



## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 19 April 2006**

**Public Authority: Ministry of Defence**

**Address: DG Info, 6<sup>th</sup> Floor  
Zone F, Desk 51  
Main Building  
Whitehall  
London  
SW1A 2HB**

#### **Summary Decision and Action Required**

**The Information Commissioner's (the "Commissioner") decision in this matter is that the Ministry of Defence (the "MOD") has not dealt with the Complainant's request in accordance with Part 1 of the Freedom of Information Act 2000 (the "Act") in that it failed to comply with section 1(1) (b).**

- 1) The Commissioner has decided the requested information is not exempt from disclosure under sections 36, 38 and 40 of the Act.**
- 2) The Commissioner has decided the MOD has correctly applied section 21 to some of the information. However, the Commissioner can see no basis for the MOD continuing to redact information falling within s.21 in light of his decision requiring disclosure of the remaining information.**

**In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that:**

**The MOD shall, within 30 days of the date of this Decision Notice provide the complainant with all the information requested on the 13 January 2005, other than that which is exempt under s.21 of the Act. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act, and may be dealt with as a contempt of court.**

## **1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**

1.1 The Commissioner has received an application for a decision whether the Complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Act.

1.2 Where a complainant has made an application for a decision, unless:

- the complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority

## **2. The Complaint**

2.1 On 13 January 2005 the Complainant requested the following information from the MOD in accordance with s.1 of the Act:

*"A complete copy of the March 2004 edition of the Defence Export Services Organisation (DESO) Directory"*

2.2 The MOD responded to the complainant on 10 February 2005 and provided him with a redacted copy of the Directory showing the structure of the organisation. The organisational information, including post titles was provided, but the names of staff and their contact details were redacted. It also redacted the locations of staff based in Saudi Arabia. It supported its decision by citing s.38, s. 40 and s.44 exemptions.

2.3 The MOD did not however redact the name of the Head of the Defence Export Services, as it had previously published the identity of the person holding this position. It also released information identifying its Assistant Director, Public Affairs.

2.4 On 17 February 2005 the complainant asked the MOD to carry out an internal review of its decision.

2.5 The Complainant did not receive a reply to his request for an internal review. In a letter dated 28 April 2005 the complainant asked the

Commissioner to investigate whether the information should be released in full.

- 2.6 The MOD eventually responded to the complainant on 5 May 2005 maintaining its decision to withhold the requested information. It did however review its decision to redact information which it had not claimed to be exempt when it originally replied to the complainant. As a result it decided to disclose the main switchboard number of DESO at Castlewood House, the ranks of the military personnel listed in the Directory and the title of the project referred to on page 24 of the Directory.
- 2.7 In its letter of 5 May 2005, the MOD stated that it considered the information to be exempt primarily because of the exemptions under s.21 and s.36 (2) (c). As it believed the strength of its argument rested with s.36 and s.21, it did not analyse the position under s.38, s.40 and s.44 in detail. However it considered it particularly appropriate to invoke s.38 (1) (b) to justify withholding the locations of DESO employees based in Saudi Arabia. The Directory does not provide addresses for any of its employees in Saudi Arabia, only the names of the cities in which DESO employees are based. It also commented on the wider danger to the health and safety of DESO employees. It argued that the precedent set by animal welfare groups cannot be ignored and that an incident of paint being thrown at the DESO building undermines any argument that protest against DESO is intrinsically or entirely peaceful.
- 2.8 It maintains that the ability of the public to contact staff within DESO is satisfied by its central switchboard service together with a Public Enquiry Unit. It believes this approach provides a more useful and efficient service than one which allows the general public to contact members of staff directly.

### **3. Relevant Statutory Obligations under the Act**

**Section 1(1)** provides that –

“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.”

#### **4. Review of the case**

The Complainant wrote to the Commissioner on 28 April 2005 expressing his dissatisfaction with the time taken by the MOD to deal with his request for internal review. However by the time the Commissioner commenced his investigations, the Complainant had received a reply from the MOD as detailed at 2.6 above.

The Commissioner's investigation has therefore focused on whether the MOD is justified in withholding the requested information.

The Commissioner requested a copy of the Directory in complete and redacted format. The Directory consists of DESO staff names, brief details of their jobs, their contact numbers and e-mail addresses. It also contains the addresses of DESO premises in the UK, a PO Box address in Saudi Arabia and the general locations of DESO staff within Saudi Arabia. The Commissioner asked the MOD to clarify what information it considered to be exempt under s.21 of the Act. He also requested a detailed explanation of why the MOD believed the exemptions applied.

#### **5. The Commissioner's Decision**

In reaching his decision in this case the Commissioner considered the arguments put forward by both the MOD and the complainant.

##### **Section 21 (1) (Information accessible by other means)**

The MOD relied upon s.21 (1) to withhold some of the information requested. S.21 exempts information from disclosure if it is reasonably accessible to the applicant otherwise than under section 1 of the Act.

The MOD explained that some of the information requested by the complainant is reasonably accessible by other means. For example, some of it is listed in standard reference books such as the Civil Service Yearbook. S.21 is an absolute exemption and therefore not subject to a public interest test.

The Commissioner has considered this material and accepts that certain information is exempt under s.21 of the Act. However, since the information covered by s.21 is accessible to the public he can see no reason why, in this case, having ordered disclosure of the remaining information, the MOD should continue to rely on this exemption. This would allow public access to a complete copy of the Directory. As this information is exempt it nevertheless remains the MOD's prerogative not to provide a copy of it in response to the request.

## **Section 36 exemption**

The MOD also relied upon section 36(2) (c) to withhold some of the information. This exempts information from disclosure if, in the reasonable opinion of a qualified person, disclosure of the information under this Act would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs.

### **The reasonable opinion of a qualified person**

The Commissioner is satisfied that the person holding the opinion is the qualified person for the purposes of the Act. In this case the qualified person was the Under Secretary of State. The Commissioner is also satisfied that the opinion of the Under Secretary of State that the information should not be released is a reasonable one in the circumstances.

### **The public interest test- Prejudice to the effective conduct of public affairs**

Section 36 is a qualified exemption. This means that for information to be exempt from disclosure, the public interest in withholding it must outweigh the public interest in disclosing it.

The MOD believes disclosure of an unredacted copy of the Directory could disrupt its ability to offer an effective service. It argues that disclosure would allow DESO to be targeted by protest groups who opposed its activities. Allowing the public access to direct dial telephone numbers and e-mail addresses would allow those opposed to DESO's activities to try to block telephone lines and send spam e-mail or messages containing viruses or other malicious software. Staff time would also be wasted in having to redirect and/ or respond to telephone calls / e-mails. This would be an inefficient use of public resources. It argued that the public can already contact DESO through its main switchboard and its Public Enquiry Unit. It argues that in withholding the information it is acting proportionately as an employer with a duty of care to its employees.

The complainant has pointed out that Army, Navy and Air Force Service lists are published with no evidence of adverse effect. The published service lists are complete lists of all officers who are currently serving or who previously served in the Armed Forces. It is therefore illogical for the MOD to withhold the names of DESO staff when details of comparable staff in the military services are freely published. The Commissioner asked the MOD about this. It explained that it is a condition of service for the grant of commissions in the Armed Forces to be notified in the London Gazette, and for subsequent changes in rank to be similarly confirmed. However, these lists do not give the place of service or provide any contact details. It concedes

that officers employed by DESO will be in the relevant service list but the public would not be able to associate any of the officers mentioned in the list with DESO.

Public interest arguments in favour of disclosure are:

1. There should be as much transparency as possible between defence companies and the MOD, especially as such companies may receive substantial sums of public expenditure as contractors. Disclosure of the DESO Directory would guard against the risks of inappropriate closeness between such companies and the MOD, which in extreme cases could lead to improper conduct or even to allegations of bribery and corruption. Movement of officials from the MOD to jobs within the arms industry (or vice-versa) could lead to government arms export policy and wider military or foreign policy being unduly skewed in favour of arms companies. Disclosure of the information would make movement of people more visible and help to ensure there is no improper conduct by officials. Putting it another way, secrecy about the identity of officials may raise suspicions (however ill-founded) about their activities.
2. It would allow for a better understanding of the MOD, its involvement in overseas projects and its relationship with the arms industry.
3. It would further the accountability and transparency of public officials by allowing the public to understand what professional responsibilities they have.
4. It could improve public confidence in the integrity of DESO officials.
5. It would make DESO staff more accessible to the public, allowing them to contact the relevant officials about matters that concern them.

The MOD has responded by stating that:

1. The public interest in transparency and openness is already satisfied by the release of a redacted copy of the Directory. This gives public visibility to the organisation and the level of staff effort concentrated in certain regions and projects. Transparency has also been addressed through the availability of a website which allows any member of the public to contact a central point in DESO.
2. It also believes it has satisfied the public interest in openness by publishing the names and contact details of senior staff in public facing roles and by the publication of a more extensive list of contact details in the Civil Service Yearbook.
3. There are already stringent rules governing the conduct and behaviour of staff whose roles bring them into contact with the commercial world. It also argues that even if the view at point 1 above is accepted, the problem is more likely to arise in

connection with senior staff whose names are already released. DESO already has a central switchboard and public enquiry unit which it believes satisfies the need for public accessibility. The work of DESO does not in any event require direct public access to individual members of DESO staff.

4. It is in the public interest to ensure the work of DESO can be conducted effectively and without unwarranted disruption or delay. Disclosure would adversely affect its ability to operate effectively.
5. It does not therefore accept that the publishing of names and contact details to any greater degree than already occurs would be in the public interest. The arrangements already in place ensure probity and public accessibility.

The Commissioner accepts there is a risk that disclosure of contact details could cause some disruption to DESO staff and therefore he is satisfied s.36 applies. However he considers the public interest arguments supporting the disclosure of the information are more persuasive than those articulated for withholding the information.

The Directory is distributed widely within the arms industry, including manufacturing, service and consultancy businesses. It is not protectively marked, e.g. as “classified”. This suggests that the MOD has not assessed the content of the DESO Directory as warranting special protection.

There is a strong public interest in improving the public’s understanding of the relationship between the arms industry and the MOD. The Commissioner also considers that public authority employees should have an expectation that they will be publicly accountable and be identified in relation to their official duties, depending on their seniority and the nature of their role. (The Directory, by its very nature, contains contact details of staff in public facing roles). He believes disclosure of the full DESO directory will deliver this accountability and will therefore be in the public interest.

**The Act provides a presumption of disclosure. There must be disclosure unless there is a stronger public interest in maintaining the exemption. The Commissioner has weighed all the competing public interest arguments, and has decided that in all the circumstances of this case, the public interest in maintaining the section 36 exemption is not strong enough to outweigh the public interest in disclosure.**

### **Section 38 (Health and Safety)**

The MOD also invoked s. 38(1) as grounds for withholding the information. This exempts information from disclosure if its disclosure

under this Act would, or would be likely to, endanger the physical or mental health of any individual, or endanger the safety of any individual.

It considered it was particularly appropriate to withhold the general locations of staff based in Saudi Arabia under s. 38(1). However, it considered it was also appropriate to withhold the names and contact details of DESO staff under s.38. It maintained however that the strength of its argument rested on s.36.

The Commissioners Awareness Guidance on the s.38 exemption states that for the exemption to apply there must be evidence of a significant risk of endangerment to the physical or mental health or the safety of any individual.

The information being withheld by the MOD are the names, contact details of DESO staff and additionally the general locations of staff based in Saudi Arabia.

The Commissioner therefore firstly has considered whether the release of this information would or would be likely to endanger the health and safety of DESO staff. If it would, then the exemption would be engaged and the Commissioner would then need to consider whether the public interest arguments are persuasive enough to justify disclosure of the information.

The MOD explained why it considers disclosing this information will endanger DESO employees. It believes that even disclosing the names of DESO employees could endanger them. This is because it considers it is relatively easy to link a name, particularly an unusual one, with a residential address with a minimum of supporting information using resources such as telephone directories, electoral rolls and credit registers. Websites can bring together a range of such resources and can be essentially used anonymously. This information could then potentially be used by anti- arms protesters to directly target, intimidate and harass staff thereby endangering their health and safety.

It believes that there is an appreciable risk of individual anti-arms protestors following the lead of animal rights activists and launching direct, violent attacks on individual DESO employees. The Commissioner is willing to accept that individuals opposed to the activities of DESO and the arms industry more generally, could use this information to assist their cause. However he is not persuaded that there is sufficient evidence to suggest that in this case the disclosure of names or contact details of DESO employees would or would be likely to endanger the physical or mental health or safety of any individual.

The MOD invoked s.38 (1) of the Act as grounds for withholding the locations of staff based in Saudi Arabia. It considers there is a very real danger to the health and safety of DESO staff in Saudi Arabia. In view



of this risk strict security measures already exist to protect vulnerable staff. Publishing the locations within that country of where staff are based would increase the risk to them. It explains that the risk of endangerment is in itself a strong public interest argument for withholding the general locations. It believes this outweighs any potential benefit, for example, in better understanding the scope of the project.

However, it has not been able to present any persuasive evidence to the Commissioner explaining how disclosing the general locations of its staff within Saudi Arabia will increase the risk of endangerment to DESO staff.

The Commissioner has considered the MOD's concern about the risk of endangerment to the health and safety of staff very carefully. He has examined the particular threat it considers staff may face by those opposed to DESO's activities. He has considered reports indicating more violent action is being adopted by anti arms protestors and has also considered the position of staff based in Saudi Arabia. However, he is not persuaded that there is sufficient evidence to indicate that releasing the names, contact details and general locations of staff will endanger them. As stated above in order to engage this exemption the Commissioner would expect there to be evidence of a significant risk of endangerment. He does not consider that the MOD has been able to persuade him that a significant risk of endangerment occurs and therefore he has decided s.38 is not engaged.

In reaching this conclusion the Commissioner has considered the extent of information contained in the Directory which is already in the public domain and the impact this has had on DESO employees. The MOD has not been able to satisfy the Commissioner that DESO staff have been endangered as a result of their identities and contact details being disclosed.

**The Commissioner has therefore decided that this exemption is not engaged. As his decision is that the exemption is not engaged, the public interest arguments are not explored further in this decision Notice.**

#### **Section 40 (personal data)**

Section 40 was applied by the MOD in its original refusal notice to the complainant. Upon review it stated that it considered the strength of its case for withholding the information rested primarily with s.36. It explained that it had not therefore analysed the position under s.40 but did not specifically confirm that it did not apply. As part of his investigation the Commissioner therefore sought clarification from the MOD about its application of s.40. The MOD claimed that s.40 would apply to all staff but maintained its view that the strength of its case rested on s.36. The Commissioner has therefore not considered the

application of s.40 any further, but is doubtful that disclosure of this Directory would contravene any of the data protection principles.

**6. Action Required**

In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires the MOD to provide the complainant with the information requested on 13 January 2005, apart from information which is exempt under s.21 of the Act.

**7. Right of Appeal**

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 19 day of April 2006

Signed: .....

Richard Thomas

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF