

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 March 2021

Public Authority: Department for International Trade
Address: King Charles Street
Whitehall
London
SW1A 2AH

Decision (including any steps ordered)

1. The complainant has requested information concerning a meeting on 29 October 2018 between the Secretary of State for International Trade and BAE Systems, to discuss the UK Government response to the killing of Jamal Khashoggi and BAE Saudi interests. Department for International Trade (DIT) provided the complainant with a heavily redacted copy of the minutes of the meeting, with some information withheld under sections 27(1)(international relations), 35(1)(a)(formulation or development of government policy), 43(2)(commercial interests) and 40(2)(third party personal data). DIT also withheld a briefing relating to the meeting in its entirety under section 36(2)(a) and (b)(prejudice to the effective conduct of public affairs).
2. During the early stage of the Commissioner's investigation DIT withdrew reliance on section 36 and provided the complainant with a redacted copy of the briefing document, with information withheld under sections 27(1), 43(2), 41(1)(information provided in confidence), 38(1)(b)(health and safety), 29(1)(a)(the economy) and 40(2). Further searches by DIT also identified an email chain and letter within the scope of the request and redacted copies of this information were disclosed to the complainant, with some information being exempt under sections 27(1), 29(1)(a), 43(2), 41(1), 40(2) and 26(1)(a)(defence). Further information was disclosed to the complainant in the later stage of the Commissioner's investigation but DIT maintained the section 27 and 29 exemptions to statistical information relating to Saudi Arabia.

3. The Commissioner's decision is that the statistical information relating to Saudi Arabia was correctly withheld by DIT under section 27(1).
4. However, DIT breached section 10(1) of the FOIA in that they failed to provide a valid response to the request within the statutory time frame of 20 working days.
5. The Commissioner does not require DIT to take any further steps in this matter.

Request and response

6. On 3 April 2019, the complainant wrote to DIT and requested information in the following terms:

"Transparency data. DIT ministers' meetings: October to December 2018" lists a meeting between Liam Fox and BAE Systems on 29.10.2018. The purpose of the meeting was "To discuss the UK Government response to the killing of Khashoggi and BAE Saudi interests".

Please send me all notes or minutes of the meeting, all preparatory documents, all communications relating to the meeting (before or after), and a list of those present'.

7. DIT belatedly responded the request on 4 June 2019. They confirmed that they held information within scope of the request and provided the complainant with a heavily redacted copy of the minutes of the meeting. DIT advised that the redacted information was exempt from disclosure under a number of FOIA exemptions, specifically, sections 27(1)(international relations), 35(1)(a)(formulation or development of government policy), 43(2)(commercial interests) and 40(2)(third party personal data).
8. DIT also informed the complainant that they held a briefing related to the meeting and that this document was exempt in its entirety under section 36(2)(a) and (b)(prejudice to the effective conduct of public affairs) of the Act.
9. The complainant requested an internal review on 29 July 2019, stating that he was doing so '*due to the extreme public interest around the situation*'. He contended that the '*government's response to the assassination of Jamal Khashoggi is fundamental to the confidence of the UK public in the integrity of its government and the credibility of government statements on human rights and the rule of law*'. The complainant stated that, '*the existence of a meeting between an international arms company, which is substantially dependent on sales*

of weaponry to the Saudi Arabian regime, and the then Secretary of State for International Trade, is bound to raise concerns when the purpose of the meeting is to discuss "BAE Saudi interests" in the light of the killing'.

10. DIT provided the complainant with their internal review on 2 September 2019. The review upheld the original decision and the exemptions applied.

