

From: Mr Paul Daly



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Head - Information Rights Team

FOI2022/00064

Mr Chris Cole
Via email: chris@dronewars.net

23 June 2023

Dear Mr Cole

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email of 9 February 2023 in which you requested an internal review of MOD's handling of your recent requests for information under the Freedom of Information Act 2000 ('the Act'). I have now completed an internal review of the handling of your requests and substance of the responses you received. The purpose of the review is to consider whether the requirements of the Act have been fulfilled. The scope of the review is defined by Part 5 of the Code of Practice¹ under section 45 of the Act. I apologise for the delay in providing this response.

Handling

2. In conducting my review of the handling of your request, 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;

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/744071/CoP_FOI_Code_of_Practice_-_Minor_Amendments_20180926_.pdf

- d. Section 17(1) which states that, where it claims that information is exempt information, the public authority must, within the time for complying with section 1(1), give the applicant a notice which states the fact, specifies the exemption(s) in question and states why the exemptions applies; and
- e. 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.

3. Your request for information was received by the Department on 30 June 2022 and was worded as follows:

“Please can I ask under the Freedom of Information Act:

1) For each month between October 2022 and December 2022 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 2022 and December 2022, the number of sorties with weapons released by a) Reaper and b) Typhoon broken down between Iraq and Syria?

3) For each month between October 2022 and December 2022, the number and type of weapons released by a) Reapers and b) Typhoons broken down between Iraq and Syria?

4) The number of UK weapon release events in a) Iraq and b) Syria per month from October 2022 to December 2022, broken down between Reaper and Typhoon?

5) Please can you tell me, for each month between October 2022 and December 2022, how many hours have UK a) Reaper and b) Typhoon flown on Operation Shader?

6) Please can you confirm if the RAF opened an investigation into local reports of civilian casualties from the RAF Reaper strike on Al Bab, northern Syria on December 20th? If so, please can you let me know the results of the investigation or whether the investigation is on-going.”

4. Section 10(1) of the Act states that you should receive a response by no later than the twentieth working day following receipt. The MOD’s response of 3 January 2023 was provided seven days late which was outside this timescale, and for this I apologise. The substantive response of 3 January 2023 informed you that the information in scope of questions 1a and 5 were provided to you in an Annex A to the substantive response.

5. However, you were further advised that Permanent Joint Headquarters (PJHQ) Secretariat had carried out the public interest test (PIT) in respect of questions 1b and c, 2, 3, 4, and 6 to determine whether the public interest in withholding some or all of the

information under the qualified exemption section 24, (national security), 26 (defence) and 27 (international relations) of the Act outweighed the public interest in disclosure. It was decided that the information in scope of your request could not be released and was withheld in full and the balance of the public interest was explained to you for each exemption. You were correctly informed of your right to appeal.

6. In summary this request was not handled in accordance with the timeliness requirements of the Act.

Substance

7. I note from your appeal request that you do not consider that the decision to withhold the information from release is correct as the information requested has been provided on a quarterly basis to you since 2015 without any suggestion of the prejudice now applied to your request. I have taken this point into consideration, and I have provided an explanation on the Department's change of position in this internal review. and I should inform you that under section 1 of the Act, I can advise you that the Department holds the information in scope of your request but that it falls entirely within the scope of the exemptions provided for at section 23(1) (information supplied by, or relating to, bodies dealing with security matters) or the qualified exemption provided for at section 24(1) (national security) and the information has therefore been withheld from release.

8. I can explain that sections 23(1) and 24(1) are cited in this internal review in the alternative as it is not appropriate in the circumstances of this case to state which of the two exemptions are engaged - so as not to undermine national security, or reveal the extent of any involvement, or not, of bodies dealing with security matters. I have explained my findings below.

Use of exemptions for Parts 1(b) – 4 of your request

9. Section 24(1) of the Act was engaged to information in scope of your request. However, I find that in this case it was more appropriate to engage sections 23(1) and 24(1) in the alternative.

Use of section 23(1) (security bodies) and section 24(1) (national security)

10. Section 24(1) can only be applied to information that does not fall within section 23(1). This means that they cannot be applied to the same information. However, the Information Commissioner's guidance on how these two exemptions interact² does allow them to be cited in the alternative.

11. Section 23(1) states that 'Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)'. Section 23 is an absolute exemption and consequently there is no further consideration required.

12. Section 24(1) states that 'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purposes of safeguarding national security'. Section 24(1) is a qualified exemption which means that it is subject to a public interest test.

² [how sections 23 and 24 interact foi.pdf \(ico.org.uk\)](https://ico.org.uk/for-organisations/our-work/our-guidance/how-sections-23-and-24-interact-foi.pdf)

13. The release of the information to which section 24(1) may be engaged would promote accountability and transparency of national security matters. However, such a release would also provide those with hostile intent valuable insight into the techniques, tactics and procedures which are employed to help protect the UK's national security.

14. The release of any information (when paired with information already available in the public domain) would provide adversaries with an insight into the UK Armed Forces tactic, techniques and procedures used in operations, and the capabilities of our Armed Forces to deliver them and could have the unfortunate effect of assisting them to develop countermeasures to undermine or negate the effect of UK operations. This would place similar future operations at risk, prejudicing the Armed Forces' capability and effectiveness and, in turn, their ability to safeguard national security and protect the UK's interest at home and around the world.

15. Clearly, any release of information that would prejudice the ability of UK Armed Forces to protect national security cannot be in the wider public interest. Whilst I cannot confirm which of these two exemptions is engaged, to the extent that section 24(1) might be engaged, taking into account the factors above, I find that the balance of public interest is in favour of withholding the information.

