

From: Andrew Tranham



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CIO-SPP-Information Rights Compliance

Our reference:
CIO/3/18/1/656 (14-05-2012-112230-001)

Your Reference:
06/12/MoD

Mr Peter Burt
(peterburt@phonecoop.coop)

21 December 2012

Dear Mr Burt,

FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW

1. I am writing in response to your email of 23 July 2012 to the Head of Corporate Information in which you asked for an internal review under the Freedom of Information Act 2000 (the Act) of the processing of your request for information (RFI) by the Ministry of Defence (MOD), received by the Department on 11 May 2012. Your RFI was detailed in the second paragraph of your correspondence addressed to CapCI-BM4 as follows:

"I should be grateful if you would provide me with any information held by the Ministry of Defence which relates to the following matters:

-- The response of the Soviet Union to Exercise Able Archer 83 and preparations for Soviet nuclear forces to respond to a possible NATO nuclear strike during the period of the exercise."

2. I have now completed an internal review that looked at both the handling of your request and the substance of the response that you received from the MOD dated 18 July 2012. The purpose of this review was to consider whether the requirements of the Freedom of Information Act (the Act) have been fulfilled. Its scope is defined by Part VI of the Code of Practice under section 45 of the Act, at:

<http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>.

Handling

3. 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 17(1) which requires a public authority which is relying on an exemption(s) in the Act to state that fact, to specify the exemption(s) and to state (if not otherwise apparent) why that exemption applies;

e. 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 given an estimate of the date that the authority expects such a decision will be made;

f. 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.

Handling

4. Under section 10(1) of the Act, a response was due by 12 June 2012. The Department provided an interim response on 12 June 2012, advising that "MOD has identified information that may fall within the scope of your request; we are in the process of collating and reviewing this information."

5. The Department provided its substantive response on 18 July 2012. This advised that two qualified exemptions applied to your request and that, in respect of these exemptions (sections 26(defence) and 27(international relations)), a test of the public interest had determined that the public interest in withholding the information outweighed the public interest in disclosure. You were correctly advised of your rights of appeal.

6. I find that the Department's substantive response was more than 20 working days after the initial response and that overall the Information Commissioner's recommended 40 day target for replying to requests where a test of the public interest is required was not met. In its response of 12 June the Department did not state in definitive terms, in accordance with section 1(1)a of the Act, that the information you requested was held, (though it stated it may be held). Neither did it specify, in accordance with section 17 of the Act, the exemptions which required a Public Interest Test (PIT), or explain why they were deemed to apply. It also did not provide an indication of when the test would be completed. I apologise for these errors.

Substance

7. The Department's substantive response of 18 July 2012 stated that the information held by MOD fell within the scope of the qualified exemptions at:

a. Section 26(1)(a) - Information which would be likely to prejudice the defence of the British Islands or of any colony.

b. Section 27(1)(a) - Information which would prejudice relations between the United Kingdom and any other State.

8. Regarding the application of these exemptions the Department explained that they were qualified and required a PIT to be conducted in order for them to be engaged. I find that you were not given a sufficient explanation of the PIT (although there is evidence that a thorough PIT was conducted). I now provide further detail of the public interest arguments.

a. Section 26(1)(a). In considering where the balance of the public interest lay, an argument for releasing the information was that it would demonstrate accountable and transparent Government. It was recognised that the information requested is 29 years old and would help further inform the public debate on 'Ex Able Archer 83' and the events surrounding it, which form part of the historical account of the Cold War. These public interests have to be weighed against a very strong public interest in safeguarding defence interests. The information within the scope of this request contains significant details of UK assessment of, and reaction to, potential adversaries and of the operation of UK forces. The way that the MOD assesses and responds to potential adversaries has not changed significantly over the last 30 years, and release of this information would provide an insight into current defence doctrine and policy. This would enable hostile forces to predict the most likely response to their actions, and prepare suitable countermeasures. In conclusion, I find that in all circumstances of the case, the Department was correct in deciding that the public interest in withholding this information outweighed the public interest in disclosure.

b. Section 27(1)(a). The arguments in favour of release are the same as above: informing the public debate on 'Ex Able Archer 83', and increasing public trust and engagement through open and transparent Government. These are balanced against the need to prevent prejudice to relations between the United Kingdom and other States. Some of the information within the scope of this request contains the views and opinions of defence intelligence staff on their assessment of the reported actions and reactions of the Soviets, as well as proposals for how NATO allies should respond to these. This assessment is written in a frank and forthright manner as it was not intended for review outside of MOD. Whilst we recognise that the information is 29 years old, the content and tone of the assessments are such that release would harm current relations with the nations involved. Other information was provided to the UK by allies and the release of this has the potential to undermine significantly their confidence in how we keep and manage sensitive information relating to this subject now and in the future. In conclusion, I find that in all circumstances of the case, the Department was correct to decide that the public interest in withholding this information outweighed the public interest in disclosure.

