

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2023

Public Authority: Department for Business and Trade
Address: Old Admiralty Building
London
SW1A 2DY

Decision (including any steps ordered)

1. The complainant has requested the public authority to disclose the number of export licence applications made by a particular company to export Aero-Engines, or their related components, to Israel for military end-use by the State of Israel from 2016-present. They also asked for certain information relating to each application. Initially the public authority said that it did not hold any recorded information, it however later, took a broader interpretation of the request and confirmed that there are three applications. It refused to disclose all information for two applications, citing section 41 and 43 of FOIA. For the third, it disclosed all information except the description of goods, citing the same exemptions.
2. The Commissioner's decision is that the public authority is not entitled to rely on section 41 or 43 of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose all remaining withheld information to the complainant.
4. 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

5. The request was made to the Department of International Trade. This department was however dissolved on 7 February 2023 and its functions and personnel transferred to the new Department of Business and Trade. The Commissioner will refer to both throughout this notice as the 'public authority'.
6. On, 28 February 2022, the complainant requested the public authority to provide the following information:

"This is a request for information under the Freedom of Information Act 2000

With regard to the following UK company

UAV ENGINES LIMITED

Cage code U8369

Company Number 02691211

Registered Address

Lynn Lane

Shenstone

Lichfield

WS14 0EA

Staffordshire

United Kingdom

Please provide the following information in the form of a table

1. The NUMBERS of export licence applications made by this company to export ANY of the following AERO-ENGINES or their related components, to ISRAEL for military end-use by the State of Israel from 2016-present.

1.a. AR731 Rotary Engine

<https://uavenginesltd.co.uk/products/ar731-38-bhp/> [7]

1.b. AR741 Rotary Engine

<https://uavenginesltd.co.uk/products/ar741-38-bhp/> [8]

1.c. AR682 Rotary Engine

<https://uavenginesltd.co.uk/products/ar682-75-bhp/> [9]

1.d. AR682R Rotary Engine

<https://uavenginesltd.co.uk/products/ar682r-95-bhp/> [10]

1.e. AR801R Rotary Engine

<https://uavenginesltd.co.uk/products/ar801r-51-bhp/> [11]

1.f. AR801 Rotary Engine

<https://uavenginesltd.co.uk/products/ar801-50-bhp/> [12]

1.g. AR-80-1010

1.h. AR-802W

1.i. Any other aero-engine model

2. For each application in (1) the DATE of application.

3. For each application in (1) the DATE of COMPLETION.

4. For each application in (1) the TYPE of licence applied for (i.e. SIEL, OIEL and/or any other kind of licence)

5. For each application in (1) the RESULT of the application (i.e. Approved, Refused, Stopped, Withdrawn etc. and/or other result)

6. For each application in (1) the STATUS of each licence application (i.e. pending, extant, expired, exhausted or any other status given and/or other status).

7. For each application in (1) the ML and/or dual use code and description for the items in each licence application”

7. The public authority responded on 28 March 2022. It denied holding the requested information.

8. The complainant requested an internal review on 16 May 2022. They stated that the company is on record for making the parts for drones and has previously exported them according to export licence data released by the public authority.

9. The public authority carried out an internal review and notified the complainant of its findings on 15 July 2022. It reconsidered the scope of the request and confirmed that it did hold an application for the export of goods but considered this to be exempt from disclosure under section 41 and 43 of FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 8 August 2022 to complain about the way their request for information had been handled. They believe further recorded information is held and that the public authority is incorrect to withhold information under section 41 and 43 of FOIA.
11. During the Commissioner's investigation, the public authority issued a revised response to the complainant dated 24 February 2023. It identified two further applications, which previously, it did not consider fell in scope. For the first application it refused to disclose any information citing sections 41 and 43 of FOIA. For the second it disclosed the requested information, except the description of goods, as it considers this information is exempt from disclosure under section 41 and 43 of FOIA.
12. The Commissioner considers the scope of his investigation to be to establish whether or not the public authority is entitled to refuse to disclose all remaining withheld information under sections 41 and 43 of FOIA.

Reasons for decision

13. Section 43 of FOIA states that a public authority can refuse to disclose information if its disclosure would or would be likely to prejudice the commercial interests of the public authority itself or a third party. It is a qualified exemption, so it is also subject to the public interest test.
14. The public authority advised that export licensing information is derived from confidential commercial transactions that are linked to contracts that have either been signed and agreed or are being negotiated. It stated that disclosure of such information specifically linked to a named company would be likely to put that company at a competitive disadvantage, since:

"competitors could use this information to undercut the company and take business away from the markets that they are operating in". And;

"could also risk business relationships between UK companies and companies overseas which, again, could result in a loss of business".

