

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 October 2022

**Public Authority:** Ministry of Defence  
**Address:** 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 the estimated annual revenue costs of the joint logistics support base and regional land training hub at Duqm, Oman for the next five years. The MOD confirmed that it held the information sought by the request but considered this to be exempt from disclosure on the basis of sections 27(1)(a) and (d) (international relations) and 43(2) (commercial interests) of FOIA.
2. The Commissioner's decision is that the requested information is exempt from disclosure on the basis of sections 27(1)(a) and (d) and that in all the circumstances of the request the public interest favours maintaining the exemptions.
3. No steps are required.

#### Request and response

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4. The complainant submitted the following request to the MOD on 16 March 2021:

*'What are the estimated annual revenue costs of the joint logistics support base and regional land training hub at Duqm, Oman for each of the next five years?'*

5. The MOD responded on 30 March 2021 and confirmed that it held information falling within the scope of the request but considered it to be exempt from disclosure on the basis of sections 27(1)(a) and (d) (international relations) and 43(2) (commercial interests) of FOIA.
6. The complainant contacted the MOD on 13 April 2021 and asked it to conduct an internal review of this decision.
7. The MOD informed him of the outcome of the internal review on 8 July 2021. The review concluded that the exemptions cited in the refusal notice had been properly applied.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 15 July 2021 in order to complain about the MOD's refusal to provide him with the information falling within the scope of his request.

## **Reasons for decision**

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### **Section 27 – international relations**

9. Sections 27(1)(a) and (d) of FOIA state that:  
  
‘(1) 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...  
  
...(d) the promotion or protection by the United Kingdom of its interests abroad’

### The MOD's position

10. The MOD argued that the effective conduct of international relations depends upon maintaining trust and confidence with other governments and international organisations. In its view if the UK does not maintain this trust and confidence, its ability to act as a significant player in the international arena, and protect and promote UK interests through international relations, will be hampered.
11. In the particular circumstances of this case the MOD explained that the Port of Duqm Company (PDC) is a 50:50 joint venture between the Government of the Sultanate of Oman and Consortium Antwerp Port. The MOD argued that disclosure of the estimated capital expenditure for each of the next five years would breach previous understandings that

this information would be kept confidential for reasons of commercial sensitivity. As a result, the MOD argued that disclosure of the information would be likely to prejudice the UK's relations with Oman and in turn would be likely to prejudice the ability of the UK to protect and promote its interests in the region.<sup>1</sup>

12. With regard to the nature of such interests, the MOD explained that the UK will continue to invest into Duqm to provide the UK with a Joint Logistic Support Base and Regional Training (JSLB) and Logistic Hub in Oman. The MOD further noted that its location is strategically useful for the UK and provides maritime basing east of Suez but outside of the Gulf. The MOD also explained that the port was used to support the delivery of Ex SAIF SAREEA 3 - the UK's largest joint exercise since 2001 - which tested the UK's ability to conduct a strategic deployment to the Middle East and to underpin one of the UK's bilateral strategic partnerships.
13. The MOD elaborated on these arguments to support its view that the exemptions were engaged in submissions to the Commissioner. However, such submissions either refer to the content of the withheld information or contain information which the MOD considers to be exempt from disclosure under FOIA. Such submissions are not therefore included in this decision notice.

#### The Commissioner's position

14. In order for a prejudice based exemption, such as section 27, to be engaged the Commissioner believes 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.
  - 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.
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met - i.e., disclosure 'would be likely to' result in prejudice or disclosure 'would

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<sup>1</sup> The MOD specifically confirmed that it considered the exemptions were engaged on the basis of the lower level of likelihood, ie 'would be likely'.

result' in prejudice. The higher level 'would' means the possible harm caused by release is more probable than not. In other words, there is a more than 50% chance of the disclosure causing the prejudice, even though it is not absolutely certain that it would do so. Case law has determined that the lower level of prejudice 'would be likely to' means that the chance of harm being suffered is more than a hypothetical or remote possibility. That is to say, there must still be a real and significant risk even if it is less likely.

15. Furthermore, the Commissioner has been guided by the comments of the Information Tribunal which suggested 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 have otherwise have been necessary'.<sup>2</sup>
16. With regard to the first criterion of the test set out above, the Commissioner accepts that the type of harm that the MOD believes would be likely to occur if the information was disclosed is applicable to the interests protected by sections 27(1)(a) and (d).
17. With regard to the second criterion, the Commissioner accepts that effective international relations depend upon trust and confidence between partners. In the context of this request, the Commissioner notes that disclosure of the requested information would breach previous understandings that such information would be kept confidential. In light of this the Commissioner accepts that there is a clear causal link between disclosure of the information and prejudice occurring to the UK's relations with Oman. As a direct consequence, the Commissioner accepts that there is a link between disclosure of the information and the ability of the UK to protect and promote its interests in the region. On the same basis, and taking into account the MOD's further submissions to it, the Commissioner is also satisfied that the risk of prejudice occurring is one that is real and significant. The third criterion is therefore met and the Commissioner is satisfied that disclosure of the information would be likely to prejudice the interests protected by sections 27(1)(a) and (d).

### **Public interest test**

18. Section 27 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public

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<sup>2</sup> Campaign against Arms Trade v the Information Commissioner and Ministry of Defence EA/2007/0040 (26 August 2008)

interest in maintaining the exemptions contained at sections 27(1)(a) and (d) outweigh the public interest in disclosing the information.

19. The MOD acknowledged that there is a public interest in demonstrating both transparency and value for money in the UK's investment at the JSLB and Regional Training Hub at Duqm and that disclosure of the withheld information would provide complete openness about the estimated cost per year of the JSLB at Duqm for each of the next five years.
20. However, the MOD argued that there was a greater public interest in the UK being able to maintain effective international relations with Oman and to be able to protect and promote the UK's interests in the region, including those set out above. Furthermore, the MOD noted that in September 2020 the Defence Secretary made an announcement about the cost of further UK Government investment in the port project, which in its view went some way to meeting the wider public interest in relation to this request.<sup>3</sup>
21. The complainant argued that the publication of such information was insufficient to allow the public to fully understand whether the investment had provided value for money for the taxpayer over the requested period. In order to be able to do so the requested information needed to be disclosed. He also suggested that as the exemptions had been engaged at the lower threshold, ie would be likely as opposed to would, this meant that the public interest favoured disclosure of the information.
22. The Commissioner accepts that disclosure of the withheld information would provide the public with a greater ability to understand whether UK's investment in the JSLB had, or would provide, value for money. Furthermore, the Commissioner agrees that there is a significant public interest in the government being open and transparent about the use of public funds. In the Commissioner's opinion the public interest arguments in favour of disclosure should not be dismissed.
23. However, the Commissioner recognises the importance of the UK being able to maintain effective international relations with other states so that it can protect and promote its interests abroad. As a result in the Commissioner's view it would be firmly against the public interest if the UK's ability to maintain such relations were damaged. In the particular circumstances of this case, the Commissioner considers there to be a

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<sup>3</sup> <https://www.gov.uk/government/news/defence-secretary-announces-investment-in-strategic-omani-port>

significant public interest in the UK being able to maintain effective relations with Oman not simply in the context of the UK's investment and involvement with the JLSB but also given the importance of the UK's relations with states in the Gulf region, including to the protection of global security. For these reasons the Commissioner has concluded that the public interest favours maintaining the exemptions contained at sections 27(1)(a) and (d).

24. In reaching this conclusion, the Commissioner has taken into account the fact that the exemptions were engaged at the lower level of likelihood. Whilst it is certainly the case that if a public authority can establish that prejudice 'would' happen, the public interest case for maintaining the exemption carries greater weight than if they had only established that prejudice 'would be likely to' happen. However, although the likelihood of prejudice in this case has been determined to be at the lower level, for the reasons set out above the Commissioner is still satisfied that the public interest nevertheless favours maintaining the exemptions.
25. In light of the Commissioner's findings in relation to sections 27(1)(a) and (d) he has not considered the MOD's reliance on section 43(2) of FOIA.

**Right of appeal**

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26. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

27. 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.

28. 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 .....**

**Jonathan Slee  
Senior Case Officer  
Information Commissioner's Office  
Wycliffe House  
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SK9 5AF**