



United Kingdom Ministry of Defence

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**From: Paul Inman
Deputy Director Information Access**

D/DG Info/3/18/1
10-10-2007-153416-005

John Ainslie
By email to john.ainslie@banthebomb.org

07 January 2008

Dear Mr Ainslie,

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email of 5 November 2007 in which you requested an internal review of the reply by the Ministry of Defence (MOD) to your request, under the Freedom of Information Act 2000 (the Act), for a copy of 'Review of Radiological Accident Probability Assessments and Radiological Risk Assessment for Vanguard Class SSBN while on the Shiplift at HMNB Clyde'. I have now conducted an independent review of your request and this letter is my formal response, detailing its findings. I am sorry that I have overshot my self-imposed internal target of completing reviews within 40 working days.

Handling

2. In conducting my review of the handling of your request, I have focused on the following requirements of the Act:
- a. Section 1(1)(a) which, subject to certain exclusions, gives any person making a request for information to a public authority the entitlement to be informed in writing by the public authority whether it holds information of the description specified in the request;
 - b. Section 1(1)(b) which, subject to certain exemptions, creates an entitlement to receive the information held by the public authority;

- c. Section 10(1) which states that, subject to certain provisions allowing extensions of time, the public authority must comply with the requirements of section 1(1) promptly, and in any event not later than the twentieth working day following the date of receipt;
- d. Section 17(1) which states that, where it claims that information is exempt information, the public authority must, within the time for complying with section 1(1), give the applicant a notice which states the fact, specifies the exemption(s) in question and states why the exemption applies;
- e. Section 17(3)(b) which states that, where the public interest in maintaining the exemption outweighs the public interest in disclosing the information, the public authority must state the reasons for claiming this;
- f. Section 17(4) which states that the public authority is not obliged to make a statement stating why the exemption applies or why the public interest in maintaining an exemption outweighs the public interest in disclosing the information if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

3. Your original request was received on 10 October 2007; a substantive response was therefore due not later than 7 November 2007. You requested a copy of 'Review of Radiological Accident Probability Assessments and Radiological Risk Assessment for Vanguard Class SSBN while on the Shiplift at HMNB Clyde'.

4. A written reply to your request for information was sent by Defence Equipment and Support (DE&S) on 5 November 2007. Much of the information you requested was released to you, but DE&S's substantive response informed you that some was considered to fall within the scope of the exemptions under sections 26 (Defence) and 40 (Personal Information) of the Act. You were advised that the public interest in withholding information covered by the exemption at section 26 outweighed the public interest in disclosure. The exemption under section 40 of the Act is absolute and no public interest test is required. The letter advised you of your right to complain both internally and to the Information Commissioner if dissatisfied.

5. DE&S's response was sent within the twenty working day limit stipulated in the Act and, given the need to consider carefully the use of exemptions and the public interest test, I am satisfied that it was 'prompt'.

6. Nevertheless, it did not explain why the exemption at section 26 was invoked, and why the public interest in maintaining the exemption outweighed the public interest in disclosure. I am sorry for these failures to comply with the Act.

Substance

7. Section 26(1) of the Act provides that information is exempt if its disclosure would, or would be likely to, prejudice the defence of the British Islands or of any colony, or the capability, effectiveness or security of any relevant forces. The

redacted information relates to the technical specification and performance of the UK's Strategic Weapons System (SWS). It would afford a potential attacker a high degree of knowledge of the risk associated with the Vanguard Class SSBN (Ship Submersible Ballistic Nuclear) when it is placed on the shiplift at HMNB Clyde, and would thereby permit the identification of relative vulnerabilities and weaknesses and the development of an optimum plan of attack.

8. The release of the redacted information would therefore be likely to prejudice the safety of the UK's nuclear deterrent. This would, in turn, prejudice the defence of the British Islands, since – as stated by MOD's Permanent Under Secretary and the Chief of the Defence Staff on 4 December 2006 – 'the nuclear deterrent remains critical to ensuring our long term defence and security'. It is also clearly the case that the nuclear deterrent contributes to the capability of the armed forces of the Crown (regardless of the probability of that capability ever being deployed). Ministry of Justice guidance states that, for the exemption at section 26 to be engaged, 'the risk that a prejudicial outcome would occur has to be more than fanciful, but need not be probable'¹. As I noted in paragraph 7 above, I consider that this risk of prejudice is certainly more than fanciful. I am therefore satisfied that, in the case of the relevant redacted information, section 26 of the Act is engaged.

9. The exemption at section 26 is qualified, and the balance of public interest must be considered. It is accepted that there is some public interest in providing public reassurance of the safety and security of the SWS. However, to the extent that public accountability is appropriate, that public interest has largely been met by the disclosure to you of the remainder of the Atkins review and is met continually by the Secretary of State for Defence's accountability to parliament. On the other side of the scales, I believe there is a considerably overriding public interest in safeguarding the SWS. The redacted probability figures could, if disclosed, be used to identify potential ways to attack the SWS. I therefore find that the balance of the public interest is strongly in favour of maintaining the exemption at section 26 of the Act, and thus of withholding the information.

10. I am satisfied that personal information within the document you requested falls within the scope of section 40 of the Act. This is an absolute exemption, with no requirement to consider the balance of public interest.

Conclusion

11. In conclusion I find that the handling of your request was not fully compliant with the Act, and I reiterate my apologies for all the errors identified above. I have drawn all these points to the attention of the officials responsible, who will bear them in mind in processing future requests.

12. My examination of the information within scope has concluded that the exemptions at sections 26 and 40 of the Act were correctly applied to some of the information you requested, and that the balance of public interest falls in favour of its being withheld.

¹ <http://www.foi.gov.uk/guidance/exguide/sec26/chap03.htm>

13. If any aspect of this review is unclear, I should be happy to explain it. If you are dissatisfied with the review, you may make a complaint to the Information Commissioner under the provisions of Section 50 of the Act. Further details of the role and powers of the Commissioner can be found on his website at www.ico.gov.uk. His address is: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Fax: 01625 524510.

Yours sincerely,

Paul Inman