15. It argued that export licence applications and the documents associated with them contain commercially sensitive information about proposed exports (including, in particular, sensitive information that includes actual goods descriptions, values, and the names of consignees, end-users, ultimate end-users and other third parties included on the application) that could be of use to competitors.
16. It referred to the mosaic effect and the ability to piece together the withheld information and information already released as Official Statistics through its transparency obligations in the Strategic Export Control Quarterly and Annual Reports and through its online searchable database (a publicly available database that allows bespoke searches of licensing data) to identify the value of the licences falling in the scope of the request. The public authority confirmed that competitors could then work out the value of the goods purchased by the end-user from the company and target the end-users with lower prices.
17. The public authority said that disclosure would also be likely to damage the trading relationship between the company and its customer(s) and possibly lead to a loss of current contracts and future trading opportunities. It would also be likely to impact on relationships with other potential customers, as they would be concerned about disclosure of sensitive information.
18. The company was contacted about the request and the possibility of disclosure and it confirmed that it has a valid non-disclosure agreement with the end-user of the products that are the subject of the licences in scope. The public authority said that it has reviewed the agreement and the company is required under the terms and conditions to treat information relating to the value of the goods purchased as confidential. The company said:

"[a]s far we are concerned, it is imperative that you continue to rely on Sections 41 and 43 of the FOI Act when considering the release of any information regarding [licence numbers redacted] and [redacted]" and that "[d]isclosure of this information along with values obtained through the mosaic effect as described would cause harm to our customers who rely on strict confidence in pricing data since all will have agreements specifically with their own ultimate customer"
19. The complainant has confirmed that it is possible to establish from information publicly available which licences were issued on a certain date, with a certain country and a general type for example ML10. But it does not give you the name of the company. When the complainant has

made information requests to the public authority previously, they have asked about a particular company or list of companies and requested very similar information to that requested here for that company or list of companies. They agree with the public authority that they have been able to then match up the information disclosed with the publicly available information and on occasions then establish the value of a licence. However, the complainant disagrees with the public authority that this information is commercially sensitive or that disclosure could lead to the prejudice claimed.

20. The complainant confirmed that the value represents the maximum amount to be exported under that licence. The company has two years to exhaust that licence and in some cases this does not happen and the company extends it. In some cases the company may not exhaust the entire value of the licence. They are of the view that even if the licence is exhausted and the company has exported the maximum goods permitted, the requested information, in conjunction with what is publicly available, does not enable anyone to work out pricing information, as this information, even when combined, does not reveal the unit price or the number of units exported. A competitor would at least need to know the quantity of goods exported to be in a position to work out pricing information and it is this information a competitor would need to undercut or outbid the company.
21. The Commissioner asked the public authority to explain further how the value of the licence was commercially sensitive when a competitor would still not know the number of units sold and at what price. The public authority confirmed that the withheld information would reveal the total value of the goods on the licences and this would disclose sensitive contractual price information between the company and the end-user. It said that even without a breakdown in respect of the values by quantity, this is still sensitive commercial information because it provides a picture of the company's pricing structure.
22. The Commissioner does not consider the value of the licence is the same as the contract agreed between the company and the end-user. The value of the licence is the maximum amount the company is permitted to export. The value does not reveal pricing information and it is not possible to work out such information, as the publicly available information and the withheld information here do not detail how many individual units, parts or components can be exported for that much. He believes you would need to know the number of units, parts or components exported or agreed to be exported for the maximum amount to be able work out the company's prices. Without pricing information a competitor cannot undercut the company.

23. The complainant has also pointed out that a company may not completely exhaust the licence and what is permitted. So unless a competitor knew the actual numbers exported, it is difficult to see how unit pricing information could be worked out.
24. For one of the applications the public authority has disclosed all the information exempt the description of items. Again, knowing the descriptions of items on the licence is not going to enable a competitor to work out costs. They would still need to know how many have been exported.
25. The public authority also argued that disclosure would be likely to prejudice the licence process. The operation of the licence process is not a commercial function nor could the public authority be said to have a commercial interest in the operation of the process. The licence process is a legal requirement. A company must obtain a licence if it wishes to export its goods. It cannot go to a "competitor" authority to obtain the same licence with a less onerous set of requirements. Therefore it is difficult to see how the public authority's commercial interests would be harmed by disclosure.
26. The public authority has been provided with several opportunities to demonstrate how disclosure would or would be likely to prejudice its own commercial interests and those of the company. Despite its engagement and submissions, the Commissioner remains unconvinced that section 43 of FOIA is engaged.
27. As the Commissioner does not consider section 43 applies, there is no need to go on to consider the public interest test.

Section 41 – information provided in confidence.

28. The Commissioner agrees that the information was obtained by another person (the company) and that it was imparted in circumstances importing an obligation of confidence. The information is not trivial or otherwise publicly available and the company would have the expectation that the information supplied would be used for the determination of its licence application and nothing more.
29. However, for section 41 of FOIA to be engaged, the public authority needs to demonstrate that disclosure would cause detriment to the confider (the company).
30. The public authority has provided the same arguments here as it has for section 43 of FOIA. It is saying that disclosure would cause detriment because it would be likely to damage the company's commercial interests.

31. The Commissioner has already explained above why he has decided that section 43 of FOIA is not engaged. It therefore follows that the Commissioner does not find section 41 is engaged, as the public authority has failed to demonstrate sufficiently that disclosure would be likely to result in commercial detriment to the company.

Right of appeal

32. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

33. 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.
34. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF