

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 5 January 2015

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

#### Decision (including any steps ordered)

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1. The complainant submitted a request to the Ministry of Defence (MOD) seeking a copy of the information held by the MOD Police concerning its investigation into particular allegations raised by him. The MOD sought to withhold all of the requested information on the basis of sections 30(1)(a)(i) and 30(2)(a)(i) of FOIA and also sought to argue that parts of the information also attracted the exemptions contained at sections 40(2), 40(1), 43(2) and 21(1) of FOIA. The Commissioner has concluded that all of the withheld information is exempt from disclosure on the basis of section 30(1)(a)(i) and that the public interest favours maintaining the exemption.

#### Request and response

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2. The complainant submitted the following request to the MOD on 6 January 2014:

*'1. Details of the claimed report/reports from the military aviation authority MAA also reports in full*

*2. Details of the report/reports from the Royal Air Force*

*(These reports as are claimed in your email and support your decision that there is a minimal flight safety risk)*

*3. Full details of the investigation carried out by you into the case of fraud by misrepresentation with regards to the HUMs [Health and Safety Monitoring system] Programme'.*

3. The MOD contacted him on 13 January 2014 in order to clarify requests 1 and 2. The complainant provided the following clarification on the same day:

*'In response to you letter dated 13<sup>th</sup> January 2014 attached to your email seeking clarification with regards to my Freedom of Information Request (F.I.O) concerning the investigation carried out by DC [name redacted].*

*As I understand it the confusion is with regards to items 1 & 2 Details of reports from the MAA and RAF. Let me clarify: DC [name redacted] undertook an investigation with regards to a case of fraud regarding the handling of information regarding the Seaking Safety Case as Part of that he undertook to look into the issue of Aircraft Safety. He has subsequently claimed in an email to me that after making enquiries with both the Military Aviation Authority (MAA) and the Royal Air Force that the risk is minimal and DOES NOT impair (his highlights) on aircraft safety. It is the reports and information the he has used from both parties that I have requested.'*

4. The MOD provided a substantive response on 21 February 2014 and explained that it considered the withheld information to be exempt from disclosure on the basis of sections 30(2) (investigations) and 40(2) (personal data) of FOIA.
5. The complainant exchanged further correspondence with the MOD about this response culminating in him submitting a request for an internal review on 18 March 2014, albeit that this was sent to an invalid email address.
6. Once the MOD was made aware of his email of 18 March, an internal review was undertaken and the complainant was informed of the outcome of this on 13 August 2014. The review concluded that the requested information was exempt from disclosure on the basis of sections 30(1)(a)(i) and 30(2)(a)(i) of FOIA. The MOD also explained that some of the information was exempt from disclosure on the basis of the following sections of FOIA: 40(2), 40(1) and 21(1) (information reasonably accessible to the requestor).

## Scope of the case

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7. The complainant contacted the Commissioner on 20 August 2014 to complain about the MOD's decision to withhold the information he had requested.
8. The Commissioner has attached a schedule to this notice which details the information which falls within the scope of this request along with the exemptions which the MOD has sought to rely on to withhold each piece of information. In addition to the exemptions cited in its correspondence with the complainant, the MOD has also applied section 43(2) to document 1b.
9. During the course of his investigation the Commissioner established that the documents 2, 3 and 8 were already in the complainant's possession. Furthermore that document 2a simply consisted of a Ministry of Defence Police (MDP) form which listed information the complainant had provided to it. Therefore the Commissioner agreed with the complainant that he would exclude from his investigation whether such information should have been disclosed in response to his request.
10. The Commissioner has therefore determined whether any of the remaining documents ('the withheld information') are exempt from disclosure on the basis of any of the exemptions cited by the MOD.

