



Ministry of Defence

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Mr Peter Burt

Via email: [REDACTED]

30 January 2023

Dear Mr Burt,

We should like to apologise for any inconvenience caused by the long delay in responding to your request for:

“a copy of the section 36 submission, the supporting documents and the full text of the email that recorded the qualified person's decision.”

which related to the application of the section 36 exemption to your requests for the Defence Safety Authority and Defence Nuclear Safety Regulator annual assurance reports for 2015-16.

We have treated your correspondence as a request for information under the Freedom of Information Act 2000 (the Act).

We previously confirmed that the Ministry of Defence holds information in scope of your request, but that we were considering the application of exemptions under sections 26 (Defence) and 36 (Prejudice to the Effective Conduct of Public Affairs) of the Act. That work was placed on hold while your requests for the annual assurance reports and our decision to withhold them were considered by the Information Commissioner and Information Rights Tribunal. We are now in a position to respond to your request.

Information which is able to be publicly released is available at Annexes A, B and C.

However, much of the information has been found to fall within the scope of the qualified exemptions provided for under sections 24 (Safeguarding National Security), 26 (Defence), 27 (International Relations), 28 (Relations within the UK) and 35 (Government Policy) of the Act and has been withheld.

As qualified exemptions, these are subject to a public interest test which means that information requested can only be withheld if the public interest in doing so outweighs the public interest in disclosure. We can confirm that a public interest test has been completed for each exemption; the arguments and outcomes are summarised below.

Section 24(1) provides that information is exempt from disclosure if exemption is required for the purposes of safeguarding national security. It has been applied to some of the information in scope which relates to the credibility and effectiveness of the UK's nuclear deterrent, and to threat assessment. The nuclear deterrent exists to deter the most extreme threats to our national security and the public has a natural interest in the measures and capabilities which are in place to deter such threats. However, any misinterpretation of the information, due to an incomplete picture, could harm the deterrent's credibility and reduce the deterrent effect. Further, release of the information would disclose some content from the annual assurance reports, which the Information

Rights tribunal agreed should be withheld under section 24. The balance of public interest was found to be in favour of withholding information which falls in scope of section 24 for the purpose of safeguarding national security.

Section 26(1) provides that information is exempt if its disclosure would, or would be likely to, prejudice (a) the defence of the British Isles or any colony or (b) the capability, security or effectiveness of the Armed Forces. They have been applied to some of the information in scope which relates to the operation of the nuclear deterrent by the Royal Navy to defend the UK. Due to its role in deterring the most extreme threats, the nuclear deterrent plays a key role in defending the UK. The public has a natural interest in the measures and capabilities which are in place to defend the UK from the range of threats it faces. However, any misinterpretation of the information, due to an incomplete picture, which could reduce the deterrence effect would negatively impact our ability to operate the deterrent and defend the UK. Further, release of the information would disclose some content from the annual assurance reports, which the Information Rights tribunal agreed should be withheld under section 26. The balance of public interest was found to be in favour of withholding the information which falls in scope of section 26 as its release would prejudice the defence of the UK and the capability and effectiveness of the Armed Forces.

Section 27(1)(a) provides that information is exempt if its disclosure would, or would be likely to, prejudice relations between the UK and any other state. It has been applied to some information in scope which discusses parallels between UK and US programmes. The public has some interest in understanding the relationships between the UK and US nuclear deterrence programmes. However, any misinterpretation of the information, due to an incomplete picture, leading to conclusions about the UK nuclear deterrent could lead to the same conclusions being extrapolated to apply to the US nuclear deterrent. Further, release of the information would disclose some content from the annual assurance reports, which the Information Rights tribunal agreed should be withheld under section 27. The balance of public interest was found to be in favour of withholding the information which falls in scope of section 27 as its release would prejudice the relationship between the UK and US.

Section 28(1) provides that information is exempt if its disclosure would, or would be likely to, prejudice relations between two or more administrations in the UK. It has been applied to some of the information in scope which relates to the basing of the nuclear deterrent in Scotland. There is a strong public interest in reassuring the public, especially in Scotland, that the nuclear deterrent is maintained and operated safely. However, any misinterpretation of the information, due to an incomplete picture, could lead to further anti-nuclear arguments from the Scottish Government, which is already strongly in favour of removing the nuclear deterrent from Scotland. The balance of public interest was found to be in favour of withholding the information which falls in scope of section 28 as its release would prejudice relations between the UK and Scottish governments.

Section 35(1)(a) provides that information is exempt if it relates to the formulation or development of government policy. It has been applied to some of the information in scope which relates to the arguments for and against the application of section 36 to the request for the release of the 2015-16 annual assurance reports, and to some of the information in scope which relates to the drafting and publication options for subsequent annual assurance reports. Releasing the information would further public understanding of how Ministers make decisions based on advice from officials. However, the nuclear deterrent is a contentious subject which requires careful consideration of decisions unfettered by public comment. This safe space is essential for the consideration of policy options and the internal debate of live issues for protecting the credibility and effectiveness of the deterrent away from interference and disruption. Withholding the information relating to the drafting and handling options for subsequent reports would preserve space to modify plans in light of changing circumstances, based on free and frank advice. Further, there is limited public interest in the arguments for and against section 36 being applied specifically to the 2015-16 annual assurance reports as, in the appeal to the tribunal, the Department ceased to rely on section 36. The balance of public interest was found to be in favour of withholding the information to preserve a safe space in which officials can provide detailed advice to ministers.

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact us in the first instance at the address above. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.gov.uk). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Act. Please note that the Information Commissioner will not normally investigate your case until the MOD internal review process has been completed. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Further details of the role and powers of the Information Commissioner can be found on their website, <http://www.ico.org.uk>.

Yours sincerely,

Defence Nuclear Organisation Secretariat