



Ministry of Defence

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Director of Information (Exploitation)

D/DG Info/3/18/1

(20-08-2007-095234-003)

The Revd John Ainslie
Scottish CND
15 Barrland Street
Glasgow
Scotland
G41 1QH

30 June, 2008

Dear Revd Ainslie,

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your letter of 3 October 2007 in which you requested an internal review of this Department's handling of your request for information dated 17 August 2007. This letter is my formal response following the review. I apologise for the delay in providing you with a substantive response. The Department aims to complete internal reviews within 40 working days but due to the current workload of my team I am afraid this has not been possible in this instance.

Handling

2. In conducting my review of the handling of your request, I have focussed 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 11(1) Where, on making his request for information, the applicant expresses a preference for communication by any or more of the following means the public authority shall so far as reasonably practicable give effect to that preference;
- e. Section 16(1) which states that a public authority has a duty to provide advice and assistance, so far as it would be reasonable to do so, to persons who make, or have made, requests for information to it;
- f. Section 17(1) which states that, where they claim that information is exempt information, public authorities must, with 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 exemptions applies;
- g. Section 17(2) which states that the notice under section 17(1) must, if applicable, state that a decision has not yet been made whether the public interest in maintaining an exemption outweighs the public interest in disclosing the information and give an estimate of the date that the authority expects such a decision will be made.

3. Your request for information was received in MOD on 17 August 2007 and, accordingly a response was due by 17 September 2007. Defence Equipment & Support wrote to you on 14 September 2007 to inform you that they believed that the information you had requested fell within the scope of qualified exemptions of s26 (Defence), s27 (International Relations) and s35 (Formulation of Government Policy) and that more time was required to consider the balance of public interest in each case. The reply then went on to tell you of your right to appeal.

4. I find that the reply was not fully in accordance with the Act in one respect: it did not confirm that the information was held by MOD, although this was implicit in the response.

5. A substantive response was sent to you on 2 October 2007, some 42 working days after your request was received, which I consider to be reasonable given that it required the conducting of public interest tests in relation to three qualified exemptions.

6. The reply disclosed information relevant to your request for "copies of presentations made at briefing to industry on the nuclear deterrent at Abbey Wood Bristol on 29 June 2007" and informed you that some information within scope had been withheld under the above exemptions. A detailed summary of the balance of public interest for each of the qualified exemptions used was provided at Annex A to the reply. The reply also provided some background information about the briefing session and advised you of your right to appeal in the first instance to MOD and then, if still dissatisfied, to the Information Commissioner.

7. In summary, MOD did not directly confirm that it held the information you requested, but in all other respects your application was handled in accordance with the Act.

Substance

8. Your complaint is specifically about the redactions that were made to the documents provided to you. As part of this internal review I have therefore considered afresh the application of exemptions in relation to s26 (Defence), s27 (International Relations) and s35 (Formulation of Government Policy) to the presentation material and will deal with each document in turn:

Document (1) – ‘Strategy for Delivery’ by Andrew MacKinder (Team Leader of the Future Submarines Integrated Project Team)

9. Redactions were applied to Document (1) under s26 and s35.

a. The use of exemption under s35: the MOD's reply of 2 October 2007 stated that the rationale for applying this exemption to slides 10 and 11 was that this concerned "information on dates, actions and activities which are being used for planning purposes only at this stage. While the decision to maintain the UK's nuclear deterrent has been made, detailed plans and dates have not yet been established nor approved by Ministers. Publication of such information could potentially restrict Ministerial ability to approve dates and proposals and the need to prevent any restrictions on Ministers outweighs the public interest in knowing such information." The information in scope consists of high level programme charts showing planning in connection with the delivery of the future nuclear programme. There is a legitimate public interest in knowing that the Government has made a decision to maintain the UK's nuclear deterrent. However, the public interest in understanding future project planning has to be balanced against the potential of actual harm of releasing information which could lead to pressure on the Department to hold or maintain unrealistic or high risk timescales and undermine the Department's ability to make free and unprejudiced decisions at the appropriate times. Moreover, there is no benefit to the public in knowing details of plans and dates when they are still under formulation prior to Ministerial approval and are therefore subject to change. Slides 10 and 11 relate directly to the formulation of Government policy and I am therefore content that s35(1) has been properly engaged.

b. The use of exemption s26: the MOD's reply of 2 October 2007 explained that in relation to s26, slide 12 contained information "on the potential future availability of certain facilities, which could be read across to capability of the current fleet". I have examined the material and am content that the slide shows the organisational detail of the future nuclear programme. Whilst there is public interest in knowing how plans for the future defence of the UK is enacted, it is clearly not in the public interest to release such information if it prejudices the effectiveness of that defence by making known the plans to a potential enemy. I therefore consider that redaction of the information on slide 12 was appropriate.

Document (2) – ‘Keynote address’ David Gould (Chief Operating Officer, DE&S)

10. The redaction of Document (2) under S35 was inappropriate in my view. The rationale for doing so was that, as written, the last sentence of paragraph 2 did not include the phrase “as set out in the 2006 White paper” (reference to: *The Future of the United Kingdom’s Nuclear Deterrent, Cm 6994*). The concern was that the notes were incomplete information and therefore potentially misleading as they could be construed as not adhering to the White Paper. However, the speaking notes used by Mr Gould are not a comprehensive statement of the MOD’s official position on a topic and were only the basis of his talk. The right of access to information under the Act applies regardless of the completeness or accuracy of the information requested. Any potential misunderstanding that might result from the release of the information is not a sufficient reason for applying a redaction. I apologise for this error. An unredacted copy of document (2) is herewith enclosed.

Document (3) – untitled presentation by Tom McKane, (the then Director General Strategic Requirements)

11. Redactions were made to Document (3) under both s26 and s35. Specifically, slide 4 was redacted completely and slides 5 (Deterrent Governance) and 6 (Deterrent Capability Relationships) were partially redacted. The reasons for redaction were given in the MOD’s reply of 2 October 2007 namely that in relation to s26, Document (3) “contains detailed information on deterrent governance that could be of assistance to a potential enemy and release could prejudice the capability and security of the Army Forces”. However, “broad detail has been provided as there is a public interest in knowing that there is deterrent governance”. In relation to s35 the MOD’s reply of 2 October 2007 stated that the slides contain “dates, actions and activities which are being used for planning purposes only at this stage” and that “Publication of such information could potentially restrict ministerial ability to approve dates and proposals and the need to prevent any restrictions on Ministers outweighs the public interest in knowing such information”

12. In relation to Slide 4 I find that it shows a broad break down of areas and dates relating to the nuclear submarine programme which are still subject to Ministerial approval and whilst there is public interest in knowing that such a programme is being developed this is outweighed by the ability of Ministers to agree these proposals without possible restriction. Slide 4 clearly contains information relating to the formulation of Government policy and s35 was therefore correctly engaged. It is equally the case that s26 applies for whilst there is public interest in knowing how plans for the future defence of the British Islands are enacted, it is clearly not in the public interest to release such information if it prejudices the effectiveness of that defence.

13. In relation to slides 5 and 6 I am not convinced that the redactions under s35 were legitimately engaged because the charts do not relate to the formulation of Government policy. Rather, they show in broad terms the relationships involved in delivering deterrent governance and capability. Whilst there is a legitimate public interest in knowing that there are processes in place to deliver deterrent governance and capability, it is clearly not in the public interest to release such information if it prejudices the effectiveness of that defence by making known the plans to a potential enemy or “there is a clear potential harm from a potential enemy in making such

processes known in detail". I therefore consider that s26(1) is the more appropriate reason for exemption of this material in the case of slide 5. However, I consider the risk of that harm to be less in the case of slide 6 and have authorised release to you of the slide complete with the exception of one redaction where I believe exemption under s26(1) remains appropriate.

Document (4) – ‘Changes to Delivery’ by Rear Admiral Matthews (DG Submarines)

14. Besides stating that the platform would be delivered within 17 years, slide 4 gave a speculative breakdown of when the stages of the project might be delivered in advance of any Ministerial decision. Again for the reasons I have set out at paragraph 9, I consider that the redaction of these dates under s35 is correct. The release of unapproved or agreed planning data is not, of itself, out with the scope of the Act, but where it relates directly to policy still under formulation the public interest needs to be tested. Whilst there is public interest in knowing of the existence of a particular Defence delivery programme, the public interest in knowing the projected dates of the internal stages in the project is outweighed by the need to preserve Ministerial ability to consider and approve such stage dates without restriction.

15. I note that you question why, given the Defence Committee's clear interest in clarifying the timescale, the timeline proposed by Rear Admiral Matthews cannot be published? The Act requires a Public Authority to consider the public interest where information may come within the scope of a qualified exemption. I believe that this has been so considered in relation to your request. In an effort to provide further advice and assistance under s16(1), I would draw your attention to an answer given by the Secretary of State for Defence in the House of Commons in response to a Parliamentary Question which provides a little more information. I quote the relevant *Hansard* entry for 18 October 2007:

"The Future Submarine Programme is required to deliver a new submarine in around 2024, which is the forecast date for entry into service of the first of the new class. The timetable to achieve this comprises a two-year concept phase, a seven-year design phase, a seven-year build phase and a period of sea trials. Work on the concept phase is now under way and dates for various aspects of the programme are under consideration as part of this work. As stated in my answer of 26 July 2007, Official Report, column 1252W, to the hon. Member for Meirionnydd Nant Conwy (Mr. Llwyd), we currently expect to reach the Initial Gate approval point in 2009. This will signify the end of the concept phase" [column 1236W].

Document (5) – ‘Nuclear Warhead Context’ by Nick Bennett (DG Strategic Technology)

16. Most of the information was released with the exception of slide 6 which was redacted in full on the grounds of exemption under s27 (International Relations). You were advised that Document 5 contained information "on warhead research that was provided by the United States (US) under the proviso that it would only be used for training purposes or presentations of this nature." Moreover that "Although there is public interest in seeing such information, the release of this information could

damage UK/US relations and could also potentially cause the UK to lose access to further information from the US.” I note that you say you do not accept that “information of US origin was disclosed which was so sensitive as to outweigh the public interest in disclosure”. Nevertheless, it is the case that for the purposes of this section, any information obtained from a State organisation or court is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State, organisation or court to expect it will be so held. The United States Government has an expectation that material provided under such agreements be used in the manner agreed. It would prejudice the provision of material in the future if we were not to observe such an agreement and could undermine UK/US defence relations more generally. The public interest in seeing the level of detail provided in the diagram is outweighed by the potential loss of access to further information and the potential damage to US/UK relations by breach of such agreements. Accordingly, I consider redaction of slide 6 under s27(3) justified.

Use of Other Exemptions

17. Some minor redactions under absolute exemption s40 of the Act have been applied to information that is personal data. S40 is an absolute exemption and not subject to a Public Interest Test.

Security Status of Presentations

18. I note from your comments that you suspect that “Many of those in the audience would not normally have access to sensitive information on nuclear submarines and nuclear weapons out with their own limited area of expertise, and that those drafting the presentations were mindful of this.” This was not, in fact the case. Those attending the presentations on Industry Day held at the MOD Abbey Wood Bristol on 29 June 2007 were all representatives of MOD’s “List X” companies. These companies are security cleared to work on MOD contracts and can view classified material.

Royal United Services Institute for Defence and Security Studies (RUSI) Conference

19. In your e-mail to Mr Bennett on 29 February 2008 you asked whether the MOD’s redacted response to your request for information may have been overtaken by information placed in the Public Domain following presentations given by Rear Admiral Matthews (and others) at the RUSI conference in January. That information can be found at the following link:

<http://www.rusi.org/events/past/ref:E46EA638D8843A/info:public/infoID:E478F8C9A93723/>

I have concluded that the redactions that have been undertaken to the information you requested have not been overtaken by the subsequent publication of RUSI papers. The information in question is “similar” rather than the same.

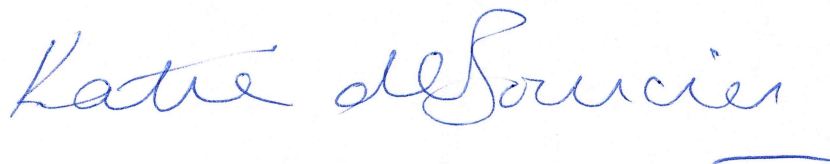
Conclusion

20. In summary, I find that:

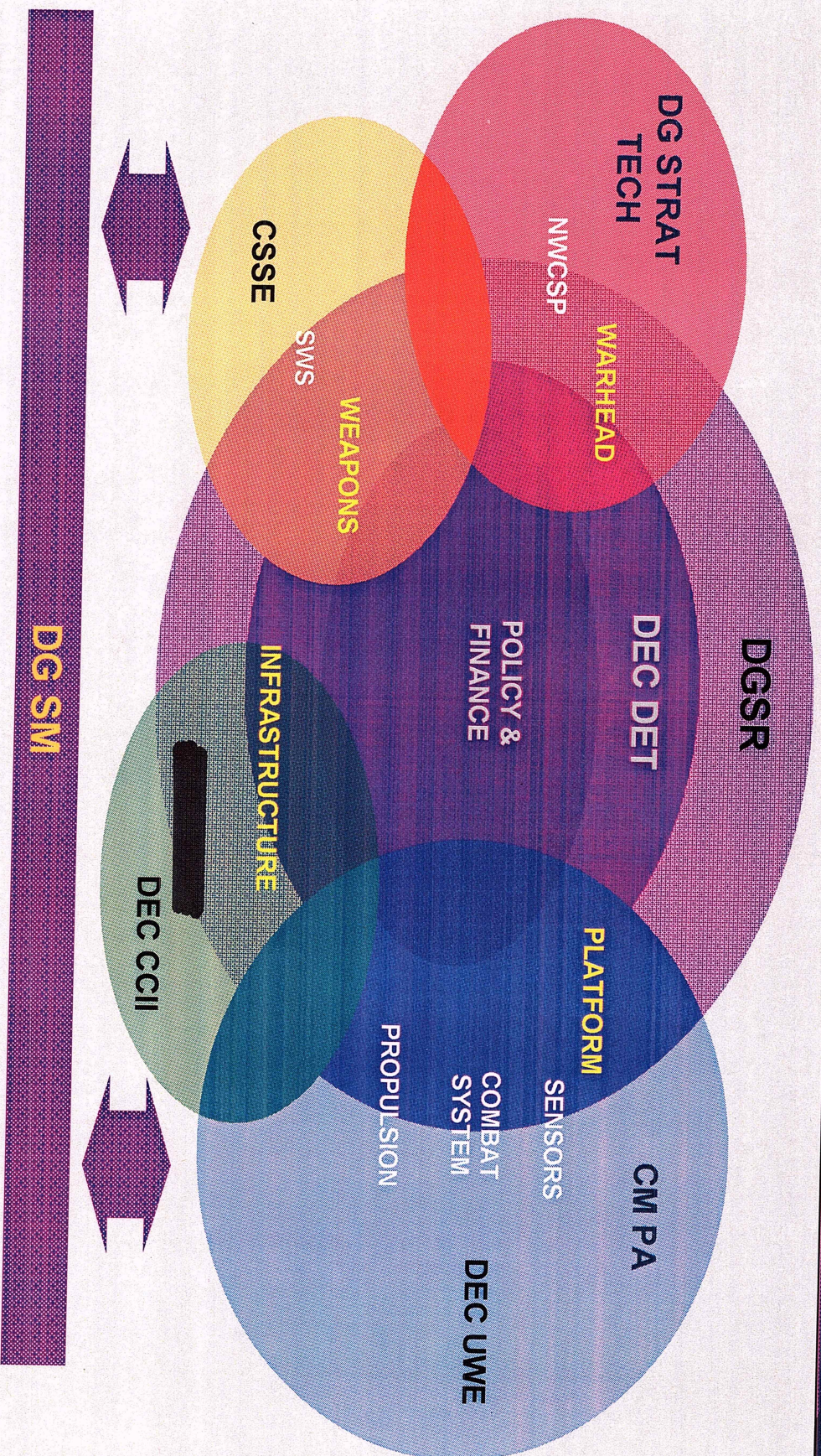
- The MOD did not directly confirm that it held the information you requested, but in all other respects your application was handled in accordance with the Act.
- The information requested was subject to redaction under s26, 27 and 35 (qualified exemptions) and to a lesser extent absolute exemption s40.
- The redaction of Document (1) under s26 and s35 is upheld.
- The redaction of Document (2) under s35 is not upheld and an unredacted copy is herewith enclosed.
- The redaction of Document (3) was subject to redactions under s26 and s35. In the case of slide 4 it was legitimate to apply redaction under both s26 and s35 but in the case of slides 5 I consider that 26(1) was the more appropriate reason for redaction than s35 which was not properly engaged. Slide 6 I found justification for one small redaction under 26(1) only; a less redacted copy of the slide is herewith enclosed.
- The redaction of Document (4) under s35 is upheld. However, I have provided a little more information about the timescales involved from Hansard in an effort to provide further advice and assistance under s16(1).
- The redaction of Document (5) under s27(3) is upheld.

21. 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 524 510.

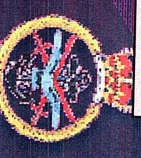
Yours sincerely,



DETERRENT CAPABILITY RELATIONSHIPS



DELIVERING DETERRENT CAPABILITY



DIRECTOR GENERAL
STRATEGIC REQUIREMENTS

Future Deterrent Industry Day

Keynote Address by Mr David Gould

Delivery: 29 June 2007, Abbey Wood.

Draft: 2

Words: 1,030

Audience: 200 very senior representatives of industry

Media: None

[Opening]

It is my great pleasure to open the Future Nuclear Deterrent Industry Day, and in doing so, I pass on the apologies of Lord Drayson for not been available today. You will understand that Minister is required to be elsewhere, though his message to you all is still very much part of what I and others will say to you today.

This afternoon we are going to outline our plan to maintain the UK's nuclear deterrent. The intention is to replace the entire Vanguard Class submarine system. Including the warhead and missile.

Holding this event, this early on, sets a good precedent.

We aim to share information and be open about our requirements. We expect no less from industry. But this is only the first step, we want this entire programme – from today onwards – to be managed in a way that allows MoD and Industry to share and make best use of our resources and information.

[DIS]

You may be sitting here thinking your company is years away from needing to pay any real close attention to what's happening. That's completely the wrong attitude – and contradicts the Defence Industrial Strategy. The DIS is about making sure businesses like you understand MOD's priorities, needs and visions. So you know where we're going – and if you know where we're going - you can prepare. We will be making some major decisions in the

short term – decisions that will have long-term impacts for all of you here today.

A big part of the DIS was an emphasis on through life management of equipment. So it won't surprise you to hear us say that through life capability management across the whole submarine programme is non-negotiable. Clearly, we are dealing with a very large, very expensive, long-term piece of kit. We would argue that this project – more than any other – needs maximum emphasis on through-life management. That has implications.

Implication one - we need to talk to each other. We don't just mean between MOD and industry - but between industries. We all need as much information as possible - as quickly as possible. That requires early engagement from you.

Another implication of the DIS is cost. In short – DE&S expect their submarines to get cheaper. The lessons from our current submarine programmes need to be realised. MoD and Industry need to be prepared to make the necessary changes to meet our targets. Be under no illusion that value for money will be a key driving force behind all of this programme. We have little doubt that with so much tax payer's money going into this - the media and parliament will be scrutinizing investments very closely – and rightly so.

[DE&S]

The future SSBN needs to incorporate all of the Through Life Capability Management principles set out in the Defence Industrial Strategy. The very principles which underpin this new organisation here at Abbey Wood.

As you know, the Government has estimated that it will cost £15 to £20 billion to acquire this system. Around two thirds of that on the new submarines. We have also indicated our intention to build the boats in the UK. But UK industry needs to offer a value for money and affordable solution.

DE&S want to see three things:

- the widest possible competition and engagement of best of class companies at sub-system level
- the best possible value through life cost solution
- the greatest possible innovation consistent with providing a fit for purpose solution within the available budget and to the required timescales

If we are to achieve this, the Government needs to play its part in sustaining continuity of activity and orders within the industry. It is our firm intention to ensure that the

ASTUTE programme provides this. Therefore we are committed to a 24 month drumbeat for the ASTUTE.

[Challenges]

Clearly, there are some challenges we will need to overcome.

I've already mentioned the fact that we expect industry to get leaner on cost.

Another major challenge is the level of collaboration we expect to see between businesses. Sharing information. Sharing plans. Sharing work. Joint working amongst critical industries is already playing a significant role in the submarine programme. That must continue. we want that attitude of cooperation to remain the pattern of behaviour early so it carries on through the next 17 years. Why? Because that is the kind of maritime industry that will ensure the best results. We must work together on the

design hand-in-hand with the supply chain – one informs the other. So we must look into new ways to manage this dynamic – building on and exceeding the successes of the Astute programme.

[SMEs]

Finally, I want to say a few words particularly to those here who represent small and medium sized enterprises.

You are vital to the success of the future submarine. We recognise that you have important, niche skills and we need to foster your position in this difficult market place. We want you to feel secure – yet we also want you to be hungry for business. I realise that in this market there is heavy inter-dependence between supplier and customer. For our part, we will give as much clarity as possible about where we are going and how we plan to get there. I have already outlined how we expect industry to work together

at all levels to make this programme happen. I hope during the Q and A session you can share some ideas on what that means in practise.

[Closing]

My colleagues will go into a lot more detail on some of the issues I've just introduced. But I hope you are beginning to get a feel for what to expect from this venture. Together, we are going to replace the UK's nuclear deterrent system. We have a clear destination and it's up to us – all of us – to ensure the result is world class capability, at an acceptable cost and with the principles of through life management at its heart.

We have a sound starting point and - by the end of today – we will have begun to map the terrain we must cross to reach our destination. Together we can do this.

We can beat our old norms and put world class capability
in service within 17 years.

We look forward to working with you.

Future Deterrent Industry Day

Keynote Address by Mr David Gould

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Media: None

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This afternoon we are going to outline our plan to maintain the UK's nuclear deterrent. The intention is to replace the entire Vanguard Class submarine system. [REDACTED]

[REDACTED] S35

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