## Reasons for decision

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### Section 30 - investigations

11. Section 30(1) is class based; that is to say if information falls within the scope of any of the classes described in section 30(1) then it is exempt. There is no need for a public authority to demonstrate any level of prejudice arising from disclosure in order for the exemption to be engaged.
12. The MOD argued that all of the withheld information was exempt from disclosure on the basis of section 30(1)(a)(i). This states that:

*'30 -(1) Information held by a public authority is exempt information if it has at any time been held by the authority for the purpose of -*

*(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained -*

*(i) whether a person should be charged with an offence'*

13. The MOD confirmed that the Ministry of Defence Police (MDP) has statutory police powers and the information was held by the MOD for the purposes of a criminal investigation which it is empowered to conduct. More specifically it explained that the withheld information concerned an investigation conducted by the MDP into allegations – made by the complainant – that certain aspects of testing on the Health and Safety Monitoring System (HUMS) wiring was not carried out prior to installation on the Sea King Mk3 helicopters. The MOD noted that this information consisted mainly of witness statements, correspondence with the Military Aviation Authority (MAA) and the MDP Enquiry Officer's case notes.
14. Having considered the MOD's submissions, along with the withheld information itself, the Commissioner is content that it falls within the scope of the exemption provided by section 30(1)(a)(i) of FOIA.
15. However, section 30(1) is a qualified exemption and therefore the Commissioner must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest in maintaining the exemption**

16. The MOD explained that it had taken into account the following factors in determining that the public interest favoured maintaining the exemption:
  - It argued that disclosure of the withheld information could hinder any future investigation should further information come to light.
  - Revealing information given in confidence to investigating officers would act as a deterrent to others who might then become less willing to provide information that may assist the police in other cases.
  - Information acquired from informants or witnesses during police investigations should also be protected to ensure that individuals are not deterred, either now or in the future, from making statements for fear that they be publicised.
  - Additionally where a decision has been taken – as in this case – not to bring criminal charges – disclosure of information gathered during the course of the investigation may be unfair to those who came under investigation but were not prosecuted.
17. Furthermore, the MOD explained that it had considered the stage of the particular investigation, whether any of the information had been

released into the public domain, the significance of the information in the scope of the request and the age of the information. It noted that on 6 January 2014 the MDP advised the complainant that no credible evidence had been found of any criminality taking place and as a result the enquiry would be closed. However, although the complainant submitted the request on the same day, the MOD explained that the investigation had yet to be formally concluded as the MDP report had not been completed.

18. The MOD also argued that the specific details of the MDP investigation were not in the public domain, albeit that a response to a Parliamentary Question in September 2013 notes that the allegations raised by the complainant were apparently the subject of a police investigation.

### **Public interest in disclosure of the information**

19. The MOD acknowledged that one of the underlying principles of FOIA is the need for public authorities to be more open and transparent in order to inform the general public. It accepted that disclosure could provide the public with an insight into the work of the police service and enable the public to have a better understanding and greater confidence in the policing role of the MDP. The MOD also accepted that disclosure would reassure the public that the MDP had properly investigated allegations of criminality.
20. For his part the complainant disputed the MOD's claim that release of the information would hinder future investigations into this matter given that it had stated that the case is closed and it will not take any further action in relation to this matter.
21. In any event, the complainant argued that disclosing the withheld information may well encourage other witnesses to come forward, something which had occurred in a number of other high profile cases.
22. The complainant also disputed the suggestion that disclosure would deter witnesses from coming forward in other investigations. He argued that if a witness provides a true statement then he has no fear of scrutiny. However, if any such statement provided is false then disclosure of any such statement is in the public interest to allow the individual who made the allegations to be challenged about such a statement.
23. Similarly, the complainant disputed the suggestion that disclosing information would make individuals less willing to approach the police; he suggested that if you have told the truth what would you have to fear from the information being disclosed?

24. The complainant argued that the MOD had failed to take into account the significant public interest in matters associated with flight safety being dealt with in an open and transparent manner. More specifically, the complainant argued that the MOD had failed to take into account the impact on him after he raised these particular safety concerns - being dismissed from his job and being branded untrustworthy.
25. The complainant also explained that he had concerns with the manner in which the MDP conducted its investigation into this matter, i.e. whether it was fair and open and in particular the way in which the facts had been presented by the MDP to the RAF and MAA.
26. More broadly, and this aligned with his reasoning to raise the safety concerns in the first place, the complainant had serious concerns regarding the MOD's actions in dealing with these safety issues, not least due to a lack of transparency on its part.