9. This review has found that the exemptions cited did not apply to all the information in each of the enclosures that are in scope of your request and that the balance of public interest should have resulted in the release of some information to inform public debate. Redacted material is therefore included with this internal review.

Application of Additional Exemptions

10. Following the review, I find that other FOI exemptions apply to some of the information within the scope of your request and as outlined below:

- a. Section 23(1). Some information is withheld under section 23(1) – Information supplied by, or relating to, bodies dealing with security matters. This is an absolute exemption, so a public interest test is not required.
- b. Section 24(1). Some information is withheld under section 24(1) – National security. Whilst it is recognised that the release of information on ‘Ex Able Archer 83’ would inform public debate, these public interests have to be weighed against a very strong public interest in safeguarding national security. The accumulation of information contained in each individual enclosure in scope of your request would enable interested parties to build a picture of how today’s UK intelligence and nuclear capability are employed, both of which are extremely sensitive, and involved in safeguarding national security. In conclusion, I find that that in all circumstances of the case, the public interest in withholding this information outweighs the public interest in disclosing.
- c. Section 26(1)(b). Some information is withheld under section 26(1)(b) - Information which would be likely to prejudice the capability, effectiveness or security of any relevant forces. The MOD recognises that there is a general public interest in openness in government because this increases public trust in and engagement with the government. Some information within the scope of this request contains details of the capability of UK forces and how they operate. Although this information is nearly 30 years old, it is still relevant to today’s forces. If released, hostile nations and organisations would be able to exploit this information to develop their understanding of the capability and effectiveness of current UK forces. This would be likely to result in prejudice to current operational capability. In conclusion, I find that in all circumstances of the case, the public interest in withholding this information outweighs the public interest in disclosing.
- d. Section 27(1)(b). Some information is withheld under section 27(1)(b) - Information which would prejudice relations between the United Kingdom and any other international organisation or international court. The reasons for release are the same as above: informing the public debate on ‘Ex Able Archer 83’, and increasing public trust and engagement through open and transparent Government. These are balanced against the need to prevent prejudice to relations between the United Kingdom and international organisations such as NATO. Some of the information within the scope of this request relates to NATO doctrine, planning and decision making which is still current. Release of this information by the UK would harm relations with other member states. In conclusion, I find that in all circumstances of the case, the public interest in withholding this information outweighs the public interest in disclosing.
- e. Section 40(2). A small amount of information is withheld as it is considered to be personal information which is exempt under section 40 of the Act. Section 40 is an absolute exemption and is not subject to the public interest. The relevant part is section 40(2) which provides exemption for personal

information of which the applicant is not the data subject. The MOD's policy is that the names and posts of members of the Senior Civil Service (SCS) and their military equivalents (Commodore, Brigadier, Air Commodore and above) will normally be available in the public domain. The personal information has therefore been withheld in accordance with this policy.

General Issues

11. The redacted documents that are being released make reference to a JIC paper (Reference: JIC(84)(N)45 titled Soviet Union: Concern About a Surprise NATO Attack). Under section 16(1) of the Act, I can advise you that after a search for this paper, I can confirm that it is not held by the Department.

12. Finally, I apologise for the quality of the print of some of the documents we are providing to you, which is due to the poor legibility of the original documents.

Conclusion

13. In summary, this review finds that:

- Your request was not handled in accordance with section 10 and section 17 of the Act.
- Some information is correctly withheld under section 26(1)(a) (defence) and section 27(1)(a) (international relations).
- Some information is also withheld under section 23(1) (Information supplied by, or relating to, bodies dealing with security matters), section 24(1) (national security), section 26(1)(b) (defence), section 27(1)(b) (international relations) and section 40(2) (personal data).
- Some information in scope of your request is released as part of this internal review.

14. 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 5FA. Fax 01625 524 510.

Yours sincerely,