Scope of the case

11. The complainant contacted the Commissioner on 29 November 2019 to complain about the way his request for information had been handled. In his complaint to the ICO the complainant contended that DIT '*should at least provide substantially more of the information requested, including that relating to "communications relating to the meeting" and the withheld briefing document*'. The complainant also noted that there was no evidence that DIT had considered one element of his request, specifically, '*communications relating to the meeting*'.
12. The Commissioner advised DIT that she considered that a meeting of this significance on such a serious matter would have been likely to have generated associated communications and it did not seem likely that the only recorded information held by DIT relating to the meeting was the minutes of the same and the briefing document. In submissions to the Commissioner, DIT apologised for not having considered that aspect of the request in their responses to the complainant's request and confirmed that they had carried out further checks and searches of their records accordingly. These searches had identified an email chain between DIT and BAE Systems, which included a letter sent as an attachment to DIT by BAE Systems prior to the meeting.
13. DIT subsequently provided the complainant with redacted copies of both the email chain and letter. The redacted information in these documents was withheld under sections 27(1)(international relations), 29(1)(a)(the economy), 43(2)(commercial interests), 41(1)(information provided in confidence), 26(1)(defence) and 40(2)(third party personal data).
14. In submissions to the Commissioner DIT also advised that they had reconsidered their decision to withhold in full the briefing for the meeting under section 36(2) and considered that a redacted copy of the briefing could be disclosed to the complainant, with sensitive information being withheld under sections 27(1), 29(1)(a), 43(2) and 40(2). Having withdrawn their reliance on section 36(2), DIT provided the complainant with a copy of the redacted briefing.

15. Having been provided with the additional information, the complainant queried three outstanding matters with the Commissioner. Firstly, the complainant noted that DIT had redacted the name of a special adviser when this name had been disclosed by DIT in a previous request. Secondly, the complainant queried why the redacted minutes provided by DIT did not include paragraph numbers 8 and 9, these having been referenced in one of the Commissioner's previous decisions (see below). Finally, the complainant questioned why defence export statistical information for Saudi Arabia had been withheld under sections 27(1) and 29(1). The complainant advised the Commissioner that he did not consider that there was a case for withholding broad statistical information on the volume of arms exports between the UK and Saudi Arabia.
16. Following further discussions with the Commissioner, DIT provided the complainant with a revised copy of the minutes of the meeting, including the name of the special adviser and numbered paragraphs 8 and 9. All of the information contained in these two final paragraphs of the minutes was redacted, except for the text in paragraph 9 reading '*and probably still were despite the Khashoggi incident*'. In their disclosure of 9 November 2020, DIT provided the complainant with an explanation as to why the aforementioned exemptions applied to the redacted information in paragraphs 8 and 9 of the minutes.
17. Importantly, DIT made clear to the complainant that **all** of the information relating to the assassination of Jamal Khashoggi contained in the briefing document had been disclosed, and that the additional redacted information did not contain any information relating to Mr Khashoggi.
18. DIT advised the Commissioner that they were maintaining their position in respect of the statistical information (i.e. sections 27(1) and 29(1)) contained in the briefing document and were in addition applying section 27(2)(confidential information obtained from a State other than the United Kingdom). DIT provided the Commissioner with supplemental submissions accordingly. Some of the information provided to the Commissioner by DIT in their supplemental submissions is sensitive and cannot therefore be disclosed in this notice. This information is contained in a Confidential Annex attached to this notice. For clarity, the relevant section of the briefing document reads as follows:

'Saudi Arabia remains the UK's largest defence export customer, accounting for [redacted] of UK Defence exports annually and [redacted] of all Defence exports to the Middle East. That amounted to over [redacted]'.
19. In the course of her investigation the Commissioner had sight of the withheld information and detailed submissions from both parties.

20. The scope of the Commissioner's investigation has been to determine whether the broad statistical information is exempt from disclosure under the exemptions applied by DIT.

Reasons for decision

Section 27 – International Relations

21. Section 27(1)(a)(c) and (d) of FOIA state that:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

- (a) Relations between the United Kingdom and any other State,*
- (c) The interests of the United Kingdom abroad, or*
- (d) The promotion or protection by the United Kingdom of its interests abroad'.*

22. The exemption focusses on whether UK interests abroad, or the international relations of the UK, would, or would be likely to be prejudiced through the disclosure of the information relating to the issue.

23. The Information Tribunal¹ has also acknowledged that the nature of the prejudice under section 27(1) is specific to international relations; in particular, the relations and interests of the UK rather than the interests of individual companies or enterprises. Nevertheless, the Commissioner also acknowledges that it may be appropriate for a public authority to apply the exemption where a large business's interests are inextricably linked to the wider relations and interests of the UK.

