

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

### **Decision notice**

**Date:** 22 November 2024

**Public Authority:** Ministry of Defence

**Address:** Whitehall  
London  
SW1A 2HB

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

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1. The complainant has submitted a multi-part request to the Ministry of Defence (MOD) seeking information about its targeting lists. The MOD refused one part of the request on the basis of section 12(1) (cost limit), explained that information in relation to another part of the request was not held, confirmed that other parts of the requested information were held but were exempt on the basis of sections 23(1) (security bodies), 24(1) (national security), 26(1) (defence) and 27(1) (international relations), and also refused to confirm or deny whether it held any information in relation a particular part of the request on the basis of sections 23(5), 24(2), 26(3) and 27(4) of FOIA.
2. The Commissioner's decision is that:
  - The information falling within the scope of parts 1-3 of the request is exempt from disclosure on the basis of sections 26(1)(a) and (b) of FOIA.
  - The MOD is entitled to refuse to comply with part 5 of the request on the basis of section 12(1) of FOIA.
  - The MOD is entitled to rely on section 26(3) of FOIA to refuse to confirm or deny whether it holds any information falling within the scope of part 6 of the request.

3. The Commissioner does not require further steps.

## Request and response

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4. The complainant submitted the following request to the MOD on 27 September 2023:

"According to JSP 900 Edition 5 (2021) the MOD maintains a number of lists related to its targeting of "entities".

Please provide PDF copies of:

1. The current Candidate Target List (CDL) of unvalidated targeted entities.
  2. The current Joint Target List (JTL) of validated targeted entities.
  3. The current Restricted Target List (RTL) of restricted validated targeted entities.
  4. The current Master Target List.
  5. Numbers of entities on each of the above lists between 2014-present, that provides an account of the growth or reduction in numbers of entities in each list indentified [sic] above.
  6. The numbers of indentified [sic] individuals who are UK nationals in each list above."
5. The complainant contacted the MOD on 26 October 2023 and submitted the following revised version of his request:

"The request below corrects some errors in the original request

According to JSP 900 Edition 5 (2021) the MOD maintains a number of lists related to its targeting of "entities".

Please provide PDF copies of:

1. The current Candidate Target List (CDL) of unvalidated targeted entities.
  2. The current Joint Target List (JTL) of validated targeted entities.
  3. The current Restricted Target List (RTL) of restricted validated targeted entities.
  4. The current Master Target List.
  5. Numbers of entities on each of the above lists between 2014-present, in a form that provides an account of the growth or reduction in numbers of entities in each list identified above.
  6. The numbers of identified individuals who are UK nationals in each list above."
6. The MOD acknowledged receipt of this request on 26 October 2023, under reference number FOI2023/12991.

7. The MOD provided a response to the request of 27 September on 30 October 2023, under reference number FOI2023/11767. It confirmed that the requested information was held but it considered this to be exempt from disclosure on the basis of section 26(1) (defence) of FOIA.
8. The complainant contacted the FCDO on the same day and asked it to conduct an internal review of this refusal.
9. The MOD did not inform the complainant of the outcome of the internal review until 17 October 2024. As part of the review the MOD explained that it did not respond to the request of 26 October 2023 (FOI2023/12991), simply because the changes the complainant made to his request did not alter its position. Nevertheless, the MOD acknowledged that it would have been helpful for the substantive response to have confirmed its response of 30 October 2023 was in respect of both requests.
10. The MOD explained that the internal review had determined that the requests should have been refused on the basis of section 12(1) of FOIA. This was on the basis that providing the information sought by part 5 of the requests would exceed the appropriate cost limit. Furthermore, the MOD also explained that the 'growth or reduction' element of the requests was not held in the form requested and that this would require the creation of new information, something the MOD was not obliged to do under FOIA. The MOD noted that where section 12(1) applies to one part of a request it can be applied to all parts of a request.<sup>1</sup> The MOD provided the complainant with advice and assistance, under section 16 of FOIA, to assist him in refining this part of the request so that it could be answered within the cost limit.
11. Despite the application of section 12(1), the internal review also provided the complainant with the MOD's revised position in respect of the other parts of the request. In relation to parts 1-3 it confirmed that it held the requested information, but it considered this information to be exempt from disclosure on the basis of sections 23(1) and 24(1) (applied in the alternative), sections 26(1)(a) and (b), and sections 27(1)(a) and (b). For part 4 the MOD explained that it did not hold this information. In relation to part 6 the MOD refused to confirm or deny whether it held any information falling within this part of the request on the basis of sections 23(5), 24(2), 26(3) and 27(4).

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<sup>1</sup> A position which the Commissioner agrees with.

## Scope of the case

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12. The complainant initially contacted the Commissioner on 5 April 2024 to complain about the MOD's decision to withhold information falling within the scope of his requests. He was also dissatisfied with its failure, at that stage, to complete the internal review.
13. Following the completion of the internal review the complainant explained to the Commissioner that he remained dissatisfied with the MOD's grounds for refusing to provide the information falling within the scope of his requests.
14. The Commissioner notes that at the internal review stage the MOD applied section 12(1) to part 5 of the request and argued that as a result of this it could have relied on this provision to refuse the entire request. However, the Commissioner is also conscious that the internal review still provided a substantive respect of the other parts of the request. The Commissioner has adopted a similar approach in this decision notice, and therefore this notice also considers the MOD's internal review position in respect of parts 1-3 and part 6 of the request, in addition to its application of section 12(1) to part 5.
15. The notice does not consider the MOD's position that no information is held falling within the scope of part 4 of the request as the Commissioner understands that the complainant does not dispute this position.

## Reasons for decision

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### Part 5 of the request

16. Section 12(1) of FOIA states that:

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."
17. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £600 for central government departments such as MOD. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively imposes a time limit of 24 hours.
18. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the Fees Regulations states that an

authority can only take into account the costs it reasonably expects to incur in:

- determining whether it holds the information;
  - locating the information, or a document containing it;
  - retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
19. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be 'sensible, realistic and supported by cogent evidence'.<sup>2</sup>
20. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether, despite this being the case, there is a public interest in the disclosure of the information.
21. In its internal review response the MOD explained that to provide the information sought by part 5 of the request would invoke section 12(1) of FOIA (in addition, as noted above, it also argued that providing some of the information sought by this part of the request would also require the creation of new information).
22. In support of its position in respect of section 12(1), the MOD highlighted that the requested information covered more than a ten year period. It also explained that the raw data is not held in a central repository nor by one central business unit. Therefore to comply with this aspect of the request, staff in several business units would be required to conduct electronic searches and also locate any hard copy information in scope of the request. This would then require a manual review to determine if all of the information is held and then to locate, retrieve and extract it for the entire period of the request. The MOD argued that this would undoubtedly take some considerable staff time and effort to then compile information in scope of the 'growth or reduction in numbers of entities for each list' for the period of the request in order to provide it under FOIA.
23. The MOD explained that the released, unredacted 'Figure 3.1: Targeting Cycle', contained within JSP900 Part 2 Edition 5 (Apr 21) (page 25 of 93) indicates the various processes from Direction & Guidance

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<sup>2</sup> Paragraph 12 of EA/2007/0004.

(clockwise) through all phases to Targeting Assessment.<sup>3</sup> It noted that as the entities are developed through the process, they transfer from and to different lists within the Target List Management process that supports the Joint Targeting Cycle. The MOD argued that this process may provide some indication of the information that may be generated and held for each target list.

24. As part of its submissions to the Commissioner, the MOD explained that it had not provided a precise cost estimate to the complainant as to do so would reveal details of the amount of information in scope of the request, which was in itself sensitive information. However, as part of its submissions to the Commissioner the MOD provided more detailed information about its cost estimate to support its application of section 12(1).
25. The Commissioner accepts that the internal review provides a reasonable case that complying with part 5 of the request would exceed the cost limit. He has reached this conclusion given the time period which the request covers, the fact there is no central store of such information, and that compiling it would require searches by several teams of both electronic and manual records. The complex nature of the targeting process, as evidenced by the diagram cited by the MOD, in the Commissioner's opinion also supports this position.
26. Furthermore, the Commissioner is satisfied that the detailed submissions sent to him in confidence by MOD regarding the process for complying with this part of the request provide further strong, and ultimately compelling, evidence to support the application of section 12(1) of FOIA to part 5.

### **Parts 1-3 of the request**

27. As noted above the MOD confirmed that it held this information but withheld it on the basis of a number of exemptions. The Commissioner has considered the application of sections 26(1)(a) and (b) of FOIA in this decision notice.
28. These state that:

"Information is exempt information if its disclosure under this Act would or would be likely to prejudice-

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[https://www.whatdotheyknow.com/request/jsp\\_900\\_current\\_edition\\_re\\_submi/response/2249075/attach/4/20230227%20JSP900%20Ed5%20Part%202%20FOIA%20FINAL%20REDACTIONS%20release%20version.pdf](https://www.whatdotheyknow.com/request/jsp_900_current_edition_re_submi/response/2249075/attach/4/20230227%20JSP900%20Ed5%20Part%202%20FOIA%20FINAL%20REDACTIONS%20release%20version.pdf)

- (a) the defence of the British Islands or any colony, or
- (b) the capability, effectiveness or security of any relevant forces.”

29. In order for a prejudice based exemption, such as section 26, to be engaged the Commissioner believes 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 – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

30. The MOD argued that the release of the current Target Lists, which can refer to targeting of the full spectrum of Defence capabilities when operating in all domains, would undermine the options and possible courses of action available to UK Armed Forces for current and future operations. This was on the basis that disclosure of this information would provide hostile nations and enemy combatants with a detailed insight to the UK’s assessment of adversary capability that could be affected by UK targeting capabilities thus enabling them to change, or develop, their Tactics, Techniques and Procedures (TTP) to gain advantage.

31. The MOD explained that it was satisfied that the level of prejudice reached the higher level of “would” rather than the lower “would be likely” prejudice UK defence interests.

32. With regard to the first criterion, the Commissioner accepts that the type of harm that the MOD believes would occur if the information was disclosed is applicable to the interests protected by sections 26(1)(a) and (b) of FOIA.

33. With regard to second and third criteria, the Commissioner is satisfied that disclosure of such information clearly has the potential to harm both the defence of British territory and the effectiveness of its armed forces. This is on the basis that disclosure of the targeting lists would provide adversaries with a direct insight to the nature of targets, and as the MOD argued, would allow them to alter their TTP to their own advantage. Furthermore, taking into account the sensitive nature of



such information the Commissioner is satisfied that the likelihood of prejudice occurring is one that meets the threshold of 'would'.

34. Sections 26(1)(a) and (b) are therefore engaged.

### **Public interest test**

35. Section 26(1) is also 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 that information.
36. The complainant argued that there is a clear, overwhelming and vital public interest in the public disclosure of the requested information. This was on the basis that the information would provide details on the extent to which UK military targeting is carried out against UK nationals. Furthermore he argued that disclosure of the information would inform the public and parliament on matters of grave importance to democratic governance, such the protection of international human rights and humanitarian law, and the prevention of the crime of extra-judicial killing or state sponsored assassinations by UK forces, acting alone or in partnership with the USA, Israel, NATO and allied states.
37. The MOD acknowledged the importance of increased public understanding in the work of the UK military operations. Furthermore, it accepted that release would also increase public confidence that any operations are perpetrated in accordance with international humanitarian law. The MOD also acknowledged that any release would provide the public with reassurance that appropriate measures exist to govern and control UK targeting.
38. However, the MOD argued that there was a very strong public interest in safeguarding the Armed Forces such that any military operations which are undertaken are not prejudiced. In addition, it argued that there was clearly also a significant public interest in ensuring that the defence of the British Islands or of any colony is not compromised.
39. The Commissioner recognises that the withheld information concerns matters of considerable importance regarding the UK's exercise of military force. He agrees with the MOD that disclosure could provide the public with confidence that targeting procedures are compliant with international humanitarian law. Furthermore, he agrees with the complainant that disclosure of the information could inform both public understanding, and in turn contribute to a public debate, concerning the matters of particular significance highlighted by the complainant. As a result the Commissioner accepts that considerable weight should be accorded to the public interest arguments in favour of disclosing this information.



