

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 14 June 2018

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF  
[info.access@homeoffice.gsi.gov.uk](mailto:info.access@homeoffice.gsi.gov.uk)

#### Decision (including any steps ordered)

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1. The complainant requested from the Home Office information on meetings attended by ministers at the Defence and Security Equipment International 2015. The Home Office withheld the information in its entirety citing the exemptions under Sections 21, 27, 35, 36, 40 and 43 of the FOIA.
2. The Commissioner's decision is that Home Office has successfully engaged Section 36(2)(b) to some of the requested information with the exception of the dates and locations of the meetings to which Section 21 was not engaged and the names and positions of those present to which Section 40(2) was not engaged. The Commissioner found that the Home Office did not hold any information regarding the length of the meetings.
3. The Commissioner has also decided that Home Office breached Section 10 of the FOIA by failing to respond to the complainant's request promptly or in any event within 20 working days.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the dates and locations of the meetings and the names and positions of those present.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply 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.

#### Request and response

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6. On 22 October 2015 the complainant wrote to the Home Office and requested information in the following terms:

*"I would like to request a list of meetings related to Defence & Security Equipment International (DSEI) 2015 that were attended by Home Office ministers.*

*I would like the request to cover meetings during the event itself and a period of a week either side of the event, i.e. from 7<sup>th</sup> to 25<sup>th</sup> September, inclusive. I do not need meetings which comprised only UK government personnel.*

*For each minister, please provide a list of their meetings/functions and include:*

*- the date, length and location of each meeting/function*

*- a list of all those present (with names and positions for politicians and senior officials, and positions for those to whom Section 40 exemptions are applied)*

*- the purpose of the meeting*

*Please provide the list in a machine readable format (such as a CSV file or spreadsheet) and please spell out any acronyms and abbreviations used.*

*I would also like to request any preparatory notes, agendas, action points or minutes relating to the meetings".*

7. The Home Office replied on 13 April 2016. It apologised for the delay and stated it was withholding the information under Section 35(1)(d) of the FOIA.
8. On the 10 June 2016 the complainant requested an internal review. He said he could not believe that basic outline information about the meetings of very senior politicians at the DSEI arms fair could be exempt. He added that other government departments had provided the information in response to similar requests.
9. Following an internal review the Home Office wrote to the complainant on 4 January 2017. It stated that it was upholding its original decision.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 3 April 2017 to complain about the way his request for information had been handled. In particular, he complained about the Home Office's delay in responding to his request and its decision to withhold the information he had requested in its entirety under the FOIA.
11. Given the Home Office's change of position as detailed in the Chronology below, the Commissioner has considered the following:
  - whether information is held regarding the length of meetings,
  - whether Section 21 applies to the dates and locations of the meetings,
  - whether Section 40(2) applies to the names and positions of those present
  - whether sections 36(2)(b)(i) and 36(2)(b)(ii) applies to the remaining requested information.

## **Chronology**

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12. On 10 July 2017 the Commissioner contacted the Home Office and requested a copy of the withheld information, any further arguments it wished to advance in respect of its decision under the FOIA and an explanation for the delays in responding to the complainant. The Commissioner also invited the Home Office to consider resolving the complaint informally by disclosing the withheld information (either in its entirety or with redactions).
13. The Home Office responded on 16 August 2017 and provided the Commissioner with a copy of the withheld information. Having reviewed the complaint and discussed it with the relevant areas within the Department, the Home Office stated that in addition to Section 35(1), which it believed applied to some of the information, it also wished to apply Section 36(2)(b), Section 27(1)(a), Section 40(2) and Section 43(2) of the FOIA. In further support of its position in relation to Sections 36 and 27, the Home Office referred to the Commissioner's

Decision Notices in the cases of [FS50659321](#)<sup>1</sup> and [FS50467452](#)<sup>2</sup> respectively.

14. In relation to the delays in the handling of the complainant's information and internal review requests, the Home Office stated that these were due to 'workloads with the case officers in question' which were then 'compounded by further delays with the clearance processes'. It accepted that the delays were 'unacceptable' and apologised to the Commissioner.
15. The Commissioner replied to the Home Office on 22 August 2017 and requested further clarification and arguments in relation to the recorded information held and the exemptions applied. She also pointed out that similar requests made by the complainant to other government departments had resulted in the requested information being disclosed (albeit with some redactions). The Commissioner notes that this information is in the public domain.<sup>3</sup> The identity of these departments was conveyed to the Home Office on 31 August 2018. They include the Department for International Trade<sup>4</sup>, the Department for Business,

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<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014503/fs50659321.pdf>

<sup>2</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2013/819674/fs\\_50467452.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2013/819674/fs_50467452.pdf)

<sup>3</sup> <https://www.caat.org.uk/resources/foi-responses/pdf/2017-05-09.dit-dso.foi-2015-20728-dso-meetings-at-dsei-2015.pdf>

<https://www.caat.org.uk/resources/foi-responses/pdf/2016-08-16.dit.foi-2015-23320-bis-ministers-meetings-at-dsei-2015.pdf>

<https://www.caat.org.uk/resources/foi-responses/pdf/2016-02-16.fco.foi-1021-15-fco-ministers-meetings-at-dsei-2015.pdf>

<https://www.caat.org.uk/resources/foi-responses/pdf/2017-05-09.mod.foi-2015-09266-mod-ministers-meetings-at-dsei-2015.pdf>

<sup>4</sup> <https://www.caat.org.uk/resources/foi-responses/pdf/2017-05-09.dit-dso.foi-2015-20728-dso-meetings-at-dsei-2015.pdf>

Innovation and Skills<sup>5</sup>, the Foreign and Commonwealth Office<sup>6</sup> and the Ministry of Defence<sup>7</sup>.

16. The Home Office responded on 5 September 2017. It stated it intended to maintain its position that the entirety of the requested information was exempt from disclosure under the FOIA. The Home Office expressed its belief that the information was covered in its entirety by Section 36(2)(b)(i) and (ii) or Section 35(1)(a) in the alternative. It added that Section 27 related to all the discussions in connection with the other countries mentioned; Section 40(2), applied to the names of the officials and suppliers mentioned in the information and Section 43(2) applied to the sections that revealed the private organisations commercial, or future, commercial activity. Although not specifically mentioned, the Home Office alluded to the application of Section 21 in respect of the information it said was already in the public domain, namely the date and location of the meetings.

## **Reasons for decision**

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### **Information held**

17. With the exception of the length of the meetings, the Home Office has stated it holds all of the requested information. It has pointed out that the meetings were fairly informal and the length was not recorded. The Commissioner has seen the notes of the meetings and is satisfied that no reference is made to their duration. She therefore accepts, on a balance of probabilities, that this information is not held by the Home Office.

### **Section 21(1) of the FOIA – Information accessible to applicant by other means**

18. Section 21(1) states that information 'which is reasonably accessible to the applicant otherwise than under Section 1 is exempt information'.

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<sup>5</sup> <https://www.caat.org.uk/resources/foi-responses/pdf/2016-08-16.dit.foi-2015-23320-bis-ministers-meetings-at-dsei-2015.pdf>

<sup>6</sup> <https://www.caat.org.uk/resources/foi-responses/pdf/2016-02-16.fco.foi-1021-15-fco-ministers-meetings-at-dsei-2015.pdf>

<sup>7</sup> <https://www.caat.org.uk/resources/foi-responses/pdf/2017-05-09.mod.foi-2015-09266-mod-ministers-meetings-at-dsei-2015.pdf>

19. The Home Office has stated that the date and location of the Defence & Security Equipment International (DSEI) Exhibition 2015 is in the public domain. The Commissioner accepts it is publicly known that the DSEI 2015 was held at ExCel in London between 15 and 18 September 2015<sup>8</sup>. However, this information does not reveal the specific location or locations or the date or dates of the actual meetings. Furthermore, the Home Office has not indicated where this specific information may be accessed.
20. The Commissioner finds that Section 21(1) of the FOIA is not engaged in respect of the location and dates of the meetings and as the Home Office has not directed the complainant to where the specific information, as per the terms of the request can be located. Therefore, she requires the Home Office to disclose this information.

### **Section 40(2) of the FOIA – Third party personal data**

21. The Home Office has stated that the names and positions of those attending the DSEI meetings are exempt from disclosure under Section 40(2) of the FOIA.
22. The Home Office has argued that these individuals would not have had the expectation that information identifying them would be disclosed. Such information was only intended for internal Home Office consumption.
23. The Home Office believes that disclosure of this information would breach the first Data Protection Act 1998 (DPA) as it would not be fair.

### **Personal data**

24. Section 40(2) of the FOIA provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in Section 40(3)(a)(ii) is satisfied.
25. One of the conditions, listed in Section 40(3)(a)(ii), is where the disclosure of the information to any member of the public would contravene any of the principles of the DPA.

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<sup>8</sup> <http://www.exhibitionworld.co.uk/2015/09/22/defence-and-security-equipment-international-2015/>

26. The Commissioner has first considered whether the withheld information would constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows;

*“personal data” means data which relate to a living individual who can be identified –*

- (a) from those data, or*
  - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual’.*
27. The Commissioner has reviewed the withheld information in this case and is satisfied that the names and positions of those attending the DSEI meetings is their personal data as it clearly identifies them.
28. The Home Office has argued that disclosure of such information would breach the first data protection principle which states that:

*‘Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

- (a) at least one of the conditions in Schedule 2 is met, and*
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.’*
29. The relevant conditions in the context of a FOIA request are the first and sixth. These can be summarised as follows;
- The data subject has given consent to the processing (condition 1)
  - The processing is necessary for the purpose of the legitimate interests of the data controller or a third party (unless the processing is unwarranted because it would prejudice the rights and freedoms or legitimate interests of the data subject (condition 6)

## **Fairness**

30. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:

- what the public authority may have told them about what would happen to their personal data;
  - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights (ECHR);
  - the nature or content of the information itself;
  - whether the individuals concerned are senior employees with public facing roles or junior staff in non-public facing roles
  - the circumstances in which the personal data was obtained;
  - any particular circumstances of the case, eg established custom or practice within the public authority; and
  - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
    - whether information of the nature requested is already in the public domain;
    - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
31. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure to the public.
32. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake, as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.

### **Reasonable expectations**

33. In the Commissioner's view, a key issue to consider in assessing fairness is whether the individual concerned has a reasonable expectation that their information will not be disclosed. These expectations can be



shaped by factors such as an individual's general expectation of privacy and also the purpose for which they provided their personal data.

34. In its submission to the Commissioner the Home Office has stated that the individuals which attended the DSEI meetings would have a reasonable expectation that their identity would not be disclosed.

### **Seniority of employees and whether employed in public facing roles**

35. The Commissioner has viewed the withheld information and notes that the individuals concerned are all senior employees with public facing roles and public profiles.
36. The Commissioner also notes that employees with similar seniority and public facing roles have been disclosed by the Department for International Trade<sup>9</sup>, the Department for Business, Innovation and Skills<sup>10</sup>, the Foreign and Commonwealth Office<sup>11</sup> and the Ministry of Defence<sup>12</sup> in response to a very similar FOIA request made by the complainant.
37. The Commissioner recognises that information about an individual's private life will deserve more protection than information about them acting in an official or work capacity – their public life. She also acknowledges that the more senior a person is, the less likely it is that disclosing information about their public duties will be unwarranted or unfair.
38. The Commissioner's view is that as all the individuals concerned are senior employees with public facing roles and profiles engaged in business discussions with a government minister, they would have a reasonable expectation that their identity would be disclosed under the FOIA.

### **Consent**

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<sup>9</sup> <https://www.caat.org.uk/resources/foi-responses/pdf/2017-05-09.dit-dso.foi-2015-20728-dso-meetings-at-dsei-2015.pdf>

<sup>10</sup> <https://www.caat.org.uk/resources/foi-responses/pdf/2016-08-16.dit.foi-2015-23320-bis-ministers-meetings-at-dsei-2015.pdf>

<sup>11</sup> <https://www.caat.org.uk/resources/foi-responses/pdf/2016-02-16.fco.foi-1021-15-fco-ministers-meetings-at-dsei-2015.pdf>

<sup>12</sup> <https://www.caat.org.uk/resources/foi-responses/pdf/2017-05-09.mod.foi-2015-09266-mod-ministers-meetings-at-dsei-2015.pdf>

39. In its submission to the Commissioner the Home Office did not say whether it had specifically contacted any of the individuals concerned. However, it did state that it did not consider condition 1 in Schedule 2 of the DPA was met.

### **Consequences of disclosure**

40. The Home Office has not specified as to whether disclosure of the names and positions would cause any damage or distress to the individuals concerned.
41. The Commissioner is not persuaded that the individuals concerned, all of whom are senior employees with public facing roles, would suffer any damage or distress by disclosure of the requested information.

### **Legitimate interests in disclosure**

42. The Commissioner recognises there is an important legitimate interest in transparency in knowing the identity of senior employees from UK defence suppliers involved in discussions with the government regarding security exports to various countries.

### **Conclusion on the analysis of fairness**

43. The Commissioner has concluded that it would not be unfair to disclose the identity of the individuals involved in the various meetings. They were all senior employees with public facing roles and profiles engaged in business discussions with a government minister concerning security exports to various countries. They would therefore have a reasonable expectation that their identity might be disclosed under the FOIA in view of the legitimate interest in transparency and openness in this case.
44. As the Commissioner has concluded that disclosure would not be unfair, she has gone on to consider Schedule 2 of the DPA.

### **Condition 6 in Schedule 2 of the DPA**

45. There are six conditions in Schedule 2 but only Condition 1 (consent) and Condition 6 (legitimate interests) should be relevant to disclosure under the FOIA. The Commissioner considers that the relevant one in this case is condition 6.

46. Condition 6 in Schedule 2 of the DPA states;

*'The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject'.*

47. The Home Office has considered whether condition 6 of the DPA would be met in this case and has decided that it would not. It has stated to the Commissioner that it does not consider disclosure of the names of the individuals would be necessary for the purpose of any legitimate interest. Even if it was, it added that disclosure would not be fair and would constitute an unwarranted interference into the individuals' privacy.
48. In relation to the issue of necessity, the Commissioner has considered whether there are any alternative means of meeting the identified legitimate interests and the extent to which those alternative regimes meet those legitimate interests. However, in this case the Commissioner is not satisfied that there are other means of meeting the legitimate interests of accountability and transparency and the Home Office has not submitted any alternative means for consideration.
49. The Commissioner has already concluded, when considering fairness above, that there would not be any unnecessary harm or distress caused to the data subjects.
50. She has also found that disclosure would be necessary to meet the legitimate public interest. Accordingly, she has concluded that Condition 6 of Schedule 2 of the DPA is met and therefore Section 40(2) of the FOIA is not engaged. Therefore the requested information referred to in the above paragraphs should be disclosed.

**Section 36(2)(b) of the FOIA – Inhibition of free and frank provision of advice and free and frank exchange of views**

51. The Home Office has argued that the remaining information falling within the scope of this request is exempt from disclosure on the basis of Sections 36(2)(b)(i) and 36(2)(b)(ii) of FOIA. These sections state that:

*'(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act..*

*(b) would, or would be likely to, inhibit-*

*(i) the free and frank provision of advice, or*

*(ii) the free and frank exchange of views for the purposes of deliberation, or*

52. In the Commissioner's view public authorities have the right to raise section 36 exemptions for the first time at internal review or during her investigation, albeit in each case they are still required to obtain the reasonable opinion of the qualified person. Therefore, the Commissioner does not consider that the Home Office's delays in citing Section 36, and

thus its delays in seeking an opinion from the qualified person undermines its application on Section 36 to the complainant's request of 22 October 2015.

53. For the exemption to be engaged the proper qualified person for the public authority must have given their opinion on the application of the exemption. With regard to the process of seeking this opinion, the Home Office sought the opinion of the qualified person (Ben Wallace, MP and Minister of State for Security) on 4 August 2017. Mr Wallace gave his opinion on 11 August 2017. The Home Office has provided the Commissioner with a copy of the submission submitted to the qualified person and his response.
54. The Commissioner is satisfied that Home Office has obtained the opinion of the proper qualified person and so this element of the exemption is met.
55. In order to determine whether the exemption is engaged the Commissioner must then go on to consider whether the opinion was reasonable with regard to the following:
  - whether the prejudice claimed relates to the specific subsection of section 36(2) that the Home Office is relying upon;
  - the nature of the information and the timing of the request; and
  - the qualified person's knowledge of or involvement in the issue.
56. The Commissioner has issued guidance on Section 36 of the FOIA. With regard to what can be considered a 'reasonable opinion' it states the following:

*"The most relevant definition of 'reasonable' in the Shorter Oxford English Dictionary is 'In accordance with reason; not irrational or absurd'. If the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable."*
57. It is important to note that when considering whether Section 36 is engaged the Commissioner is making a decision not on whether she agrees with the opinion of the qualified person, but whether it was reasonable for him or her to reach that opinion.
58. Having reviewed all of the information placed before the qualified person the Commissioner is satisfied that the information included the relevant arguments. The qualified person was provided with a detailed submission outlining the possible consequences of disclosure as well as

the counter arguments in favour of disclosure. The qualified person had access to the withheld information. In light of this the Commissioner is satisfied that the qualified person was provided with sufficient information to allow him to arrive at a reasonable opinion on the application of the exemption.

59. The qualified opinion states that Sections 36(2)(b)(i) and 36(2)(b)(ii) are engaged. This is on the basis that disclosure would inhibit the free and frank provision of advice and the free and frank exchange of views. The opinion goes on to state that discussions of Ministers with key stakeholders and suppliers must be free and frank if they are to be of value. This is integral to engagement and good Government relationships. Disclosure of the information would have an inhibiting effect, because suppliers would be reluctant to discuss issues freely if they believed that the information was likely to be released and would compromise the 'safe space' in which discussions take place.
60. The Home Office added that the 'chilling effect' argument in this case was 'convincing'. This was because disclosure would inhibit free and frank discussions with suppliers in the future and that the loss of frankness and candour would damage the quality of advice and deliberation and lead to poorer decision making. This was particularly so given that the conversations were very much ongoing.
61. In support of its decision to withhold the information the Home Office made reference to the Commissioner's Decision Notice FS50659321<sup>13</sup> concerning discussions between the Department for Transport (DfT) and Govia and Southern Rail. In this case the Commissioner upheld the DfT's application of Sections 36(2)(b)(i) and 36(2)(b)(ii) of the FOIA. The Home Office said this Decision Notice was a helpful precedent in the present case where frank discussions had taken place of the issues facing Southern Rail and the challenges it faced at that time. In her decision the Commissioner found it was reasonable to conclude that the train operator would be discouraged from entering into discussions with the DfT if it expected these would be disclosed at some stage in the future.
62. In its submissions to the Commissioner the Home Office stated that although a couple of years had passed since the DSEI 2015 Exhibition the withheld information remained sensitive. It pointed out that if the

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<sup>13</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2014503/fs50659321.pdf>

government routinely disclosed the views of others, including in the current case, those of stakeholders and contractors, they would be wary, reticent or circumscribed when providing advice or expressing views in the future. This in turn would lead to poorer decisions being made, which would not be in the public interest.

63. The Home Office's submissions to the Commissioner reiterated the arguments endorsed by the qualified person listed above in support of the application of Section 36(2) of the FOIA.
64. The Commissioner has reviewed the withheld information and is satisfied that it was reasonable for the qualified person to reach the view that disclosure would be likely to inhibit the free and frank provision of advice and the free and frank exchange of views. The Commissioner has found that the withheld information includes frank discussions between the Minister and various UK defence suppliers regarding security exports to various countries. For that reason, the Commissioner has concluded that the qualified person's opinion was a reasonable one and that therefore the Section 36(2)(b)(i) and (ii) exemptions are engaged.
65. As Section 36(2) of the FOIA is a qualified exemption, the Commissioner will now consider whether the public interest in maintaining it outweighs the public interest in disclosing the information.

### **Public interest arguments in favour of disclosure**

66. The Home Office recognises there is a public interest in openness and transparency in all aspects of Government and that there may be a particular public interest in relationships with UK defence suppliers and agreements with other countries.
67. The Home Office also recognises there is a public interest in disclosure to help the public's understanding of international exports and the transparency of discussions with UK defence suppliers to enhance the public's trust in decisions made.
68. The complainant has argued that there is an unquestionable public interest in an informed debate about UK arms and security industry exports. He pointed out that arms fairs, such as DSEI, see thousands of buyers and sellers from across the world arranging deals. The complainant expressed the belief that UK government ministers are in attendance to promote these events and issue invites to international delegations. He has also stated that given the destructive impacts of the arms trade, it is an area where UK politicians and officials should be subject to a meaningful level of transparency to allow an informed debate.

## **Public interest arguments in favour of maintaining the exemption**

69. The Home Office has argued that the disclosure of the requested information would inhibit the free and frank provision of advice and the exchange of views. The discussions of ministers with key stakeholders and suppliers must be free if they are to be of value. Discussions of this type are integral to good engagement and relationships with suppliers and governments. The Home Office expressed the belief that disclosure would have an inhibiting effect because suppliers would be reluctant to discuss issues freely if they believed the information would be released. Also, some recommendations would be withheld from these discussions if they could be seen as controversial or unconventional.
70. The Home Office has also argued that the ability of Ministers to communicate candidly is a crucial aspect of the safe space for effective bilateral discussions. Without the protection afforded by safe space, policy development and effective security co-operation would be markedly more difficult, both now and in the future.

## **Balance of the public interest**

71. The withheld information consists of a 'read out' or summary of the bilateral meetings.
72. The Commissioner has firstly considered the arguments in favour of disclosure and accepts there is a public interest in transparency in relation to discussions between the Government and UK defence suppliers.
73. The Commissioner also accepts there is public interest in relation to discussions and agreements made between UK defence suppliers and different countries and the government's interest, support and connection with these.
74. However, the Commissioner recognises the importance of government ministers being able to receive and provide free and frank advice and exchange free and frank views with its UK defence suppliers. Such discussions must be free and frank to be of value and are integral to good engagement and relationships with suppliers and other governments. The Commissioner accepts that disclosure of the requested information would have an inhibiting effect on these discussions as suppliers would be reluctant to discuss issues freely if they believed the content of these would be disclosed at some later date. The Commissioner also accepts that some recommendations would not be made in these discussions if they could be viewed as controversial or unconventional when disclosed.

75. The Commissioner recognises the safe space arguments raised by the Home Office when having bilateral discussions with UK defence suppliers in connection with potential sales to other countries.
76. The Commissioner considers that the public interests are finely balanced in this case. However, she finds, for the reasons listed above and considering the free and frank content of the withheld information and the importance/sensitivity of the issue that the public interest arguments in favour of maintaining the exemption under Section 36(2)(b)(i) and 36(2)(b)(ii) outweigh those in favour of disclosure.
77. As the Commissioner has upheld the Home Office's application of Section 36(2)(b) with the public interest balanced in favour of maintaining it she has not gone on to consider the other exemptions cited under Sections 27(1), 35(1), and 43(2) of the FOIA.

### **Section 10 of the FOIA– time for compliance**

78. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
79. Section 10(1) of the FOIA provides that a public authority must comply with Section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt. The complainant submitted his request on 22 October 2015 and the Home Office responded on 13 April 2016.
80. The Commissioner's decision is that the Home Office did not deal with the request for information in accordance with the FOIA. In this case it breached Sections 1(1) and 10(1) by failing to respond to the request within 20 working days.

### **Other matters**

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81. The Commissioner's guidance<sup>14</sup> covering internal reviews states that these should take no longer than 20 working days in most cases and 40 working days in exceptional circumstances. Further information on a
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<sup>14</sup> <https://ico.org.uk/media/for-organisations/documents/1624144/section-45-code-of-practice-request-handling-foia.pdf>



public authority's complaint's procedure is set out in the Section 45 of the FOIA Code of Practice.<sup>15</sup>

82. In the present case the complainant requested an internal review on 10 June 2016. The Home Office eventually responded with the internal review outcome on 4 January 2017. This was almost 7 months and 145 working days later.
83. The Commissioner would like to take this opportunity to remind the Home Office that good practice dictates internal reviews should be carried out promptly and ideally within 20 working days unless there are exceptional circumstances, in which case the long stop should be 40 working days.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/235286/0033.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/235286/0033.pdf)

## Right of appeal

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84. 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: 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)

85. 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.

86. 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 .....**

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