### **Balance of the public interest arguments**

27. When considering the public interest in maintaining the exemptions provided by section 30(1), the Commissioner takes the view that consideration should only be given to protecting what is inherent in those exemptions – the effective investigation and prosecution of crime - which requires the following:
  - the protection of witnesses and informants to ensure people are not deterred from making statements or reports by fear they might be publicised;
  - the maintenance of independence of the judicial and prosecution processes;
  - the preservation of the criminal court as the sole forum for determining guilt;
  - allowing the investigating body space to determine the course of an investigation; and
  - protecting information that deals with specialist techniques.
28. Therefore when weighing up the public interest in relation to the exemption the following factors (amongst others) should be considered:
  - the stage or stages reached in any particular investigation or criminal proceedings;
  - whether and to what extent the information has already been released into the public domain;
  - the significance or sensitivity of the information; and
  - the age of the information.

29. The Commissioner has considered the weight that should be attributed to the public interest in maintaining the exemption. Firstly, the Commissioner does not accept that the MOD's argument that disclosure may be unfair to those who may have come under investigation is a relevant factor in balancing the public interest test. This is because it is not a factor which impacts on the effective investigation and prosecution of offences.
30. Furthermore, in terms of the stage of the investigation, the Commissioner recognises that as the MOD has noted, at the time of the request the MDP investigation had not yet been formally closed. However, it is clear that the investigation had reached a final conclusion in all but name given that the complainant was informed by the MDP, prior to submitting his request, that no credible evidence had been found of any criminality and as a result the enquiry would be closed. Therefore, in the Commissioner's opinion although the investigation may technically still have been open at the time of the request, the substantive investigation itself had clearly been completed.
31. Moreover, in the Commissioner's opinion the likelihood of this investigation being reopened would appear to be somewhat remote given that the complainant was informed that the MDP was not the appropriate body to take forward such matters. Therefore the risk of disclosure undermining any future investigation into these particular allegations appears unlikely.
32. Nevertheless, the Commissioner believes that the nature of withheld information – which essentially comprises witness statements, discussions with third parties and the investigating officer's notes – represents significant, and indeed sensitive, information. This is because the information forms the main body of the MDP's investigation file into these allegations (the remaining information comprising the investigation file falls out of the scope of the Commissioner's investigation for the reasons discussed above).
33. Furthermore, in the Commissioner's opinion it is logical for the MOD to argue that disclosure of such information risks having an adverse effect on the willingness of individuals to assist the MDP, and indeed other police forces, with other investigations in the future. In particular, disclosure of witness statements is, in the Commissioner's opinion, very likely to have a deleterious impact on the police's ability to secure the co-operation of individuals in the future. The Commissioner is not persuaded by the complainant's suggestion that witnesses and others who co-operate with the police would have nothing to fear if the information they supplied was truthful and accurate. The Commissioner's findings in this respect align with the position he has adopted in previous cases where section 30 has been cited.

Furthermore, in the particular circumstances of this case in the Commissioner's opinion this factor attracts particular and notable weight given that the information dates from only a number of months before the request.

34. With regard to the arguments in favour of disclosure, the Commissioner recognises that the issue at the centre of this request – namely aircraft safety – is clearly one of significant and broad public interest, and not one that is simply a concern or private interest of the complainant. Disclosure of the withheld information would provide the public with a clear understanding not only of the original safety issues that were originally raised by the complainant and indeed an indication as to how they were addressed, but also an insight into the MDP's investigation into criminal allegations made by the complainant. Therefore, more broadly, disclosure of the information could provide the public with some insight into how individuals – such as the complainant – are treated when they raise concerns such as these with their employer. That said, having reviewed the withheld information the Commissioner does not believe that its contents could be used to support the suggestion that the MDP investigation was unfair or lacked credibility.
35. In conclusion the Commissioner has decided that the balance of the public interest narrowly favours maintaining the exemption. The Commissioner has reached this decision given the recent age of the information and the significant risk he believes that its disclosure would have on the future provision of information to the police. In reaching this decision the Commissioner wishes to emphasise that he is in no way dismissing the significance of the issues raised by the complainant. Simply that in his opinion the benefits that would be gained by disclosure of this information in terms of providing greater transparency and openness in relation to this particular investigation are outweighed by the broader detrimental impact on future police investigations in general.
36. In light of his findings in relation to the MOD's application of section 30(1)(a)(i) the Commissioner has not considered its reliance on any of the other exemptions.



## Right of appeal

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37. 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 123 4504

Fax: 0870 739 5836

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

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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**

**Annex**

| <b>Item</b> | <b>Description of item</b>        | <b>Exemptions applied by MOD</b><br><br><b><u>Sections 30(1)(a)(i) and 30(2)(a)(i) are applied to all information in scope of the request.</u></b> | <b>Commissioner's decision</b>  |
|-------------|-----------------------------------|--|---|
| 1           | Witness statement of third party. | Section 40(2) to some information and section 40(1) to some information.   | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |
| 1a          | Property Record Form.             | Section 40(2) to some information.   | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |
| 1b          | Contract.                         | Section 43(2) and section 40(2) to some information.   | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |

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| 1c | Defence Standard 05/91 Issue 2.          | Section 21. <sup>1</sup>  | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |
| 2  | Witness statement of complainant.        | Exempt in entirety under section 40(1) with some information also exempt under section 40(2).   | Out of scope of investigation.  |
| 2a | Property Record.                         | Information listed on the record was provided by complainant so he should have a copy of it.    | Out of scope of investigation.  |
| 3  | Report – Executive Summary Final Report. | Extracts of the report provided to the MOD by the complainant so he should have a copy of this. | Out of scope of investigation.  |
| 4  | Witness statement of third party.        | Some information section 40(2) and some information section 40(1).                              | Exempt under section 30(1)(a)(i) and public interest favours maintaining the            |

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<sup>1</sup> The MOD has explained that this document is in the public domain at <http://www.dstan.mod.uk> and that on registering on this website a member of the public can download this document free of charge. The Commissioner has attempted to access this document via this route but has not been able to do so. This because a member of the public (as opposed to member of MOD staff) is only provided with limited access to the site in question which does not extend accessing the document in question. Therefore the Commissioner does not believe that this information is reasonably accessible to the requestor.

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|   |  |   | exemption.  |
| 5 | Fax coversheet.  | Some information section 40(2).   | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |
| 6 | Emails between Ministry of Defence Police (MDP) and RAF.                 | Some information section 40(2) and some information section 40(1).  | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |
| 7 | Witness statement of third party.  | Some information section 40(2) and some information section 40(1).  | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |
| 8 | Emails between complainant and MDP with copies of Parliamentary letters. | The complainant already holds this information.<br><br>Under FOIA, section 40(2) applies to some information and section 40(1) to some information. | Out of scope of investigation.  |
| 9 | Emails between MDP and third party.                                      | Some information section 40(2) and some information section 40(1).  | Exempt under section 30(1)(a)(i) and public interest favours maintaining the            |

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|     |                                     |  | exemption.  |
| 10  | Emails between MDP and third party. | Some information section 40(2).                                    | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |
| 11  | Emails between MDP and MAA.         | Some information 40(2) and some information 40(1).                 | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |
| 12  | Emails between MDP and third party. | Some information section 40(2).                                    | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |
| 12a | Draft witness statement.            | Some information 40(2) and some information 40(1).                 | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |
| 13  | Emails between MDP and third party. | Some information section 40(2) and some information section 40(1). | Exempt under section 30(1)(a)(i) and public interest favours maintaining the            |

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|    |                                     |  | exemption.  |
| 14 | Emails between MDP and third party. | Some information section 40(2) and some information section 40(1). | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |
| 15 | Officer's Case Book.                | Some information section 40(2) and some information section 40(1). | Exempt under section 30(1)(a)(i) and public interest favours maintaining the exemption. |