

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 April 2023

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

Decision (including any steps ordered)

1. The complainant requested information from the Department for International Trade (DIT). The information requested concerned export licence applications by UK companies to export any military list and/or dual use items to Israel for military end-use by the State of Israel within a specified timeframe.
2. The DIT provided some information but withheld other information, citing sections 22, 43(2), 41, 44 and 36 of FOIA. Though some information was provided after the initial response, the DIT said that it did not hold any more information than it had already provided or was withholding under the cited exemptions. The complainant queried whether further information was held.
3. On 7 February 2023 a machinery of government change was announced whereby the DIT was merged into a new government department, the Department for Business and Trade (DBT). This decision notice has therefore been issued to the DBT in respect of information originally requested from the DIT.

4. The Commissioner's decision is that, on the balance of probability, the DBT does not hold any further information to which the complainant is entitled. However, the Commissioner has recorded a breach of section 1 and 10 of FOIA because of the late provision of some information.
5. The Commissioner does not require further steps.

Request and response

6. On 28 February 2022, the complainant wrote to the DBT and requested information in the following terms:

"With regard to each of the following UK companies

UAV ENGINES LIMITED (Cage code U8369) UAV TACTICAL SYSTEMS LIMITED (Cage code KCYD9) FERRANTI TECHNOLOGIES LIMITED (Cage codes K0663, K1888, K6412) ELBIT SYSTEMS UK LIMITED (Cage code U1GD8) INSTRO PRECISION LIMITED (Cage code U2879) ELITE KL LIMITED (Cage code U4581)

please provide the following information in the form of a table with six columns for each of the 8 company cage codes.

1. The NUMBERS of export licence applications made by each company to export ANY military list and/or dual use items to Israel for military end-use by the State of Israel from 2016-present.
2. For each application in (1) the TYPE of licence applied for (i.e. SIEL, OIEL and/or any other kind of licence)
3. For each application in (1) the DATE of application.
4. For each application in (1) the DATE of approval, refusal, and/or other result
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. A description of the items listed in each licence application according to ML and/ or PL code

If this request exceeds the costs limit and appears overlyburdensome please prioritise the request and confine to the information available within the limit by taking the order of companies as the order of priority (UAV Engines, UAV Tactical, Ferranti etc), and the numerical order of sections as the order of priority (1,2,3,4 etc) equally.

That is, please provide all company data available under column 1 as the priority over all column information for company 1. So I would prefer numbers of applications (1) for all companies than all information (1-6)for just one company (UAV Engines)."

7. The DBT responded on 28 March 2022. It stated that it was considering citing section 43(2) and therefore needed 20 extra working days to consider the public interest.
8. On 6 April 2022 the DBT responded and provided some information. It withheld other information under section 22 (information intended for future publication), section 41 (information provided in confidence) and section 43(2) (commercial interests). The DBT stated that it did not hold information:

"in relation to UAV Engines Limited, UAV Tactical Systems Limited, Ferranti Technologies Limited, Elbit Systems UK Limited, or Elite KL Limited..."
9. The complainant made a request for an internal review on 16 May 2022 querying what information was held by the DBT. The complainant had to chase a response several times but the DBT said it was considering the balance of the public interest regarding the exemptions it had cited.
10. Following an internal review, the DBT wrote to the complainant on 30 September 2022. It stated that it was upholding the citing of the three exemptions and added two further exemptions - section 44 and section 36 of FOIA. The review also maintained that the information it had referred to in its original response was not held.

Scope of the case

11. The complainant contacted the Commissioner on 21 November 2022 to complain about the way their request for information had been handled.
12. In light of the Commissioner's initial investigation letter, the DBT wrote to the complainant on 24 February 2023 and explained that it had conducted a further data analysis and had located further information,

all of which was exempt from disclosure with the exception of one licence application (though not all the information relating to it was disclosed as it was considered to be exempt).

13. The Commissioner sent a second investigation letter to the DBT solely regarding what information it held as this had been the subject of the complainant's review request. He also wrote to the complainant to confirm the scope of his investigation.
14. The DBT initially sent the Commissioner a detailed response, outlining its arguments regarding what exemptions had been cited. When the Commissioner requested information about what information the DBT held, outlining some of the complainant's argument, the DBT provided its counter arguments.
15. Subsequently the Commissioner put the DBT's arguments to the complainant who did not accept them and provided their reasons why.
16. The Commissioner therefore considers that the scope of his investigation is restricted to what information is held by the DBT and any procedural issues.

