

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2016

Public Authority: Ministry of Defence

Address: Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant submitted a request to the Ministry of Defence (MOD) for a copy of a study it had commissioned into online radicalism. The MOD provided the complainant with a redacted version of this report but sought to withhold the remainder on the basis of the exemptions contained at the following sections of FOIA: 35 (government policy); 38 (health and safety); 40 (personal data); 41 (information provided in confidence) and 43 (commercial interests).
2. The Commissioner has concluded that the majority of the redacted information is exempt from disclosure on the basis of one of these exemptions. However, the Commissioner has found that a small portion of the redacted information is not exempt from disclosure.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the complainant with a further copy of the report with the information identified in the confidential annex, which accompanies this decision notice, unredacted.¹
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

¹ The confidential annex has been sent to the MOD only as it refers directly to the content of the report.

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant submitted the following request to the MOD on 30 April 2013:

'A study commissioned in 2012 by the Defence Science and Technology Laboratory (Dstl) from i to i Research.

During the tender stage the study was described as research into "What is the influence of the internet with (AQ) [al-Qaeda] extremist offenders and online communities with an interest in supporting extremism/terrorism?"

The tender reference number was 1000063935. The estimated period of the contract was 09/02/2012 to 28/06/2012.'

6. The complainant subsequently confirmed that he required the report provided to Dstl by the contractor responsible for conducting the study.
7. The MOD provided him with a substantive response to this request on 14 August 2013. The MOD confirmed that it held the report in question but considered it to be exempt from disclosure on the basis of sections 35, 38, 40 and 41 of FOIA.
8. The complainant contacted the MOD on 31 October 2013 in order to ask for an internal review of this decision.
9. The MOD informed him of the outcome of the internal review on 20 April 2015. The review confirmed that the MOD considered the requested information to be exempt from disclosure on the basis of sections 35(1)(a), 38(1)(a) and (b), 40(2) and 41(1) of FOIA.

Scope of the case

10. The complainant contacted the Commissioner on 19 June 2015 in order to complain about the MOD's decision to withhold the report he had

requested. In particular he questioned why a redacted version of the report could not be disclosed.

11. During the course of the Commissioner's investigation the MOD provided the complainant with a heavily redacted version of the report.² The complainant remains of the view that further portions of the report should be disclosed under FOIA.
12. This notice therefore considers whether the exemptions cited by the MOD provide a basis to withhold the redacted portions of the report. In addition to the exemptions cited above, the MOD also sought to withhold parts of the report on the basis of section 43(2) of FOIA.

Reasons for decision

Section 35(1)(a) – formulation and development of government policy

13. The MOD has argued that the majority of the report – in essence all of the report with the exception of chapter 2 and the redactions made to the front cover - is exempt from disclosure on the basis of section 35(1)(a) of FOIA which states that:

'Information held by a government department or by the National Assembly for Wales is exempt information if it relates to-

(a) the formulation or development of government policy'

14. Section 35 is a class based exemption, therefore if information falls within the description of a particular sub-section of 35(1) then this information will be exempt; there is no need for the public authority to demonstrate prejudice to these purposes.
15. The Commissioner takes the view that the 'formulation' of policy comprises the early stages of the policy process – where options are generated and sorted, risks are identified, consultation occurs, and recommendations/submissions are put to a Minister or decision makers. 'Development' may go beyond this stage to the processes involved in

² The report in question is 44 pages long. The complainant was provided with approximately 4 pages of information contained throughout the report.

improving or altering existing policy such as piloting, monitoring, reviewing, analysing or recording the effects of existing policy.

16. Whether information relates to the formulation or development of government policy is a judgement that needs to be made on a case by case basis, focussing on the precise context and timing of the information in question.
17. The Commissioner considers that the following factors will be key indicators of the formulation or development of government policy:
 - the final decision will be made either by the Cabinet or the relevant minister;
 - the government intends to achieve a particular outcome or change in the real world; and
 - the consequences of the decision will be wide-ranging.
18. The MOD explained that the requested information related to the formulation and development of government counter terrorism policy, such as the recently announced PREVENT policy, including policy on the legitimate surveillance of online activity by UK authorities for intelligence and law enforcement purposes. The MOD emphasised that the research contained in the report was being used for the ongoing development of government policy designed to deal with radicalism. It noted that because of the subject matter to which these policies relate, it could not be assumed that all aspects of such policies will necessarily be placed in the public domain, for example, where publication of policy details would prejudice national security.
19. Having considered the MOD's submissions, the Commissioner is satisfied that the parts of the report withheld on the basis of section 35(1)(a) fall within the scope of the exemption given that the research was used, and according to the MOD indeed continues to be used, to inform various aspects of the government's approach to combating counterterrorism. The Commissioner accepts that the government's policy formulation and development in this area is clearly one that aims to achieve a particular decision in the real world and the consequences of which will be wide-ranging.

