



Neutral citation number: [2024] UKFTT 1120 (GRC)

Case Reference: EA/2023/0487

**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

**Heard at: Field House, London
Heard on: 23 & 24 September 2024
Decision given on: 16 December 2024**

Before

**JUDGE C GOODMAN
MEMBER A CHAFER
MEMBER M SAUNDERS**

Between

CHRIS COLE

and

Appellant

**(1) INFORMATION COMMISSIONER
(2) MINISTRY OF DEFENCE**

Respondents

Representation:

The Appellant represented himself

For the Respondent: Mr John Goss of counsel

For the Second Respondent: Mr Christopher Knight of counsel

Decision:

1. The appeal is Dismissed. Decision Notice IC-230725-W8D9 is in accordance with the law.
2. There is a CLOSED annex to this Decision. The Tribunal orders that the CLOSED annex, together with the CLOSED bundle and the evidence and submissions given in the CLOSED session at the hearing on 23 September 2024, must be held pursuant to Rule 14(6) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory

Chamber) Rules 2009 on the basis that they will not be disclosed to anyone except the Commissioner and the Ministry of Defence as to do otherwise would defeat the purpose of these proceedings.

REASONS

3. On 3 January 2023, the Appellant submitted the following request for information to the Ministry of Defence ("MoD") pursuant to the Freedom of Information Act 2000 ("FOIA"):

"Please can I ask under the Freedom of Information Act:

- 1) For each month between October 2022 and December 2022 and broken down between i) Reaper and ii) Typhoon
 - a) the total number of missions undertaken by these aircraft on Operation Shader; b) the number of those missions entering Syria; c) the number of those missions entering Iraq?
- 2) For each month between October 2022 and December 2022, the number of sorties with weapons released by a) Reaper and b) Typhoon broken down between Iraq and Syria?
- 3) For each month between October 2022 and December 2022, the number and type of weapons released by a) Reapers and b) Typhoons broken down between Iraq and Syria?
- 4) The number of UK weapon release events in a) Iraq and b) Syria per month from October 2022 to December 2022, broken down between Reaper and Typhoon?
- 5) Can you please tell me, for each month between October 2022 and December 2022, how many hours have UK a) Reaper and b) Typhoon flown on Operation Shader?
- 6) Please can you confirm if the RAF opened an investigation into local reports of civilian casualties from the RAF Reaper strike on Al Bab, northern Syria on December 20th? If so, please can you let me know the results of the investigation or whether the investigation is on-going."

(This request for information shall be referred to in this Decision as "the Request".)

4. Operation Shader is the United Kingdom's contribution to the Global Coalition Against Daesh. The RAF have conducted air strikes against Daesh as part of Operation Shader in Iraq since September 2014 and in Syria since December 2015.

Reaper is an RAF Remotely Piloted Aircraft System, primarily focussed on Intelligence, Surveillance, Target Acquisition and Reconnaissance missions, which is capable of being fitted with weapons and conducting air strikes. Typhoon is a RAF multi-role aircraft, capable of conducting both air-to-air and air-to-ground strikes.

5. The MoD had provided statistical information in response to similar requests from the Appellant on a quarterly basis since 2015, including in response to a similar request on 31 October 2022 for information for July to September 2022.
6. The MoD provided to the Appellant on 9 February 2023 the information requested in parts 1a) and 5 of the Request only. Those parts of the Request were not in issue in this appeal.
7. After the Appellant complained to the Information Commissioner ("the Commissioner"), the MoD carried out an internal review. The findings of the internal review were sent to the Appellant on 23 June 2023. The MoD acknowledged that the internal review had not been carried out within FOIA time limits.
8. The MoD had initially withheld the information requested in parts 1b), 1c), 2, 3 and 4 of the Request pursuant to sections 24, 26 and 27 FOIA. The MoD revised its position on internal review and withheld this information on the basis that it was exempt pursuant to either sections 23(1) or 24(1) in the alternative, and under sections 26(1)(b) and 27(1)(a) and (c). These parts of the Request are the subject of this appeal.
9. In relation to part 6 of the Request, the MoD confirmed on 20 September 2023 that it did carry out an investigation which confirmed that there were no civilian casualties. The MoD continued to withhold information about whether that investigation was carried out by the RAF. The Appellant confirmed at the hearing that part 6 was not in issue in the appeal.
10. In the course of its investigation, the Commissioner received the withheld information and confidential submissions from the MoD. On 18 October 2023, the Commissioner issued Decision Notice IC-230725-W8D9, concluding that "the information sought by questions 1b) to 4... is exempt from disclosure on the basis of section 23(1) or section 24(1) of FOIA" in the alternative. The Commissioner did not require further steps.
11. The Appellant appealed to the Tribunal.