Reasons for decision

Section 1 – general right of access to information held by public authorities

17. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
18. In cases where there is a dispute over the amount of information held, the Commissioner applies the civil test of the balance of probabilities in making his determination. This test is in line with the approach taken by the Information Rights Tribunal when it has considered whether information is held (and, if so, whether all of the information held has been provided). The Commissioner is not expected to prove categorically whether the information is held.
19. The complainant had queried the DBT's response as follows:

"DIT states 'DIT does not hold the requested information in relation to UAV Engines Limited, UAV Tactical Systems Limited, Ferranti Technologies Limited, Elbit Systems UK Limited, or Elite KL Limited.

Consequently, this information is not held by DIT.' However DIT has already confirmed it holds some of this information and has even disclosed some of it to me in previous responses to my FOIA requests in 2021, so DIT's latest response makes no sense."

The DBT's view

20. Firstly, the DBT explained that its searches were electronic using its online export licensing system SPIRE:

"the searches were made by the type of goods referred to (military and/or dual use) and Israel as the end-user in the timeframe specified in the requests".

These searches were "full and thorough" to ensure that everything within scope was included. No relevant information had been deleted or destroyed (regarding this request and the previous request in 2021) and is held in line with the DBT's data retention policy.

21. The DBT contends that its search for information regarding the later request (the subject of this complaint) was wide in order to locate any export licence applications falling within its scope. The DBT states that the located information was then searched fully in order to ensure it included everything within the scope of the request. Once located, information was removed that was not in scope - "applications where the goods were ultimately going to be used for military end-use by another country other than the State of Israel".
22. The DBT has considered the specific matter of the two responses and explained that, in its opinion, the wording of the two FOIA requests differed significantly and, it argues, that this is why the responses differed. The DBT underlined the differences that led to different search terms in its response to the Commissioner –
- [reference for 2021 redacted] was for "The NUMBERS of export licence applications made for each cage code to export ANY military list items to Israel for end-use by the State of Israel from 2016-present."
 - [reference for 2022 redacted] was for "The NUMBERS of export licence applications made by each company to export ANY military list and/or dual use items to Israel for military end-use by the State of Israel from 2016-present."

The DBT interpreted the first request as follows:

"...as a request for information about applications for 'end-use by

the State of Israel' (and searched for information based on this criteria) rather than searching for information about 'military end-use by the State of Israel' as requested in [later request reference redacted]".

This is why, according to the DBT, more applications were found to be in scope of the earlier request.

23. The DBT, directing the Commissioner to a spreadsheet it had provided explained that it -

"considered the ultimate end-use destination of the proposed export i.e., where the goods were for ultimate end-use in another country or where the end-user was not state owned, and applications meeting these criteria were not considered to be in scope".

24. Finally, the DBT explained that its searches had captured the same information as had been disclosed in the previous request in 2021 but that, after a thorough review, it was considered to be out of scope.

The complainant's view

25. The complainant does not accept the explanation provided by the DBT and he describes it as "neither rational nor believable on the face of the facts".

26. The UK military list is in the public domain -

[UK Strategic Export Control Lists \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

The complainant notes that:

"...in the UK Military List, items are by definition items made for 'military end-use', unless they are considered to be 'dual-use items' and these dual use items are listed as such to distinguish them from solely military item, which are themselves divided into differing categories according (sic) regulations and legal obligations."

27. The complainant states the following:

"...if a 'military list item' is exported to Israel for 'end use by the State of Israel', then that is not necessarily the same as 'military list items' exported 'for military end-use by the State of Israel'. It is on this detailed point that the department appears to rely in this case."

The complainant further explains that, "...if items are neither solely military nor dual use items they are not controlled items at all under the UK arms export control regime" and states that they do not require export licence applications under the UK export control regime. Therefore all the export licence application data from the two responses (2021 and 2022) must be for either military or dual use for end use by the State of Israel. The complainant argues that,

"The first request purposely concentrated on military list items for end-use by the State of Israel while the second widened the request to include both solely military and dual-use items for military end use by the State of Israel."

They contend that the numbers of applications provided in the second response was much reduced even though the complainant states that the scope had widened because it included " 'and/or' dual use items". Their view is that the request was not just for military or just for dual use but for both and that was why the conjunction "and" had been used.