Public interest test

20. Section 35 is a qualified exemption and therefore the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption contained at section 35(1)(a) outweighs the public interest in disclosing the information.

Public interest arguments in favour of maintaining the exemption

21. The MOD argued that officials and ministers need to have a safe space to formulate and develop policy unhindered by public commentary on research that is used in the policy making process. The MOD emphasised that given the significant public interest in the topics associated with this policy making, partial or misleading representation of selected insights from the report could skew public attitudes towards the topics in question in an unhelpful and inflammatory way. This would impact unfavourably on the ability of government and ministers to shape policies in an appropriately objective and evidence-based manner. Ultimately, the MOD argued that public interest was best served by government policy making being conducted on an informed, evidential basis free from emotionally charged, partial or misrepresentative reporting of research in the public domain.

Public interest arguments in favour of disclosing the withheld information

22. The MOD acknowledged that disclosure of the withheld information would provide the public with access to research analysis on the influence of the internet on radicalisation which could increase the public's understanding of the government's policy response to radicalisation. Furthermore, the MOD acknowledged that in the wake of the Snowden case³ the issue of what constituted appropriate surveillance in order to combat such radicalism was a matter of particular public interest.

Balance of the public interest test

23. In considering the balance of the public interest arguments outlined above, the Commissioner has taken into account the comments made in a key Information Tribunal decision involving the application of the section 35(1)(a). In that case the Tribunal confirmed that there were two key principles that had to be taken into account when considering the balance of the public interest test: firstly the timing of the request and secondly the content of the requested information itself.⁴

³ <http://www.theguardian.com/us-news/edward-snowden>

⁴ *DFES v Information Commissioner and Evening Standard* (EA/2006/0006)

24. The Commissioner has initially considered the weight that should be attributed to the public interest arguments in favour of maintaining the exemption.
25. With regard to 'safe space', the Commissioner accepts that the government needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction. This will carry significant weight in some cases. The need for a safe space will be strongest when the issue is still live. Once the government has made a decision, a safe space for deliberation will no longer be required and this argument will carry little weight. Nevertheless, the Commissioner does accept that the government may also need a safe space for a short time after a decision is made in order to properly promote, explain and defend its key points. However, this safe space will only last for a short time, and once an initial announcement has been made there is also likely to be increasing public interest in scrutinising and debating the details of the decision. The timing of the request will therefore be an important factor in determining the weight that should be given to safe space arguments.
26. The Commissioner notes that in the MOD's view the policy making process remained ongoing at the time of the request. It is of relevance to note that the Commissioner does not accept that there is inevitably a continuous process or 'seamless web' of policy review and development. In most cases, the formulation or development of policy is likely to happen as a series of discrete stages, each with a beginning and end, with periods of implementation in between. Nevertheless, the Commissioner recognises that there are no universal rules. Policymaking models are always evolving, and may vary widely between departments and situations.
27. In the circumstances of this case the Commissioner is persuaded – based on the more detailed submissions provided to him by the MOD - that the research in the report in question is still being actively used as part of the government's policy formulation in relation to combating radicalism. He therefore accepts that the safe space arguments are relevant to this case. Furthermore, he accepts that such arguments should be accorded significant weight. Given the current public concern in relation to the threat of radicalisation and violent extremism, and the public interest in the government's surveillance of such online activities, the Commissioner accepts that if the research was disclosed it would clearly be of interest to the public. In the Commissioner's view, even without the potential of partial or misleading reporting of the issues contained in the report, it seems inevitable that the publication of such research would lead to some external interference and distraction to the government's ability to develop policies designed to combat online radicalisation. The Commissioner agrees with the MOD that it is firmly in

the public interest that government departments can formulate policy based on an informed and evidential basis free from external influences. In the Commissioner's opinion, such an argument attracts additional weight given the sensitive and high profile nature of the policy making in question.

