

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 February 2023

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

#### **Decision (including any steps ordered)**

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1. The complainant has requested copies of sensitive documents that were left at a bus stop. The above public authority ("the public authority") relied variously on sections 24 (national security), 26 (defence), 27 (international relations), 40 (third party personal data), 42 (legal professional privilege) and 43 (commercial interests) of FOIA to withhold the information.
2. The Commissioner's decision is that all the requested information engages section 26 and the balance of the public interest favours maintaining the exemption.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 4 July 2021, the complainant wrote to the public authority and requested information in the following terms:

"In June 2021 BBC News reported that nearly 50 pages of MOD documents had been found in 'a soggy heap behind a bus stop in Kent' by a member of the public...

"...Please provide a a [sic] copies of all the documents found behind the bus stop in Kent."

5. The public authority responded on 23 July 2021. It relied on sections 24 and 26 of FOIA to withhold the requested information.
6. Following an internal review the public authority wrote to the complainant on 14 December 2021. It maintained that sections 24 and 26 applied to the withheld information, but it additionally relied upon sections 27, 40, 42 and 43 of FOIA to withhold the information.

## **Reasons for decision**

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7. Section 26 of FOIA allows a public authority to withhold information whose disclosure would affect the capability, effectiveness or security of any of the UK's armed forces.
8. The public authority stated that it could not provide any further explanation as to why the exemption was engaged as to do so would itself disclose information that would be exempt.
9. The BBC report on the documents that it received stated that they contain information about a voyage conducted by HMS Defender through the Black Sea and:

"The bundle includes updates on arms exports campaigns, including sensitive observations about areas where Britain might find itself competing with European allies...And there are briefing notes for last Monday's session of the UK-US Defence Dialogue, including observations on President Joe Biden's first months in office...one document, addressed to Ben Wallace's private secretary, and marked "Secret UK Eyes Only", outlines highly sensitive recommendations for the UK's military footprint in Afghanistan, following the end of Operation Resolute Support, the Nato operation currently winding down in the wake of President Biden's decision earlier this year to withdraw American forces."<sup>1</sup>

10. The Commissioner has viewed copies of the information being withheld. Having done so, he is satisfied that the entirety of the information engages section 26 of FOIA. Unfortunately he is unable to expand further on his reasoning.

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<sup>1</sup> <https://www.bbc.co.uk/news/uk-57624942>

## **Public interest test**

11. The complainant argued that the public interest should favour disclosure. In his view, the contents of the document, as reported by the BBC demonstrated that:

“The MOD misrepresented the actual events of the operation on the day it occurred, presenting the confrontation as unprovoked Russian aggression where it was clearly a planned MOD test of Russian defences signed off by the highest levels of the British government.

“The public interest in disclosure of the plans of the HMS Defender's operation are greater than their continued low level classification as the documents would shed light on the MOD media and information operations deployed in this operation against the British public that appear to have contained false information. This was only uncovered because of the fact a BBC journalist was on board the HMS Defender and the classified planning documents were found at a bus stop. Without both these apparently accidental events the MOD may have continued to misreport the false sequence of events to the British public and provided a pretext for a more serious confrontation with far graver implications.

“Disclosure of the documents may shed light on the extent to which the apparent MOD disinformation was planned in advance of the HMS Defender operation and was intended to target the British public. The use of information operations targeting false information at British civilian audiences is not expressly ruled out in MOD Media Operations policy.

“The MOD have till now withheld parts of its Targeting Policy (JSP900) that explains policy on targeting Information Operations. The MOD documents seen by the BBC may shed light on the issue as to whether an MOD policy has been approved that allows targeting of the British public with false information in order to maintain consent of military actions. If such a policy has been approved on this single occasion, [sic] or is an ongoing general policy, the public interest in the disclosure of any related documents that may shed light on this issue are of utmost importance to civilian democratic oversight of British military policy.”

12. Having viewed the withheld documents, the Commissioner is not satisfied that they support the narrative that the complainant has set out above (though he recognises that the complainant has made this assessment based on reports of what was in the documents rather than the documents themselves).

13. In any case, as was described in the BBC article, documents relating to HMS Defender only formed part of the information that was recovered. No specific public interest arguments have been put forward in respect of the remaining documents – although, again, the Commissioner recognises that the complainant is hampered in presenting such arguments.
14. The Commissioner recognises that there is a very strong public interest in preserving the capability, effectiveness and security of the UK's armed forces. He is satisfied in this case that not only would disclosure be more likely than not to undermine that capability, effectiveness or security, but that the harm that would arise from such an effect, if it did occur, would be substantial. This would easily outweigh any general public interest in transparency and accountability.
15. The Commissioner is therefore satisfied that, in the circumstances of this case, section 26 of FOIA is engaged and the balance of the public interest favours maintaining the exemption.

## Right of appeal

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16. 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)

17. 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.
18. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**