24. In order for a prejudice based exemption, such as section 27, to be engaged, the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to occur if the withheld information was disclosed, has to relate to the applicable interests within the relevant exemption;

¹ [Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 \(26 August 2008\)](#).

- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather, there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
25. The Commissioner has been guided by the view of the Information Tribunal which considered that, in the context of section 27(1), prejudice can be real and of substance *'if it makes relations more difficult or calls for a particular damage limitation response to contain or limit damage which would not otherwise have been necessary'*².
26. In submissions to the Commissioner, the complainant contended that there was no case for withholding broad statistical information on the volume of arms exports between the UK and Saudi Arabia, stating that it was *'extremely hard to see how the UK's relations with Saudi Arabia would be damaged'*. The complainant noted that the government *'already provides information on arms exports to Saudi Arabia based in the value of Single Individual Export Licences'* and stated that if that does not jeopardise UK-Saudi relations then it is hard to see why fuller information on the value of contracts would.
27. The complainant advised that BAE Systems provides information in its annual reports on the value of sales to and from Saudi Arabia, including specifically the KSA Ministry of Defence and Aviation. The complainant noted that BAE Systems are not legally required to release this level of detail, but that they provide it on a voluntary basis, without apparent harm to UK-Saudi relations.
28. The complainant informed the Commissioner that a number of other major arms exporters provide information on the value of contracts

² *Campaign Against the Arms Trade v The Information Commissioner and Ministry of Defence* (EA/2006/0040), paragraph 81.

secured by destination country, for Saudi Arabia and others. He highlighted that the USA provides figures on the value of Foreign Military Sales orders by country (as well as Notifications and Deliveries) and France provides figures on the value of arms export contracts by country (as well as deliveries). The complainant stated that there is no evidence that providing such information had harmed those countries relations with their major customers. Similarly, the complainant advised that most EU states provide information on deliveries by customer, as well as licences, and that the UK had not provided information on deliveries, but because of claims that this was due to the difficulty in collecting the data, rather than any concerns over the UK's relations with recipient states.

29. In submissions to the Commissioner, DIT advised that KSA would not expect information on the value of their annual imports of defence (and security) equipment and services from the UK to be released by the UK government. DIT stated that the KSA would consider the release of such information to be against their national interests.
30. DIT acknowledged the complainant's highlight of BAE Systems having released in annual reports the value of sales to and revenue from Saudi Arabia, in relation to exports to KSA. However, DIT advised the Commissioner that *'these are different figures and any comparison between government and industry figures is not a like for like comparison'*. Furthermore, DIT informed the Commissioner that *'KSA holds the UK Government, and the Government to Government contracts, to a higher account than it does private companies'*. DIT acknowledged that other countries publish information in relation to their defence industry sales in line with the requirements of their governments, and the Department publishes information relating to defence sales in line with the requirements of the UK government.
31. DIT informed the Commissioner that the UK government has signed an agreement with KSA and the release of additional information to that already in the public domain, would amount to the UK government publicly acting counter to this agreement. DIT advised that, *'if this information was made public, it would require the UK government to take significant remedial measures to try and re-establish trust and rebuild our relationship with KSA'*.
32. DIT explained that any breach of confidentiality would also result in a breach of trust, *'a critical component of business relationships in the Middle East, especially as the UK Government is seen as a partner of choice by KSA'*. The Department advised that such a breach of trust would impact on future cooperation and collaboration on shared defence and security objectives and would damage the wider bilateral relationship with Saudi Arabia, of which defence is a principle pillar. DIT

stated that this would have a negative effect on UK relations more broadly in the Gulf region.