40. However despite this the Commissioner is satisfied that there is a greater public interest in withholding the information falling within the scope of parts 1 to 3 of the request. In his view it would be very clearly against the public interest to disclose information of this nature which would provide direct assistance and insight to the UK's adversaries. The Commissioner notes that this could be across the full spectrum of defence capabilities and in all operating domains, and in doing so would present a direct risk to the operation of current and future military operations. In the Commissioner's view the public interest in avoiding such an outcome is one that firmly outweighs the public interest arguments in disclosure, strong though they may be.
41. In view of this finding, the Commissioner has not considered the other exemptions cited by the MOD to withhold the information falling within the scope of parts 1-3 of the request.

### **Part 6 of the request**

42. The MOD refused to confirm or deny whether it held any information falling within the scope of part 6 of the request on the basis of a number of exemptions contained in FOIA.
43. This decision notice considers the MOD's reliance on section 26(3) of FOIA to do so. Section 26(3) provides the public authority with an exemption from the duty to confirm or deny whether it holds the information only where this would, or would be likely to, damage the interests set out at sections 26(1)(a) or 26(1)(b).
44. In support of its position the MOD argued that if it were to confirm or deny whether it held any information falling in the scope of the question "The numbers of identified individuals who are UK nationals in each list above between 2014-present)" it would provide adversaries with a meaningful insight into the UK's military operations and targeting over the years which may, or may not, relate to UK nationals.
45. The Commissioner accepts the logic of the MOD's argument. Confirmation or denial as to whether such information is held would clearly provide adversaries with some insight into the nature of targets, ie whether any were UK nationals, over the period covered by the request (ie any lists from 2014 to present). In turn the Commissioner accepts that such an insight would prejudice the interests which sections 26(1)(a) and (b) are designed to protect. Section 26(3) is therefore engaged.

### **Public interest test**

46. Section 26(3) is also subject to the public interest test.

47. The MOD argued that it was firmly of the view that the public interest favoured maintaining the exclusion of the duty to neither confirm nor deny given the consequences for doing so.
48. The Commissioner accepts that by confirming whether or not it holds information in the scope of the request could provide the public with an insight into targeting practices, and as with his public interest considerations above, he accepts that there is a legitimate, and significant, public interest in this. However, again in line with his findings above, the Commissioner is also satisfied that there is a greater public interest in maintaining this exemption in order to protect the effectiveness of the targeting process, and in turn the interests which sections 26(1)(a) and (b) are designed to protect. He is therefore satisfied that the public interest favours maintaining the exemption contained at section 26(3).
49. In view of this the Commissioner has not considered the MOD's application of the other exemptions to part 6 of the request.

## **Other matters**

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50. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe.<sup>4</sup> The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated requests, reviews should be completed within a total of 40 working days.<sup>5</sup> In this case the MOD took 12 months to complete the internal review.
51. The Commissioner has recently issued a Practice Recommendation to the MOD regarding its FOI performance, including its delays in completing internal reviews.<sup>6</sup>

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<sup>4</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

<sup>5</sup> <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

<sup>6</sup> <https://ico.org.uk/media/action-weve-taken/practice-recommendations/4031462/practice-recommendation-fpr0987683.pdf>

## **Right of appeal**

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52. 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)

53. 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.
54. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Jonathan Slee**  
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**Information Commissioner's Office**  
**Wycliffe House**  
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