Section 26 (defence)

16. I can advise that in this case the specific limb that has been engaged is section 26(1)(b) of the Act which provides that information is exempt if its disclosure would or would be likely to harm (b) the capability, effectiveness or security of any relevant forces.

17. Like section 24, section 26 is a qualified exemption and therefore subject to a PIT. The arguments for, and against, the release of the requested information are closely related to those explained above.

18. Release of information regarding 'how many sorties and type of weapons released by RAF Reaper and Typhoon aircraft flown on Operation Shader during 2022 and, if any, where these sorties occurred' would increase public understanding of the operations of RAF Reaper and Typhoon, increase public confidence and trust in overseas operations. It would also promote openness and transparency about such matters.

19. However, these factors have to be balanced against releasing information that would provide an adversary the information required to make a detailed assessment of the effectiveness of UK tactics and operational capabilities. Providing those with hostile intent details of the techniques, tactics and procedures which Armed Forces personnel utilise on operations today would assist them to develop counterstrategies, placing British Forces and their Allies at more risk than they otherwise might be as well as undermining the delivery of current and future missions and tasks.

20. Taking all these factors into consideration, I am satisfied that the balance of the public interest lies in withholding the information under section 26(1)(b) in this case.

Section 27 (international relations)

21. 27(1) of the Act which provides that information is exempt information its disclosure would, or would be likely to,

- (a) prejudice relations between the UK and any other State;*
(c) prejudice the interests of the UK abroad.

22. The release of the information to which this exemption is applied would demonstrate the MOD's commitment to the Government's openness and transparency agenda, making the Government more accountable to the public, and to the international community. It is also accepted that there is a general interest in the deployment of UK Armed Forces personnel and how they act in defence or support of other nations.

23. In this particular case, the requested information includes detail of UK operations in support of, and in partnership with, Iraq and other allies, with whom the UK continues to operate with. The release of such information would prejudice the UK's interests in these locations, and in particular its relationship with partner forces. The relationship that UK Armed Forces have with its partners are built on trust; and a general understanding that information relating to military or security activities conducted under that partnership are handled in a confidential and secure manner. The UK's basis for operations in Syria and Iraq is with their consent for a UK presence. It is assessed that the release of the information in scope of the request could directly undermine and damage relationships between the UK and international partners.

24. It is also assessed that adversaries could use the withheld information, in particular where it gives an indication of the tactics or techniques being used by the UK and partner forces, to its own advantage. This could be done through either the development of counterstrategies, or by using the information out of context to try and influence or manipulate the way that the operations are presented to the public and international partners.

25. Any loss of trust between the UK Government and any other allied or partner nation would negatively impact upon the UK's ability to work together closely with them on current and future shared defence and security objectives, such as Counter Terrorism and regional stability.

26. Taking all these factors into consideration, I am satisfied that the balance of the public interest lies in withholding information which would be likely to prejudice relations with any other states and is therefore exempt under section 27(1)(a) and, more broadly, 27(1)(c) of the Act.

27. Like the application of section 26(1), I can confirm that the level of prejudice under section 27(1)(a) and (c) in this case against release is set at the higher level of "would" rather than "would be likely to".

Part 6 of your request

28. I can advise that the Department inadvertently engaged the above exemptions of the Act to this part of your request, however, the intention was to instead neither confirm nor deny (NCND) whether any information is held by the Department. I apologise for this administrative error in the substantive response. I find that for part 6 of your request, it is necessary to engage the neither confirm nor deny limbs of section 23 and 24 of the Act.

29. Sections 23(5) and 24(2) of the Act exclude the duty of a public authority to confirm or deny whether it holds information which, if held, would be exempt under sections 23(1) or 24(1) respectively.

30. By virtue of section 23(5) the duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in section 23(3).

31. By virtue of section 24(2) the duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security.

32. The Information Commissioner accepts that the exemptions provided for at section 23(5) and 24(2) are mutually exclusive and can be relied upon independently or jointly in order to conceal whether or not one or more of the security bodies has been involved in an issue which might impact on national security. However, each exemption must be applied independently on its own merits. Section 24 is qualified and is therefore subject to the public interest test.

33. Confirmation or denial of whether the information requested in scope of part 6 is held could provide our adversaries with an insight into our procedures which would allow them to change their future tactics and procedures. Additionally, the confirmation or denial of whether the information is or is not a security or intelligence interest and/or capability could be exploited by individuals or organisations with consequent damage to national security. I have therefore determined that, in all of the circumstances of this case, it is correct for MOD to neither confirm nor deny whether any information is held under sections 23(5) and 24(2) of the Act.

34. Please note that the explanations for the application of these exemptions are somewhat brief because more detailed explanations would involve the disclosure of information which would itself be exempt. The provision at section 17(4) of the Act does not oblige me to make such statements

35. For the avoidance of doubt, this should not be taken as confirmation that any information in scope of part 6 of your request is or is not held.

Conclusion

36. In summary:

- a. Your request was not fully handled in accordance with the timeliness requirements of the Act, as the substantive response was seven days late, for which I have apologised.
- b. The balance of the public interest has been found to lie in favour of applying the exemptions at sections 26(1)(b) and 27(1)(a) and (c) to withhold information in scope of parts 1(b) to 4 of your request as explained in this review.
- c. Sections 23(1) and 24(1) have been applied in the alternative to information in scope of parts 1(b) – 4 of your request.
- d. The MOD neither confirms nor denies any information in scope of part 6 of your request is held under either section 23(5) or 24(2) of the Act.

If you remain dissatisfied with the review, you may make a complaint to the Information Commissioner by following this link - <https://ico.org.uk/make-a-complaint/foi-and-eir-complaints/>. Further details of the role and powers of the Commissioner can be found on the following website: <https://ico.org.uk>. The address is: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

Mr Paul Daly