

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

### **Decision notice**

**Date:** 3 January 2023

**Public Authority:** UK Space Agency (An executive agency of the Department for Business, Energy and Industrial Strategy)

**Address:** 1 Victoria Street  
London  
SW1H 0ET

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

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1. The complainant has requested information relating to the SABRE (Synergetic Air Breathing Rocket Engine) project.
2. The UK Space Agency (UKSA) disclosed information but withheld some under section 43(1) (trade secrets) and 43(2) (commercial interests).
3. The Commissioner has decided that aspects of the withheld information engage section 43(1) (trade secrets) and the withheld information in its entirety engages section 43(2). The Commissioner has also decided that the public interest lies in maintaining the exemption for the majority of the information but favours disclosure for milestone description headings and associated Government Financing Activity ('GFA') information.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Disclose schedule 4, as marked up by the Commissioner in the confidential annex, to the complainant.

## Request and response

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5. On 19 November 2021 the complainant requested the following information:

"We hereby request the provision of the following information:

1. The terms, including any milestones, that were set by the UK Space Agency in 2014 for the SABRE project, to receive the funding committed of up to £60 million.
  2. Confirmation of the discharge (or not) of any conditions and/or the achievement (or not) of any milestones for each release of funding for the SABRE project between the accounting periods of 2014/15 to 2020/21.
  3. The terms, including any milestones, that were set for each grant commitment made between the accounting periods of 2016/17 to 2020/21.
  4. Confirmation of the discharge (or not) of any conditions and/or the achievement (or not) of any milestones for each release of funding for the SABRE project between the accounting periods of 2016/17 to 2020/21."
6. On 19 January 2022 the UKSA responded. In response to part 1 of the request, it disclosed the Grant Offer Letter ('GOL'), which sets out the terms set for the SABRE project by the UKSA but withheld schedule 3 ('The Proposal') and schedule 4 ('Milestone plan and deliverables'). It disclosed information in response to parts 2-4 of the request.
6. The complainant requested an internal review on 23 February 2022. The UKSA provided the outcome to this internal review on 22 April 2022, upholding its original decision.
7. The complainant is concerned with the UKSA's decision to withhold schedule 4 ('the milestone plan and deliverables') of the GOL.

## **Background information**

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8. The UKSA has provided the Commissioner with the following background information in relation to this case:

“Reaction Engines Limited ('RE'), a UK company, was awarded a £50M government grant in 2015 for the development of a new propulsion system called SABRE (Synergetic Air-Breathing Rocket Engine). The funding was used to advance the development of high-performance heat exchangers for eradicating the extreme heat generated by friction during supersonic and hypersonic flight.

RE gained international recognition for its innovative technology development and this funding was expected to culminate with a ground test for its air-breathing 'core' engine. However, a ground test could not be conducted due to facility issues beyond REL's control, so the programme was replanned and concluded with a Critical Design Review.

Providing the UK with unique/tradable Intellectual Property, RE SABRE derived technology enables the UK to lead collaborative multi-national programmes across commercial and defence sectors. From motorsport to battery cooling technology and green energy, the company is attracting global attention in a wide range of spin-off markets as a direct result of SABRE developments funded under this grant.”

## **Reasons for decision**

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9. Section 43 of FOIA states:

“(1) Information is exempt information if it constitutes a trade secret.

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”

10. The UKSA is withholding specific information within schedule 4 under section 43(1) (trade secrets) and the whole of schedule 4 under section 43(2) (commercial information). Schedule 4 sets out the milestone plan deliverables for SABRE.

11. The Commissioner's guidance<sup>1</sup> states 'It is not sufficient for you (a public authority) to simply speculate about the prejudice which might be caused to the third party's commercial interests. You need to consult them for their exact views in all but the most exceptional circumstances.'
12. The UKSA has provided the Commissioner with a letter it received from RE about this request. RE describe the information contained within schedule 4 as follows: 'The breakdown defined in the documents provides detail of individual bespoke technology elements being created as part of the SABRE design, which we consider constitute trade secrets, associated costs and levels of internal Reaction Engines investment.'
13. The complainant disputes the position that the milestone information represents trade secrets, "It may be that meeting the deliverables would require undertaking actions which rely upon the use of trade secrets but that does not make the deliverables themselves a "trade secret" within the terms of section 43(1) FOIA."
14. It wasn't clear to the Commissioner what information the UKSA was applying section 43(1) to, so he asked for clarity. The UKSA confirmed that 'We consider the Schedule 4 milestone descriptions (in white, excluding the headings in grey), major milestone dates, value (including fiscal year payment) and deliverables sections to be trade secrets.' The UKSA also provided an example of the information it would be willing to disclose to the complainant, one redacted page out of 17.
15. The Commissioner noticed that the UKSA was prepared to disclose information from page one of schedule 4, for example 'MS 3b-4' but did not make any effort to redact any other pages, which also contained similar information.
16. The Commissioner has carefully considered whether this information represent trade secrets. On the one hand, the Commissioner agrees with the complainant that this information doesn't provide any insight into **how** the specific technology elements have been achieved. However, this information does confirm that each individual element has been achieved and the Commissioner recognises that, in the field of rocket science, this achievement in itself, if disclosed, could cause real and significant harm to RE.
17. Whilst the information might not be intelligible to the majority of individuals, the UKSA has explained 'Organisations with the technical

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<sup>1</sup> [Section 43 - Commercial interests | ICO](#)

expertise, if they were able to access Schedule 4, would have the knowledge to understand some of the bespoke technologies developed and sequencing behind the SABRE project.'