33. DIT advised that the UK is committed to a long-term strategic partnership with KSA, supporting education, health, culture, trade and investment, security and defence and co-operation on international issues. The Department stated that their work is central to maintaining this relationship with Saudi Arabia and achieving the UK's aims in relation to this. DIT advised that the disclosure of the information would prejudice KSA willingness to engage with the UK on these wide-ranging issues.
34. Responding to the DIT arguments in submissions to the Commissioner the complainant noted that DIT accepted that other major suppliers to Saudi Arabia publish such statistical information, and that BAE, the dominant supplier of UK arms to Saudi Arabia, voluntarily publishes more detailed information about its contracts with Saudi Arabia than is requested here. The complainant noted that *'DIT itself supplies partial information on licences issued for arms exports to Saudi Arabia'*.
35. The complainant advised the Commissioner that they could not see how the arguments made by DIT were relevant *'to the three broad statistics under consideration'*. The complainant questioned whether the disclosure of the three statistics requested would actually breach the agreement between the UK government and KSA, stating that this *'seems extraordinarily unlikely'*. Even if it would, the complainant contended that this *'would raise wider questions and substantial concerns about the UK government commitments provided to another government in precedence to the UK public'*.
36. With regard to the first criterion of the three limb test described in paragraph 24 above, the Commissioner accepts that potential prejudice to the UK's relations with Saudi Arabia clearly relates to the interests which the exemption contained at section 27(1)(a) is designed to protect.
37. With regard to the second criterion, in light of the submissions provided by DIT (including sensitive information set out in the Confidential Annex), the Commissioner is satisfied that disclosure of the withheld information (which she has seen) clearly has the potential to harm the UK's relations with Saudi Arabia. The Commissioner acknowledges the entirely reasonable arguments which the complainant has made, and she appreciates that, in and of itself, the withheld information (broad statistical information) may not be considered to be particularly sensitive. However, it is clear from the submissions provided by DIT, that the *disclosure* of the withheld information, more than the actual information itself, is what has the potential to harm the UK's relations with Saudi Arabia, as such a disclosure would be considered to be a

breach of confidence. The Commissioner is therefore satisfied that there is a causal link between the potential disclosure of the withheld information and the interests which section 27(1)(a) is designed to protect.

38. The Commissioner is also satisfied that the resultant prejudice envisaged by DIT, which would be caused if the information were to be disclosed, can be correctly categorised as real and of substance. That is to say, subject to meeting the likelihood test at the third criterion, disclosure could result in making UK relations with Saudi Arabia more difficult and/or demand a particular diplomatic response.
39. In relation to the third criterion, the Commissioner accepts that in the circumstances of this case the higher threshold of likelihood is met and she agrees with DIT that disclosure of the information would prejudice the UK's relations with Saudi Arabia. The Commissioner's rationale for reaching this conclusion is based upon the information provided in DIT submissions (as mainly discussed in this notice but also contained in the Confidential Annex).

Public interest test

40. Section 27 is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest in favour of disclosing the information

41. In submissions to the Commissioner, DIT stated that they took their responsibility for meeting transparency and accountability obligations very seriously and to this end the Department publishes annual UK Defence and Security exports³, with statistical figures by region, rather than by country. DIT acknowledged the high level of public interest in this subject and noted that via their transparency publications the UK Government already places a considerable amount of information relating to defence sales into the public domain. This seeks to inform public debate on the subject.
42. When originally submitting his complaint to the Commissioner, the complainant provided her with very detailed and helpful submissions. However, those submissions focussed on the public interest attached to the information within scope of the request in respect of the UK

³ www.gov.uk/government/statistics/uk-defence-and-security-export-statistics-for-2019

Government's response to the killing of Jamal Khashoggi. The Commissioner notes that the horrific and barbaric killing of Mr Khashoggi and its circumstances prompted international outrage and was one of the most high profile and shocking diplomatic incidents for many years. Consequently, any information which would shed light on the response of the UK government to this atrocity would carry considerable weight in terms of the public interest in transparency and accountability.