28. With regard to the public interest in disclosure, in the Commissioner's view there is a clear and legitimate interest in the public being able to understand how the government is developing its response to the threat of online extremism. Disclosure of the information withheld under section 35(1)(a) would provide the public with a clear insight into the nature of the social science research which the government uses to develop such a policy. The public interest in disclosing the information should therefore not be underestimated.
29. However, in conclusion, the Commissioner has decided that the public interest narrowly favours maintaining the exemption. He has reached this conclusion because of the significant protection he believes live policy making should be afforded, and given the subject matter of the request, the likelihood of the withheld information leading to external influences being brought on the government's safe space in which to make such policy.
30. He has therefore concluded that the requested report is exempt from disclosure on the basis of section 35(1)(a). The only exception to this finding concerns part two of the report, and the redactions made to the front cover, because the MOD did not apply that exemption to these parts of the document.
31. The Commissioner has therefore gone on consider whether the remaining exemptions cited by the MOD provide a basis to withhold such information. Rather than consider each of the exemptions in turn, the Commissioner has considered the remaining information that has been withheld.

Name of supplier – redacted from front cover⁵

32. The MOD argued that the name of the supplier was exempt from disclosure on the basis of section 43(2), sections 38(1)(a) and (b), and section 40(2) of FOIA.

⁵ The name of the supplier which won the tender is in the public domain (and not redacted from the version of the report provided to the complainant). However, the name of the organisation which actually delivered the report has been redacted.

33. Section 43(2) states that:

'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).'

34. In order for a prejudice based exemption, such as section 43(2), to be engaged the Commissioner considers 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; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

35. In relation to the commercial interests of third parties, the Commissioner does not consider it appropriate to take into account speculative arguments which are advanced by public authorities about how prejudice may occur to third parties. Whilst it may not be necessary to explicitly consult the relevant third party, the Commissioner expects that arguments which are advanced by a public authority should be based on its prior knowledge of the third party's concerns.

36. The MOD argued that disclosing the name of the supplier would be likely to prejudice the supplier's commercial interests. This was on the basis that knowledge of the supplier's work in this area is not in the public domain and its commercial reputation and interests would be negatively impacted were this knowledge to become widespread.

37. The Commissioner accepts that such an argument meets the first criterion set out at paragraph 34 above. However, the Commissioner is not persuaded that there is sufficiently clear causal relationship between

disclosure of the supplier's name and harm to its commercial interests. Whilst the Commissioner recognises that the report focuses on a sensitive area, he is not clear how simply confirming that the supplier conducted the report would necessarily have a negative impact on the supplier's reputation. Furthermore, the Commissioner notes that the supplier who won the tender to deliver the report has already been identified, presumably without any negative impact on its commercial interests. Consequently, the Commissioner has concluded that section 43(2) is not engaged with regard to the name of the supplier.

38. Section 38(1) states that:

Information is exempt information if its disclosure under this Act would, or would be likely to—

*(a) endanger the physical or mental health of any individual, or
(b) endanger the safety of any individual.'*

39. The MOD provided detailed submissions to support its reliance on section 38(1). However, these focused primarily on protecting the identity of individual contributors to the research (and these submissions are discussed in detail below). However, the MOD's submissions to support its reliance on sections 38(1)(a) and (b) did not explain why disclosure of the supplier's name would endanger the health or safety of any individual. The Commissioner has therefore concluded that the name of the supplier is not exempt from disclosure on the basis of section 38(1) of FOIA.

40. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act 1998 (DPA).

41. Personal data is defined in section (1)(a) of the DPA as:

'...data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller; and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual.'

42. In the Commissioner's opinion the name (and address) of the supplier do not relate to a living individual and thus do not constitute personal data as defined by the DPA. Therefore this information cannot be exempt from disclosure under section 40(2) of FOIA.

Name of author

43. The MOD withheld the name of the author of the report under section 40(2) of FOIA.
44. The Commissioner accepts that the name of report's author constitutes personal data within the meaning of section 1 of the DPA as it clearly relates to an identifiable individual.
45. The MOD argued that disclosure would breach the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

46. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
 - The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights (ECHR);
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - any particular circumstances of the case, eg established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
 - The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:

- whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
47. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure to the public.
48. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake, as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.
49. The MOD argued that the researcher did not expect his name, and thus his association with this particular piece of work, to be placed into the public domain. With regard to the consequences of disclosure, the MOD emphasised the sensitive nature of research given that it focused on issues concerning radicalisation and violent extremism, and argued that there could be detrimental consequences for the researcher in being linked to work on such sensitive topic.
50. The Commissioner accepts that the researcher in question would have had a reasonable expectation that his name, and thus his involvement with this research, would not be placed into the public domain. In terms of the consequences of disclosure, the Commissioner accepts that given the subject matter of the research, the detrimental consequences envisaged by the MOD cannot be dismissed lightly. Moreover, the Commissioner does not believe that there is any particularly compelling or overwhelming legitimate public interest in disclosure of the researcher's name.
51. In view of the above, the Commissioner finds that it would have been unfair to disclose the researcher's name. Disclosure would have contravened the first data protection principle. The MOD was therefore entitled to withhold the name on the basis of section 40(2).