28. The complainant put forward a possible argument in favour of DBT's view – that the reason the list from the earlier request was longer was because there was a "broader interpretation of 'military list items'". The wording of the first request included "'dual use military list items that were not just 'for military end use'" as per the later request that is the subject of this decision notice. The complainant argues that this might explain the DBT's "restricted interpretation...of the phrase 'for military end use'" that excluded dual use items. He suggests that this might result in the Commissioner concluding that, on the balance of probability, there is no further information.
29. They point out that "only one of the items listed in the 2021 response is identified as having a dual use ML code". The complainant has a full list of ML codes from another information request which they provided to the Commissioner. The complainant says that by referring to the UK Military List you can see "the categories under which the exporting subsidiaries of ELBIT have described the controlled items they applied to export to Israel". Taking ML5b as an example, the complainant lists:

"Target acquisition, designation, range-finding, surveillance or tracking systems; detection, [M12A4/5*] data fusion, recognition or identification equipment, and sensor integration equipment."

Their view is that this -

"...example is clearly of military targeting equipment 'specially designed for military use' that by definition of the scope of the

2021 request has been found by DBT to (sic) an item in an export licence application for military list items to be exported to Israel for end use by th(sic) State of Israel. This is clearly NOT dual-use equipment as there is no conceivable reason why the State of Israel would wish to use military targeting equipment for any other use than that of military targeting.”

The complainant challenged the Commissioner to find a single example from the ML codes of possible dual use. The complainant found one sole example for police security equipment.

30. The complainant points out to the Commissioner the serious nature of the request and the need for accuracy concerning arms exports. They highlight the matter of “incorporation licences” and defines them as “where an item is exported to a country and then incorporated into a larger system before being re-exported”. The complainant raises the possibility that,

“in some cases the export from the UK was to an Israeli state entity that then incorporated the item into a larger system for re-export to an ultimate end user elsewhere that was not Israeli military end-use”.

According to the complainant this requires “a specific incorporation licence”. Some of the information from the earlier request “may fall into this category and appear to do so in official statistics it is certainly not the case that they all do so” and does not explain the DBT’s ‘not held’ claim.

The Commissioner’s view

31. The DBT identified three further licence applications which had been previously considered out of scope when it conducted a further data analysis after the Commissioner began his investigation. Two of these licence applications had not been considered in scope but they were reassessed and, at that point, found to be in scope but still subject to exemption. In relation to the third application that was disclosed to the complainant, “this was originally excluded from scope as it was for an industrial component, not a spare part for a UAV engine”. The goods were not controlled and did not require an export licence but it was going to be used on a UAV engine – “despite not being designed for this purpose”. The actual goods descriptions were withheld.
32. The Commissioner has considered the two opposing views of the complainant and the DBT. The Commissioner is conscious of the complainant’s arguments regarding the variation in what was provided

under two apparently similar requests, not far apart in date, and the fact that the DBT located further information that was within scope after the Commissioner began his investigation. It is difficult to achieve complete objectivity, even when exactly the same searches are made, if the information that is returned is then assessed by an individual/s. Bearing in mind that requests vary, the DBT should always clarify if in any doubt about the scope of the request. In this instance, the searches conducted appear to have been the same. The element of difference occurred when decisions were taken as to what information from those searches was in scope. This seems to be the main element that could result in a discrepancy such as has been highlighted by the complainant.

33. Ultimately the request, though very similar, was not identical and the wording was capable of differing interpretation. The DBT has had several opportunities to locate further information and has done so. It also highlighted an error in the information it had provided. Whilst he appreciates the seriousness of the request, he has concluded that, on the balance of probability, the DBT does not hold any further information to which the complainant would be entitled.

Procedural matters

34. The Commissioner acknowledges that some additional information was identified late and disclosed to the complainant during the Commissioner's investigation. This is information that falls within the scope of the complainant's request, which should have been communicated to them under section 1 of FOIA within 20 working days of their request (by the timeframe specified in section 10 of FOIA). As it was not, the Commissioner has recorded a breach of section 1 and 10 of FOIA against the DBT.

Other matters

35. The section 45 code of practice¹ recommends that public authorities complete the internal review process and notify the complainant of its findings within 20 working days, and certainly no later than 40 working days from the receipt.

¹ [CoP FOI Code of Practice - Minor Amendments 20180926 .pdf \(publishing.service.gov.uk\)](#)

36. In this case the DBT did not provide an internal review for four months after it was requested. This was two months beyond the maximum timeframe that the Commissioner considers to be reasonable.

Right of appeal

37. 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

38. 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.
39. 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

Janine Gregory
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