The Law

12. Section 23(1) FOIA provides that:

"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)."

13. Section 23(3) lists various security bodies including the three security and intelligence agencies and the special forces (the "section 23(3) bodies").
14. The section 23(3) bodies are also not listed as public authorities in Schedule 1 to FOIA. As a three-judge panel of the Upper Tribunal noted in *FCDO v Information Commissioner & Williams* [2021] UKUT 248 (AAC) at paragraph 23:

"the combined effect of these provisions is to signal a clear Parliamentary intention that there should be no question of requiring the disclosures of any information which was directly or indirectly supplied by, or relates to, any of the specified security agencies".
15. Section 23(1) FOIA is an absolute exemption. This means that the requirement in section 2(2)(b) FOIA to balance the public interest in maintaining the exemption against the public interest in disclosure does not apply.
16. In *Commissioner of Police of the Metropolis v Information Commissioner & Rosenbaum* [2021] UKUT 5 (AAC), the Upper Tribunal approved at paragraphs 35 and 43, fourteen principles in relation to the application of section 23.
17. Section 24(1) FOIA provides that:

"Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b) is required for the purpose of safeguarding national security".
18. In *Williams*, at paragraphs 31 and 32, the Upper Tribunal approved six principles in relation to the application of section 24(1). In particular the Upper Tribunal found that "required" in this context means "reasonably necessary" (paragraph 31(4)).
19. Sections 23 and 24 are mutually exclusive. The Upper Tribunal decided in *Williams* at paragraph 85 that by reason of national security, the exemptions in sections 23(1) and 24(1) can be specified in the alternative, without specifying which applies, in order to mask which exemption is relied upon.
20. Section 26(1) FOIA provides that:

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

(b) the capability, effectiveness or security of any relevant forces."

21. Section 26(2) FOIA defines "relevant forces" as:
- "(a) the armed forces of the Crown, and
 - (b) any forces co-operating with those forces,
- or any part of those forces."
22. Section 26(1) FOIA is a prejudice-based exemption. The prejudice must be "real, actual and of substance" (*Department for Work and Pensions v Information Commissioner* [2014] UKUT 0334 (AAC) at paragraph 26). The "would be likely to" limb:
- "connotes a degree of probability where there is a very significant and weighty chance of prejudice to the identified public interests. The risk must be such that there 'may very well' be prejudice to those interests, even if the risk falls short of being more probable than not." (*R (Lord) v Secretary of State for the Home Department* ([2003] EWHC 2073 (Admin)) at paragraph 100))
23. It is for the Tribunal to decide whether prejudice is likely. However, in matters of national security, defence, and international relations, the Tribunal is bound to respect the institutional capacity and democratic accountability of the relevant public authority. The First-tier Tribunal and Upper Tribunal have underlined in a series of cases how "appropriate weight" must be attached to evidence from the public authority in such cases, in light of its far better access to information, specialist advice, experience and expertise (see for example, *APPGER v Information Commissioner & Ministry of Defence* [2011] UKUT 153 (AAC) at paragraph 56, *Savic v Information Commissioner, Attorney General's Office and Cabinet Office* [2016] UKUT 535 (AAC) at paragraph 116, and *Cole v Information Commissioner & Ministry of Defence* (EA/2016/0290 at paragraphs 55-59).
24. Both section 24(1) and 26(1) FOIA are qualified exemptions. This means that if the exemptions are engaged, the Tribunal must then consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure (section 2(2)(b)).
25. In relation to the public interest balance in the context of section 24(1) FOIA, the sixth principle approved by the Upper Tribunal in *Williams* was that:
- "Even when the chance of a particular harm is relatively low, the seriousness of the consequences (the nature of the risk) can nonetheless mean that the public interest in avoiding that risk is very strong... As the Upper Tribunal put it: "the reality is that the public interest in maintaining the qualified national security exemption in section 24(1) is likely to be substantial and to require a compelling competing public interest to equal or outweigh it... That does not mean that the section 24 exemption carries an "inherent weight", but is a reflection of what is likely to be a fair recognition of the public interests

involved in the particular circumstances of a case in which section 24 is properly engaged."

26. The Upper Tribunal has decided that where more than one qualified exemption applies, the public interest in maintaining different exemptions can be aggregated, to the extent that the public interests in question overlap or are capable of aggregation (*Department for Business & Trade v Information Commissioner & Montague* [2023] EWCA Civ 1378).
27. The powers of the Tribunal in determining this appeal are set out in section 58 FOIA. The Tribunal stands in the shoes of the Commissioner and takes a fresh decision on the evidence before us. We can review any finding of fact on which the Decision Notice was based, but do not review the way in which the Commissioner made its decision or conducted its investigation.

The Hearing and Evidence

28. A hearing was held over two days on 23 and 24 September 2024. The Tribunal had before it an open bundle of 127 pages, which included the open witness statement of Group Captain Redican, the Appellant's Grounds of Appeal, and the Responses of both Respondents. Each party provided a helpful skeleton argument and an agreed bundle of authorities.
29. The Tribunal also had before it a closed bundle, consisting of the Commissioner's Closed Response, a Closed Witness Statement of Group Captain Redican, which included the withheld information, and the unredacted copy of a letter from the MoD to the Commissioner. On 9 July 2024, Judge Griffin ordered that the closed bundle be held pursuant to Rule 14(6) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 and not disclosed to anyone except the Respondents. A gist of the closed bundle was provided to the Appellant before the hearing.
30. At the hearing, the Tribunal heard oral evidence from Group Captain Redican in an open session where he was cross-examined by the Appellant and Mr Goss, counsel for the Commissioner. The Tribunal then went into a closed session from which the Appellant was excluded. Group Captain Redican gave further evidence during the closed session and both Respondents made submissions. Mr Goss assisted the Tribunal to fulfil its investigatory function during the closed session, in particular by testing the evidence of Group Captain Redican, including on a number of topics identified by the Appellant in writing at the end of the open session. The Appellant was provided with a gist of the closed session, and the Appellant, Mr Goss, and Mr Knight for the MoD, then made closing submissions in a further open session.
31. The Tribunal kept the Rule 14(6) Order under review throughout the hearing and kept in mind that non-disclosure of evidence and submissions must be limited to what is necessary because it derogates from the principle of open justice. We kept in mind the guidance in the Tribunal's Practice Note on Closed Material in Information Rights Cases and in *Browning v Information Commissioner & Department*

for Business, Innovation and Skills [2014] EWCA Civ 1050. The Appellant accepted that a Rule 14(6) Order and closed session were appropriate in the circumstances of this appeal.

Evidence of the MoD Witness

32. Group Captain Redican gave evidence in the open session, and in more detail in the closed session, about the use of Reaper and Typhoon in Operation Shader, and the wider national security and defence context. His key points can be summarised as follows:
- a. Group Captain Redican has been a RAF officer for 26 years and is presently a Deputy Assistant Chief of Staff for the Joint Force Air Component. He has detailed, first-hand knowledge of the use of Reaper and Typhoon on Operation Shader.
 - b. Although the MoD had disclosed statistical information about the use of Reaper and Typhoon on Operation Shader in the past, there had been a number of significant changes, both in the conduct of Operation Shader, and in the wider Middle East and global political and security context, which had altered the MoD's assessment of the risk of disclosure.
 - c. The nature and tempo of Operation Shader had changed significantly since 2016, as demonstrated by the significantly reduced number of Reaper and Typhoon strikes in 2021 as compared with 2016. It was now much easier for adversaries to draw conclusions about tactics, techniques and procedures ("TTPs") for Reaper and Typhoon from the withheld information because they were much less "hidden in the noise". Information about TTPs could be used by adversaries to develop counter measures and to undermine the efficacy of Reaper and Typhoon, and to improve their understanding and assessment of UK operational capabilities generally, which increased the risk to UK and allied service personnel.
 - d. The wider Middle East and global political and security context had also changed significantly since 2016, in particular in light of the increased role and influence of Iran in the Middle East, and the Russian invasion of Ukraine in February 2022 which increased the likelihood of a conflict with Russia in Europe. As a result, a "line in the sand" had to be drawn in relation to the withheld information. Group Captain Redican observed frankly that, in his opinion, that line should have been drawn earlier.
 - e. While the withheld information would not in and of itself give a particular insight into the TTPs for Reaper and Typhoon, a more and more accurate picture could be built over time when this information was combined with other information available from both public and non-public sources. State actors such as Russia and Syria had access to far more data, and a far more sophisticated ability to analyse and combine vast quantities of data at high speed, than terrorist organisations like Daesh.