Section 2 of the requested report

52. The MOD argued that all parts of section 2 of the report which had been redacted were exempt from disclosure on the basis of sections 41(1)

and 38(1)(a) and (b). Additionally, the MOD also argued that sections 2.1.1 and 2.1.2 were exempt from disclosure on the basis of section 43(2) of FOIA.

53. With regard to the application of section 43(2), the MOD argued that disclosure of sections 2.1.1 and 2.1.2 would result in the disclosure of proprietary material and that the disclosure of such material may risk the loss of commercial advantage to the supplier.
54. In terms of the three criteria set out above at paragraph 34, the Commissioner accepts that the nature of the prejudice envisaged by the MOD is clearly one which falls within the scope of section 43(2) of FOIA. Moreover, the Commissioner accepts that there is causal link between disclosure of information which describes the approach taken by the supplier in conducting this research and a potential impact on its commercial position given the potential advantage disclosure of such information would provide to other suppliers of such research. The second criterion is therefore met. However, in relation to the third criterion, the Commissioner can only accept that this is met with regard to the information set out under section 2.1.2 of the report. This information appears to genuinely describe the specific and particular approach taken by the author of the research in question and the Commissioner is persuaded that the level of detail included could be useful to other suppliers who may undertake similar research in the future. However, in the Commissioner's view the same cannot be said of the information contained in section 2.1.1. Rather, in his opinion this information simply describes a relatively standard approach to research of this type which it seems would already been known and used by other suppliers conducting similar research.
55. Therefore, whilst the Commissioner accepts that section 2.1.2 of the report is exempt from disclosure on the basis of section 43(2), section 2.1.1 of the report is not.
56. Section 43(2) is a qualified exemption and therefore the Commissioner must consider the public interest test and whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information which he accepts is exempt under section 43(2) of FOIA.
57. The public interest arguments in favour of disclosing section 2.1.2 are essentially similar to those set out above at paragraph 22. More specifically, given the content of the material contained in section 2.1.2, disclosure of this information would provide the public with a clear insight into certain aspects of the methodology of the research. The Commissioner accepts that such information may therefore be of

particular interest to those involved in conducting research and studying the causes of radicalisation / violent extremism and analogous issues.

58. However, the Commissioner believes that there is a considerable and significant public interest in protecting the commercial interests of third parties who undertake work for, and on behalf of, government. In essence, this is because there is an inherent public interest in ensuring fairness of competition.
59. Therefore, whilst disclosure of the withheld information would provide an insight into aspects of the methodology of this research into a subject of considerable importance and public interest, the Commissioner has nevertheless concluded that the public interest favours maintaining the exemption.
60. With regard to the MOD's reliance on section 41(1) of FOIA, this exemption provides that:

'Information is exempt information if -

- (a) it was obtained by the public authority from any other person (including another public authority), and*
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.'*

61. Therefore for this exemption to be engaged two criteria have to be met; the public authority has to have obtained the information from a third party **and** the disclosure of that information has to constitute an actionable breach of confidence.
62. With regard to section 41(1)(b), in most cases the approach adopted by the Commissioner in assessing whether disclosure would constitute an actionable breach of confidence is to follow the test of confidence set out in *Coco v A N Clark (Engineering) Ltd* [1968] FSR 415. This judgment suggested that the following three limbed test should be considered in order to determine if information was confidential:
- Whether the information had the necessary quality of confidence;
 - Whether the information was imparted in circumstances importing an obligation of confidence; and
 - Whether an unauthorised use of the information would result in detriment to the confider.

63. However, further case law has argued that where the information is of a personal nature it is not necessary to establish whether the confider will suffer a detriment as a result of disclosure.
64. The MOD argued that information withheld under this exemption was provided by a third party, namely the individuals who agreed to be interviewed as part of the research. These contributors consented to participate based on a written assurance provided by the researcher to the offenders that any contributions would be treated confidentiality. Therefore, the MOD argued, that disclosure of the information withheld under this exemption would be contrary to the assurances given and lend itself to a breach of confidence actionable by the contributors to the study. In terms of the detriment to the individuals concerned, the MOD explained that whilst the study methodology ensured that all information in the study is non-attributable to individuals, there is a small, but significant risk that the identities of those who participated in the study may already be known to some in their communities who may not be sympathetic to its aims. Whilst this itself may not thus far have proved to be to the detriment of the participants, there is a risk that should this knowledge be extended by disclosure of the actual content of the study – which include some direct quotes from contributors – it may give rise to animosity to the contributors as a group, thus endangering their safety.
65. With regard to the application of section 41(1), the Commissioner is of the view that this cannot apply to some parts of the section 2 of the report which have been withheld on this basis of this exemption. This is because some of the information does not meet the requirements of section 41(1)(a) because it does not constitute information provided by the individuals who were interviewed as part of the research. Rather it is information created by the report's author.
66. In terms of the information that was provided by the contributors, the Commissioner accepts that this information can be correctly described as confidential for the following reasons:

Does the information have the necessary quality of confidence?