18. In reaching this decision the Commissioner has considered the judgement Department of Health v. Information Commissioner EA/2008/0018 where the Tribunal confirmed a trade secret "usually suggests something technical, unique and achieved with a degree of difficulty and investment" and suggested the "highest level of secrecy." The Commissioner notes that RE takes great steps, including confidentiality clauses for its current and former staff, to protect this information.
19. To summarise, the Commissioner is satisfied that **some** milestone descriptions and events within schedule 4 are trade secrets. However, the Commissioner doesn't believe that all of the remaining 16 pages represent trade secrets.
20. Furthermore, the Commissioner also doesn't agree with the UKSA's statement that "Once redacted to remove the trade secrets from the documentation, there would not be anything in the document that would provide any use to the public." The Commissioner will return to this when he conducts the public interest test.
21. The UKSA has also applied section 43(2) to schedule 4, in its entirety, and has stated 'Releasing Schedule 4 would undermine REL's ability to compete globally. Revealing pricing mechanisms would undermine their negotiations for other contracts or procurements. Understanding how they cost their technology would give their competitors an advantage when it comes to their own pricing and technological developments.'
22. The complainant argues that section 43(2) cannot apply, since 'The SABRE Project is a research and development project for which the underlying aim is not to make a profit or to participate competitively in a commercial activity. This would be contrary to public funding of a research and development project.'
23. The complainant is also concerned that the UKSA has confirmed that the milestones being withheld have already been met. Therefore, 'any costs or investment related to the milestones in the GOL (Grant Offer Letter) are now historic.'
24. The Commissioner acknowledges that it's not the aim of the SABRE project to make a profit. However, he is satisfied that the technology, and the related costing information contained within schedule 4, could be used by RE in the future for commercial means.
25. With the above in mind, the Commissioner is satisfied that schedule 4, in its entirety, is engaged under section 43(2). Therefore, he has gone

onto consider the balance of the public interest in relation to each of the exemptions.

26. On the one hand, the UKSA acknowledges that 'There is a public interest in how taxpayer money is spent and managed.' It also acknowledges that 'The release of information may assist the public in understanding how decisions made by public authorities affect their lives, facilitate transparency, and allow the public to, in some cases, challenge those decisions.' The Commissioner notes that there is a significant amount of taxpayer money involved in the SABRE project.
27. The UKSA also acknowledges that 'The public is interested in how UKSA funds technologies, how UKSA measures success and how UKSA holds companies to account after funding. There is also an interest in how the UK positions itself globally and works to foster a diverse and vibrant sector.'
28. Finally, the UKSA acknowledges that 'There is demonstrable public and industry interest in potential disruptive Synthetic Air Breathing Rocket Engine (SABRE) technologies, such as novel air-breathing propulsion systems.' For the industry, there is specific interest in the development opportunities that SABRE brings and the potential applied uses of this technology.
29. The Commissioner has looked at the information that was disclosed to the complainant in response to the request. It outlines the agreement between RE and the UKSA in relation to the SABRE project but is limited to generic contractual information and dispute resolution information.
30. The Commissioner notes that links to the UKSA publishes<sup>2</sup> its spending, for transactions under and above £25000. However, these reports only relate to September 2022 and the withheld information relates to 2016-2019.
31. The UKSA has explained 'We maintain that the rest of the document should be withheld. The rest of the tables split financing into Partner funded/GFA funded and Equity Funded sections, which should not be released into the public domain. As this provides detailed information on the sources of funding for Reaction Engines, this would provide an insight into their business model to competitors, which would make them less competitive for future funding competitions.' However, it is precisely the issue of grant funding (from the government) that the complainant is concerned with.

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<sup>2</sup> [UK Space Agency spending report: September 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/114122/uk-space-agency-spending-report-september-2022.pdf)

32. The Commissioner considers this a finely balanced case. On the one hand, he is aware of the potential for this SABRE technology – it is not within the public interest to disclose the trade secrets of the organisation undertaking this work or to compromise its commercial interests by exposing detailed information relating to its partner or equity funding strategies. On the other hand, the SABRE project involves a large amount of taxpayer money and there doesn't seem to be much information about the costing of the project in the public domain.
33. Furthermore, the complainant has expressed concerns that 'The Agency has failed to recognise the specific public interest in the fact that the SABRE project has received greater funding and further commitments than those set out in the GOL and that it is not clear whether the envisaged external funding has been released.'
34. The Commissioner agrees that, where such a large amount of taxpayer money is involved, the UKSA should be as transparent as possible about the milestones that RE is, or isn't, hitting in relation to the SABRE project. Therefore, he has decided that the public interest lies in maintaining section 43 for the majority of the information, except for the milestone description headings and associated GFA information. This way, RE's competitors will not be privy to the breakdown of each event and deliverable within the milestones but it will provide greater transparency on the government funding and progress of the SABRE project.

## Right of appeal

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35. 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)

36. 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.
37. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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