsay the position of the MOD that the vast majority of Reaper missions are reconnaissance and surveillance operations and that no strike operations are taking place outside those approved by Parliament. The only way that the requested information could feature in the debate is if the information from this request were to be added to information already in the public domain, in order to draw conclusions about the use of Reaper, which may or may not be accurate. This illustrates the risk of the mosaic or jigsaw effect that would be caused by the release of the information.
50. The appellant drew our attention to the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions of 15 August 2020 but we note that the observations made therein are general in nature and not directly applicable to the legal oversight of the decision-making process in the context we are concerned with.
51. We have also considered the reliance placed on the report from the Public Administration and Constitutional Affairs Committee dated 6 August 2019 by the appellant. However, we agree with the authors of the report that there is a difference between the “principle of how special forces and drones are utilised” as compared to “specific instances of deployment” about which the report recognises that there cannot be open debate. The information requested in this case does not affect the principles involved for the reasons we have given but it is a request for details of specific deployments.
52. While the public interest in ensuring transparency, scrutiny and accountability in the use of this type of equipment is substantial, the information requested will not further that public interest to any significant extent. We remind ourselves that the information request with which we are concerned is for the number of sorties flown outside of Operation Shader during 2019 by RAF Reaper aircraft and, if any, where these sorties occurred. We have concluded that disclosure of the information would not educate the public or build trust in the way suggested, simply through the provision of the bare data requested to the extent required to outweigh the public interest in the maintenance of the exemption given our conclusion about the level of risk that would be occasioned by the disclosure of the information.
53. In his skeleton argument the appellant states that the refusal to disclose whether or not Reaper has been deployed outside of Operation Shader means that there can be no assessment of whether any such deployment is lawful or the impact of any operation on civilians. The disclosure of the number of sorties and location will not, of themselves, advance an assessment of legality or impact assessment as the

information will not tell the public the nature of the sortie(s) if any, or anything about the use to which the Reaper was employed.

54. Disclosure of the number of sorties in 2019 and their geographic location will serve only to provide a piece of a jigsaw of information which may not provide an accurate picture about how the system might be being deployed. The participants in the debate who oppose or question the use of Reaper will not be assisted in that debate by disclosure of this information whereas adversaries of the relevant forces could put it to good effect. The interested and educated observer who will find the requested information of real use would be an adversary of the relevant forces rather than those who wish to bring further scrutiny to bear on the use of the equipment.
55. As this Tribunal has previously stated in earlier cases, the public interest in maintaining the exemption in section 26(1)(b) is exceptionally weighty. It is not absolute; it is a qualified exemption but there is an exceptionally strong public interest in preventing harm to relevant forces. The security and safety implications carry a very strong weight in the balance of the public interest where there is a risk to life for those forces that would result from disclosure.
56. In this case there are insufficient countervailing considerations to outweigh the risk to security and safety of the forces which are of sufficient significance to have engaged section 26(1)(b) at the higher level of “would prejudice”. We do not consider that the public interest factors that favour disclosure, of this particular information in this case come anywhere near outweighing the risk to life were the exemption provided in s.26(1)(b) not to be maintained.
57. We have concluded that the public interest in disclosure of the requested information does not outweigh the public interest in maintenance of the exemption.
58. For these reasons we find that the Information Commissioner’s decision notice was in accordance with the law and did not contain any exercise of discretion that ought to have been exercised differently.
59. The appeal is dismissed.

Signed Tribunal Judge Lynn Griffin

Date: 30 May 2023