67. The Commissioner considers that information will have the necessary quality of confidence if it is not otherwise accessible and if it is more than trivial; information which is of importance to the confider should not be considered trivial.
68. With regard to the information that meets the requirements of section 41(1)(a) the Commissioner is satisfied that this information is not trivial and is clearly of importance to the confider.

Was the information obtained in circumstances importing an obligation of confidence?

69. Based upon the MOD's description of the interview process, the Commissioner is satisfied that the information was clearly provided by the contributors on the basis that it would be kept treated confidential.

Would disclosure be detrimental to the confider?

70. Furthermore, the Commissioner is satisfied that disclosure of the information would be detrimental to the confider for the reasons provided by the MOD.

71. However, although section 41 is an absolute exemption, the law of confidence contains its own built in public interest test with one defence to an action being that disclosure is in the public interest.

72. The public interest arguments in favour of disclosing the information withheld under this exemption are similar to those set above at paragraph 22.

73. However, the MOD argued that such interests were significantly outweighed by the need to honour the commitment of confidentiality given to the offenders in question who consented to participate in the study. It argued that if such a confidence was not honoured this would jeopardise the viability of future research involving offenders, an outcome which would be firmly against the public interest. It also argued that disclosure of such information could lead the government open to legal action by those whose confidence had been breached.

74. The Commissioner acknowledges that disclosure of these parts of the withheld information would provide the public within an insight into the contributions made by the offenders involved in the research. Such insights could be of significant interest to those seeking to understand more about the subject of online radicalisation. However, the Commissioner believes that this is considerably outweighed by need to protect the confidentiality due to the offenders who took part in the study and the need to ensure the future viability of similar research.

75. Similarly, the Commissioner has concluded that only some parts of section 2 of the report can be exempt from disclosure on the basis of section 38(1). The Commissioner has reached this finding for the reasons contained in the following paragraphs:

76. In relation to section 38, the MOD argued that disclosure of the information contained in part 2 of the report could be used to identify the individuals who contributed to the report. Therefore their health and safety was at risk for the reasons discussed above at paragraph 64.

77. In terms of the three criteria set out above, the Commissioner accepts that the first criterion is clearly met. However, with regard to the second criterion, the Commissioner believes that it is only sustainable to argue that a causal effect exists between disclosure of information and harm to an individual's health or safety in the context of this case if disclosure of that information would lead to that individual being identified. Whilst the disclosure of some the redacted information from section 2 of the report could certainly lead to the identification of the contributors, the Commissioner believes that it is simply not sustainable to argue that this is the case for all of the redacted information. Information falling within this latter category cannot therefore be exempt from disclosure on the basis of section 38(1). With regard to the former category of information, the Commissioner considers that its disclosure represents more than a hypothetical possibility of harm occurring. He has reached this conclusion for the same reasons he believes that disclosure of the information under section 41(1) would be detrimental. Such information is therefore exempt from disclosure on the basis of sections 38(1)(a) and (b).
78. Section 38 is a qualified exemption and thus also subject to the public interest test.
79. For the reasons discussed above, the Commissioner accepts that the public interest in disclosing the report should not be underestimated. However, he believes that this is significantly outweighed by the need to ensure that the health and safety of the offenders who took part in the study is not harmed. The public interest therefore favours maintaining the exemptions contained at sections 38(1)(a) and (b).
80. In summary then, the Commissioner has concluded that some of the parts of the information redacted from section 2 of the report are exempt from disclosure on the basis of sections 43(2), 38(1) or 41(1). However, the Commissioner has also found that these exemptions do not provide a basis to withhold the remaining parts of section 2 of the report. In order to clarify exactly how the Commissioner considers these exemptions to apply – or not apply – he has drafted a confidential annex which will be sent to the MOD only. This is because the annex refers in detail to the exempt information itself.
81. This annex also specifies the exact steps the MOD needs to undertake to comply with this decision notice.

Right of appeal

82. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

83. 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.
84. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF