

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 July 2014

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

#### Decision (including any steps ordered)

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1. The complainant requested copies of five research papers produced by the Development, Concepts and Doctrine Centre in connection with the 2015 Strategic Defence and Security Review.
2. The Commissioner's decision is that the public authority was entitled to withhold the research papers on the basis of the exemption at section 35(1)(a) FOIA.
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

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4. On 23 November 2013, the complainant requested information from the public authority in the following terms:

*'Please provide copies of the following internal research publications produced by the Development, Concepts and Doctrine Centre (DCDC):*

- *Joint Operating Concept (JOC) Research Paper: Research and Experimentation (Nov 12)*
- *JOC Research Paper: Force Generation (Nov 12)*
- *JOC Research Paper: Command and Control (Oct 12)*
- *JOC Research Paper: Partnering and Understanding (Oct 12)*

- *JOC Research Paper: Mass and technological Edge – quality vs quantity (Sep 12).'*
5. The public authority provided its response on 12 December 2013. It informed the complainant that it considered the information requested exempt from disclosure on the basis of section 35(1)(a) FOIA.
  6. On 12 December 2013 the complainant requested an internal review.
  7. The public authority wrote to the complainant on 27 January 2014 with details of the outcome of the review. It upheld the original decision above.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 3 February 2014 to complain about the way his request for information had been handled. He challenged the decision to deny him the information requested.
9. The complainant explained that the public authority had previously disclosed a JOC research paper to him in September 2013 which was subsequently the focus of coverage in the national media to which he had personally contributed.<sup>1</sup> He argued that the media coverage contributed to a better public understanding of issues arising from the work of the public authority and the DCDC. Given the fact that the public authority had previously disclosed a JOC research paper to him under the FOIA, he argued that the decision not to disclose others was an ad hoc one lacking a legitimate grounding.
10. The scope of the Commissioner's investigation therefore was to consider whether the public authority was entitled to withhold the five JOC research papers (the disputed information) the complainant requested on 23 November 2013.

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<sup>1</sup> <http://www.theguardian.com/uk-news/2013/sep/26/mod-study-sell-wars-public>

## Reasons for decision

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### Section 35(1)(a)

11. Information held by a government department is exempt from disclosure on the basis of section 35(1)(a) if it relates to the formulation or development of government policy.

### The disputed information

12. The public authority explained that all of the research papers requested by the complainant are contributory papers to the Defence Joint Operating Concept (DJOC) which will, in turn, feed through to conclusions in the 2015 Strategic Defence and Security Review. The review represents the Government's policy for '*assuring the Nation's Defence and Security*' and the disputed information therefore relates to it.
13. The Commissioner understands that the Strategic Defence and Security Review was announced by the coalition government in May 2010 with the aim of updating the UK's security policy and managing the public authority's budget in line with the coalition government's commitment to reducing the deficit. The Commissioner is satisfied that the 2015 Strategic Defence and Security Review is government policy within the meaning in section 35(1)(a). He is therefore also satisfied that the research papers relate to the formulation or development of government policy because they contribute to the DJOC which feeds into the 2015 Strategic Defence and Security Review.
14. The Commissioner finds that the public authority was entitled to engage the exemption at section 35(1)(a).

### Public interest test

15. The exemption at section 35(1)(a) is subject to a public interest test. Therefore, the Commissioner must also consider whether in all the circumstances of the case, the public interest in maintaining the exemption at section 35(1)(a) outweighs the public interest in disclosing the disputed information.
16. As mentioned, the complainant considers that there is a public interest in a better understanding of issues arising from the work of the public authority and the DCDC. Given that the public authority has previously disclosed a JOC research paper to him, he also considers the decision to deny him the disputed information lacks a legitimate grounding.

17. The public authority acknowledged the general public interest in openness and transparency. Specifically in this case, the public interest in the disclosure of information concerning the direction of the use of the UK's Armed Forces. It also recognised the public interest in transparency in the way decisions are made regarding the future employment of UK Armed Forces.
18. The public authority further recognised the public interest in the ability to assess the quality of advice being given to Ministers concerning the future employment of the UK's Armed Forces.
19. It is also noted that there is a public interest in increasing public understanding and confidence in the work of the military.
20. The public authority however argued that there was a greater public interest in ensuring that the Secretary of State's decision-making is based on the best advice from the DCDC who, in the event of disclosure, would be deterred from providing full and frank advice in relation to the DJOC for fear that it could be disclosed prematurely. There is a risk that DCDC staff might come under pressure not to challenge established policies if their opinions/ideas were to come under external scrutiny prematurely.
21. There is also a public interest in preserving the safe space for DCDC staff to be able to formulate and develop ideas including those ideas which might not be well received by every member of the public. The Secretary of State would be denied a full range of options to consider if DCDC staff could not contribute freely and frankly to the Strategic Defence and Security Review.
22. The public authority explained that once the DJOC document has been published, most of the information in the underpinning concept papers would be available for disclosure. It was therefore unsurprising that certain JOC research papers had been disclosed in the past. However, considerations over their disclosure would have related to their intended purpose as well as their content. Therefore, the availability of the JOC research paper referred to by the complainant does not set a precedent for disclosure in this case nor does it override the strong public interest in withholding the disputed information for the reasons already explained.

*Balance of the public interest*

23. The Commissioner accepts that the disputed information would increase public understanding of the work that the DCDC is doing and also increase transparency in relation to some of the options considered by the government in the future employment of the UK's Armed Forces.

24. However, the Commissioner agrees with the public authority that in the circumstances, there is a strong public interest in DCDC staff being able to contribute freely and frankly to discussions regarding the future employment of the Armed Forces. It would not be in the public interest if the Secretary of State is unable to consider a full range of options in relation to the Strategic Defence and Security Review.
25. For the same reasons, the Commissioner also accepts that there is a strong public interest in preserving the safe space of DCDC staff to formulate and develop ideas without fear that they would be subjected to premature external scrutiny by members of the public, including the media.
26. The Commissioner accepts that the disclosure of the paper referred to by the complainant is not in itself sufficient to override the public interest in withholding the disputed information. However, as the public authority suggested, the public interest factors in favour of withholding the disputed information at the time of the complainant's request would have to be re-considered after the DJOC document is published.
27. The Commissioner therefore finds that in all the circumstances of the case, the public interest in maintaining the exemption at section 35(1)(a) outweighs the public interest in disclosing the disputed information.

## Right of appeal

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28. 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: 0300 1234504

Fax: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

29. 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.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**