43. However, as previously noted, during the Commissioner's investigation DIT disclosed all the previously withheld information which referred to the killing of Mr Khashoggi, thus meeting that public interest in disclosure.
44. In respect of the residual withheld information (broad statistical information) the complainant provided the Commissioner with further detailed and helpful submissions.
45. The complainant stated that there is acute public and parliamentary concern over UK government approval and promotion of arms sales to Saudi Arabia in relation *'both to the appalling repression within the country and devastating impact of the Saudi-led bombing in Yemen'*. The complainant contended that there is a pressing public interest in having a full picture of UK involvement, *'and yet the most basic piece of information about UK arms sales to Saudi Arabia, namely the total value of such sales, is not available to the public'*. The complainant stated that only the value of Single Individual Export Licences is disclosed, and suggested that these may represent a third or less of the total value of sales. The complainant contended that this *'represents a huge gap in transparency and in the information available to inform public debate'*.
46. The complainant stated that the war in Yemen has killed over 100,000 people as a direct result of military action, including more than 12,000 civilians. Two thirds of these deaths have been caused by air strikes by the Saudi-led coalition. In addition to the direct impact of the bombing, the complainant stated that many more lives have been lost through the humanitarian catastrophe caused by the war and the Saudi-led coalition's air and naval blockade of Yemen. The complainant advised that nearly 80% of the population remain in need of humanitarian aid and protection, and attacks on food production and infrastructure suggested the deliberate use of starvation as a weapon of war – which would also constitute a war crime.
47. The complainant noted that UK-made weapons are playing a central role in the war, with billions of pounds of weapons provided under government contracts between the UK and KSA, with BAE Systems as the prime contractor. The complainant contended that *'the continued arms sales, their extent and nature, are of critical public interest'*.

48. The complainant noted that there is extensive evidence of repeated violations of International Humanitarian Law in attacks by the Saudi-led coalition in Yemen. The complainant contended that air raids had *'frequently targeted civilian gatherings such as weddings and busy market places where there was no military target nearby'*. The complainant noted that UK-made equipment used in the conflict includes Typhoon and Tornado aircraft, manufactured by BAE Systems, and advised the Commissioner that over half of Saudi Arabia's combat aircraft used for the bombing raids are UK supplied.
49. The complainant advised that the UK government has confirmed that such aircraft have been deployed on combat missions in Yemen and has admitted the use of UK-made munitions, including Paveway bombs and Brimstone and Stormshadow missiles, in the conflict. Given the central role of UK weapons, the complainant contended that *'they will certainly have played a part in the hundreds of cases of attacks on civilian targets committed by the Saudi-led coalition in Yemen'*. The complainant advised that researchers on the ground had discovered weapons fragments that demonstrate the use of UK-made weapons in attacks on civilian targets.
50. The complainant noted that in September 2016, Parliament's International Development and Business, Innovation and Skills Committees had concluded that:
- 'Given the evidence we have heard and the volume of UK-manufactured arms exported to Saudi Arabia, it seems inevitable that any violations of international humanitarian and human rights law by the coalition have involved arms supplied from the UK. This constitutes a breach of our own export licensing criteria'⁴.*
51. The complainant stated that the supply of weapons and their continued delivery, even as evidence of violations of international and humanitarian law in the conflict have mounted, has been and continues to be, of enormous public and parliamentary concern, nationally and internationally. The complainant provided the Commissioner with several examples attesting to this diverse and widespread concern.
52. One of the most prominent of these examples was the decision of the Court of Appeal in June 2019 that it had been *'irrational and therefore unlawful'* for the Secretary of State for International Trade to have granted licences for the export of arms to Saudi Arabia for use in Yemen without making any assessment as to whether violations of International

⁴ <https://www.bbc.co.uk/news/uk-politics-37376317>

Humanitarian Law had taken place⁵. The complainant noted that the government was ordered to retake all decisions to export arms to KSA in accordance with the law and to stop issuing new arms export licences to KSA. The complainant advised that the resumption of arms sales by the government in July 2020 was widely criticised and is the subject of a further legal challenge.

53. The complainant stated that there are grave concerns about the anti-democratic nature of the UK-Saudi alliance and that in terms of the war in Yemen, the UK government *'has done all it can to maintain business as usual, whatever atrocities the Saudi-led coalition has committed'*. More broadly, the complainant contended that *'the power of Saudi Arabia as an arms buyer (in a buyers' market) has contributed to muting potential criticism of the Saudi regime's human rights abuses and disregard for the law and democratic values'*.
54. The complainant highlighted, as evidence of the damage the relationship causes, the UK government forcing the Serious Fraud Office (SFO) to drop its investigation into allegations of wide-spread corruption *'surrounding what at the time was the largest weapons contract ever entered into by the UK state'*. The complainant contended that *'this effective exemption from the rule of law for the Saudi regime is clearly counter to the accountability and transparency that is vital to the basic health of a democratic state'*.
55. The Commissioner notes that the complainant refers to the SFO's investigation into the Al Yamamah oil for arms contracts (entered into by Margaret Thatcher's government and KSA in 1985) and bribery allegations against BAE Systems. In December 2006 the SFO discontinued its investigation⁶. In April 2008, upon judicial review of the SFO's decision, the High Court ruled that the SFO had acted unlawfully by dropping the investigation and was strongly critical of the UK and Saudi governments and of how ministers had *'buckled'* to *'blatant threats'* that KSA cooperation in the fight against terror would end unless the investigation was dropped. In overturning the SFO decision, Lord Justice Moses and Mr Justice Sullivan said that, *'We fear for the reputation of the administration of justice if it can be perverted by a threat'*.

⁵ <https://www.theguardian.com/law/2019/jun/20/uk-arms-sales-to-saudi-arabia-for-use-in-yemen-declared-unlawful>

⁶ Reportedly following the personal intervention of then Prime Minister, Tony Blair.

56. However, the House of Lords upheld an appeal by the SFO in July 2008, finding that the SFO director had acted legitimately on fears that UK national security could be damaged and UK lives put at risk by continuing the investigation⁷. Lord Bingham of Cornhill stated that *'The director's decision was one he was lawfully entitled to make. It may indeed be doubted whether a responsible decision maker could, on the facts before the director, have decided otherwise'*.
57. The complainant noted that the withheld information, although statistical, is in the context of a request concerning information about a meeting between BAE Systems, the prime contractor in UK-Saudi arms deals, and the UK government *'following the murder of journalist Jamal Khashoggi by officials linked to Saudi Crown Prince Mohammed bin Salman'*. The complainant noted that despite this, *'the UK licensed at least £11.5 million worth of arms to Saudi Arabia in the weeks that followed the killing, and UK representatives met with Saudi officials to promote further arms sales'*.
58. The complainant contended that whilst it was *'impossible to see how such general statistics as are being considered here could possibly comprise highly sensitive information'*, it is very clear that they are absolutely vital for public and parliamentary understanding, scrutiny and accountability. The complainant acknowledged that more detailed statistics are of course important, but suggested that *'it seems unusual and contrary that detail is readily available in several forms while the overview statistics that actually aid understanding are not'*. The complainant further suggested that while it might be expected that some information would be restricted, *'that this vital element of the 'full picture' is missing would be a surprise to anyone looking into the issue'*.
59. The complainant advised that the scale of the variation in the total arms export figures that are currently available exacerbated this transparency issue. He advised that his research suggests that the real value of exports is likely to be *'more than twice'* that in the published licence statistics. This, the complainant contended, presents a very real issue for transparency and accountability.
60. Uncertainty surrounding the value of such exports would, the complainant contended, affect assessments and discussions on a wide range of subjects around the relationship between the UK and Saudi Arabia. He advised that:

⁷ [Lords back SFO over decision to end inquiry into BAE | The Independent | The Independent](#)

'Perhaps most obviously, there is huge public concern around the scale of UK support for and corporate profit from the war in Yemen, and there have been comparisons with the level of aid provided to Yemen. A report by Oxfam stated that the UK had received eight times more from arms sales to the Saudi Arabia-led coalition fighting in Yemen than it has spent on aid to help civilians. In reality, the difference will be much greater'.

61. In response to the DIT statement that they place a considerable amount of information about defence sales into the public domain, the complainant countered that transparency requires both a level of detail and the big picture. The complainant stated that it was notable that none of what might be seen as the four main financial data points that could inform debate are available. Specifically:

- *'The total exports – at issue here;*
- *Combat aircraft licence/export data – the UK government provided data about licences but these were reissued periodically with no information as to how much of the new licence was for new equipment and how much was repeated. As such, it is impossible to determine overall values;*
- *Missile licence/export data – many of the relevant exports have taken place under open licences. These allow for unlimited quantities to be delivered and no values are reported, effectively hiding the exports from public view;*
- *Services such as maintenance and logistical support (including the operational support provided by BAE's 6,500 staff in Saudi Arabia) – this is not included in government licensing data'.*

62. The complainant contended that the above were the key data points in any discussion of the UK role in supporting the Saudi Arabian military's attacks on Yemen. *'Without them, understanding is substantially hampered and the possibility of politicians being held to account is reduced'.* The complainant contended that the requested statistics *'are precisely the type of information that is required for informed debate and scrutiny on an issue that even the DIT acknowledges has a "high level of public interest"'*.

Public interest in favour of maintaining the exemption

63. In submissions to the Commissioner, DIT noted that this exemption recognises that the effective conduct of international relations depends on maintaining trust and confidence between governments. This relationship of trust allows for the free and frank exchange of information on the understanding that it will be treated in confidence. DIT contended that if the UK does not respect such confidences, then its

ability to protect and promote UK interests through international relations would be hampered, which would not be in the public interest.

64. DIT explained that through its international relations with countries such as Saudi Arabia, the UK seeks to project its influence and promote its prosperity. Increasingly, the links between prosperity, including trade, investment and UK development programmes and national security relationships, are the means by which the UK seeks to help shape the agendas of foreign governments. DIT stated that the diplomatic relationship between the UK and KSA would be harmed by the disclosure of the withheld information and this would not be in the public interest.
65. DIT advised the Commissioner that further to the UK Government's obligations under the Government to Government arrangements, conducting business in the Middle East is very much based on personal relationships (expressed as "reciprocal trust and mutual respect" in the umbrella MOU) and once trust and respect is lost, e.g. by a breach of confidentiality, the UK could expect the benefits of that relationship to be lost. DIT stated that the UK government and UK defence companies *'are operating in an aggressive global marketplace and we believe it is in the public interest to protect UK prosperity within this context'*.
66. DIT advised that disclosure of the withheld information would be a breach of a pledge of confidentiality, and thereby would adversely affect UK relations with key strategic allies and trading partners. The Department stated that, *'foreign governments would not conduct business with the UK in the defence sector if it was believed that information supplied in confidence pertaining to prospective or ongoing defence purchases would be disclosed. For defence matters, ongoing engagement between government/other states and defence companies is a key component in building and maintaining effective relationships'*. Since Saudi Arabia would view the disclosure of sensitive defence information as against their national interests, this *'could undermine progress on shared defence and national security goals and damage the UK's reputation for honouring its international obligations'*. Such an outcome would not be in the public interest.
67. DIT stated that many of the opportunities for military exports to KSA are subject to live commercial campaigns and negotiations which would be adversely affected by the damage to bilateral and commercial relations resulting from the disclosure of information against the wishes of KSA. As the success of negotiations on these prospects would significantly bolster the commercial positions of UK industry, sustaining many thousands of jobs and critical industrial capabilities, it would not be in the public interest to jeopardise these.
68. DIT stated that the damage to bilateral relations between the UK and Saudi Arabia which disclosure would cause, would be particularly

serious, given the recent impact of COVID-19 on the sector and the need to support the defence industry in the context of reducing national defence budgets, increasingly fierce competition to secure exports, and UK competitor nations' direct investment in their domestic industries to accelerate their national COVID recovery and economic strength.

Balance of the public interest

69. As previously noted, it is important to be clear that the Commissioner's consideration of the public interest in this notice is confined to the part of the residual withheld information which the complainant has contested, specifically the broad statistical information contained in the briefing document.
70. Whilst the minutes of the meeting within scope of the complainant's request have been the subject of a previous decision by the Commissioner involving DIT (FS50858528) in November 2019, the briefing document was not within the scope of the request giving rise to the decision in that case.
71. In FS50858528, the Commissioner found that, despite the title of the DIT meeting with BAE Systems, the minutes of the meeting contained very little, if any, information on the UK Government's response to the killing of Mr Khashoggi. Consequently, the Commissioner was not convinced that disclosure of the redacted information in the minutes would address the complainant's particular concerns.
72. Similarly, all information in the briefing document relating to the killing of Mr Khashoggi was disclosed to the complainant during the Commissioner's investigation in this case. The Commissioner notes that disclosure of the broad statistical information would not shed any light on the UK Government's response to Mr Khashoggi's killing, the main public interest argument originally advanced by the complainant in his complaint to the ICO.
73. The Commissioner recognises and acknowledges (as have DIT in their submissions) that the issue of arms exports and defence sales, is one which carries a high level of transparency and accountability, particularly in respect of those made to Saudi Arabia. The complainant has contended that this public interest is particularly strong, *'given the UK's government's failure to assess whether the Saudi-led coalition violated humanitarian law during the Yemen conflict'*. The Commissioner notes in this respect that in June 2019 the Court of Appeal⁸ found that the UK

⁸ <https://www.judiciary.uk/wp-content/uploads/2019/06/CAAT-v-Secretary-of-State-and-Others-Open-12-June-2019.pdf>

Government had made *'no concluded assessments of whether the Saudi-led coalition had committed violations of international humanitarian law in the past, during the Yemen conflict, and made no attempt to do so'*⁹.

74. However, the Commissioner notes that disclosure of the broad statistical information in this case would not lend any further detail or transparency to the issue (extremely serious though it clearly is) of potential violations of international law committed by the Saudi-led coalition in the war in Yemen. The complainant has advanced powerful and cogent arguments for greater transparency and accountability of the UK's involvement in the war in Yemen via its support (through arms sales) for the Saudi-led coalition.
75. The Commissioner would entirely agree that there is an urgent need for informed public debate on this issue, given the terrible and tragic suffering being inflicted on the Yemeni people. However, disclosure of the percentage of UK Defence exports to KSA, whilst obviously carrying a legitimate and significant public interest in transparency, would not be able to provide scrutiny or interrogation of individual contracts, and the legality or ethicality of the same. With respect to the complainant, the Commissioner considers that much of his worthy and commendable submissions are pertinent to these extremely important and pressing public interest issues, but these would not be advanced by the disclosure of the broad statistical data concerned.
76. As the Commissioner noted in FS50858528, in her view a significant amount of weight should be attributed to the public interest in the UK maintaining strong and effective relations with other countries, including KSA.
77. The Commissioner acknowledges and appreciates the complainant's point that some other countries provide more information on the value of defence export contracts secured by destination country, including Saudi Arabia, without apparent harm to their relations with the destination country. However, DIT have been very clear in submissions that the disclosure of the withheld information would harm the diplomatic relationship between the UK and KSA. Given the importance of the UK's bilateral relationship with Saudi Arabia across a range of objectives, primarily defence and security, the Commissioner considers that there is a strong public interest in preserving and protecting this relationship.

⁹ <https://www.independent.co.uk/news/world/middle-east/saudi-arabia-yemen-airstrikes-war-crimes-cover-a9061061.html>

78. The public interest in preserving UK international relations is not confined to Saudi Arabia in this case. The Commissioner is also of the view that it would not be in the public interest for UK relations with other strategic allies and trading partners, or UK relations in the Gulf region, to be disproportionately damaged by disclosure of the withheld information.
79. Whilst the Commissioner recognises and accepts that the withheld statistical information carries a legitimate public interest, she considers that any additional transparency which its disclosure would bring, beyond the proactive annual publication by DIT of UK Defence and Security exports, would be outweighed by the damage which would be caused, primarily to UK relations with Saudi Arabia, and the UK's interests concerning the same, but also to UK relations with other states
80. The Commissioner has therefore concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the redacted statistical information.
81. Having found the withheld information to be exempt under section 27(1)(a) the Commissioner has not proceeded to consider section 29(1)(a)(the economy) which DIT also applied to this information.

Section 10 - Time for Compliance

82. Section 10 of the FOIA states that responses to requests made under the Act must be provided '*promptly and in any event not later than the twentieth working day following the date of receipt*'. In failing to issue a response to the complainant's request within 20 working days, DIT breached Section 10 of the FOIA.

Other matters

83. The Commissioner would commend DIT for the assistance and cooperation shown during her investigation, most notably in the Department reviewing their original position and providing the complainant with further information. The Commissioner would also commend the complainant for the provision of detailed and high quality submissions in this matter.

Right of appeal

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@justice.gov.uk
Website: 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

**Gerrard Tracey
Principal Adviser
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**