- f. Although Syria and Russia would have some understanding of the TTPs and capabilities of UK armed forces, there would be details which they did not know. It was crucial, in the opinion of Group Captain Redican, to protect every scrap of information in light of the changing global political and security situation.
- g. Although Reaper was due to exit service in 2024, its replacement, Protector, was a similar platform which would operate with broadly similar TTPs, with the result that information disclosed about Reaper would also be relevant to Protector.
- h. While detailed "strike statements" had been released by the MoD about Reaper strikes in Iraq and Syria, including two strikes during the period to which the Request related, these were carefully drafted and contained only limited, carefully selected, information.

The Appellant's submissions

33. The Appellant's grounds of appeal, as developed in his written and oral submissions, can be summarised as follows:

- a. The MoD had provided statistical information about Reaper and Typhoon in response to similar requests on a quarterly basis since 2015, including in relation to the quarter immediately before that covered by the Request. It was doubtful that, in the space of three months, the release of such information could suddenly "relate to" to a section 23(3) body, put national security at risk, or prejudice the capability, effectiveness or security of relevant forces, if it had not done so before, and that the balance of public interest could have swung so suddenly in favour of withholding.
- b. The withheld information was high level statistical information, aggregated over a month, and requested several months after the end of the period. Group Captain Redican had confirmed that the withheld information would not in and of itself reveal much about the TTPs of Reaper and Typhoon. The Tribunal must rigorously test the MoD's reliance on the "mosaic effect" and require the MoD to identify what specific information could be combined with the withheld information to put national security or relevant forces at risk.
- c. More sophisticated state adversaries, such as Russia and Syria, would already be aware of the capabilities of Reaper and Typhoon, in particular from operating in the same airspace over Syria and Iraq.
- d. The MoD had confirmed to the Commissioner in an email dated 23 June 2023 that with reference to sections 24 and 26 FOIA, there was "no evidence of prejudicial effect" or harm from previous disclosures to the Appellant.
- e. The Commissioner had stated in a letter to the MoD dated 16 May 2023 that section 24(1) applied only if there was "evidence of specific and real threats to national security which would occur if the withheld information was disclosed".

- f. The MoD's approach was inconsistent and arbitrary. Group Captain Redican's oral evidence demonstrated a level of confusion and disagreement at the MoD about the risks of disclosure and a new disinclination to disclose. This was a "serious backwards step" in transparency which limited proper public oversight and understanding of military operations. The Appellant referred the Tribunal to the decision in *Guardian Newspapers Ltd & Brooke v Information Commissioner & BBC* (EA/ 2006/011 and 013, 8 January 2007), where the Information Tribunal observed at paragraph 55 that:
- "Disclosure of information serves the general public interest in the promotion of better government through transparency, accountability, public debate, better public understanding of decisions, and informed and meaningful participation by the public in the democratic process."
- g. The regular quarterly release of statistical information about Reaper and Typhoon had improved public understanding of UK involvement in Operation Shader. The Appellant had used it to identify gaps in the MoD "strike statements" which the MoD had confirmed were "omitted in error". Public oversight and understanding was all the more important in light of the changing global political and security context and a vital part of the democratic process.

The MoD and Commissioner's submissions

34. In their Responses to the appeal and submissions, both the Commissioner and the MoD maintained that the withheld information was exempt from disclosure on the basis of section 23(1) or section 24(1) in the alternative, and section 26(1)(b) FOIA.
35. Mr Knight submitted on behalf of the MoD that, as outlined by Group Captain Redican, the change in its position in relation to releasing quarterly statistics about Reaper and Typhoon missions on Operation Shader was due to the changing national security and military context, rather than specific evidence of prejudice caused by previous disclosures.
36. In relation to section 24 FOIA, Mr Knight reminded the Tribunal of the principles approved by the Upper Tribunal in *Williams*. Mr Knight submitted that the need for caution on the part of the Tribunal, as required by the fifth principle, was particularly acute where, as in this case, a predictive evaluation of future conduct and risk in a dynamic and changing situation was required. This was an assessment which the MoD was particularly well-placed to carry out.
37. In relation to the balance of public interest, Mr Knight submitted that the public interest in the withheld information was limited because it was such high level statistical information. Some degree of public accountability and transparency had been provided by the MoD's "strike statements" and by disclosing information in response to parts 1a) and 5 of the Request. More effective and democratic accountability and scrutiny was provided by bodies such as the House of Commons Defence Committee and the Intelligence and Security Committee of Parliament, than through FOIA disclosures to the Appellant.

38. Mr Goss on behalf of the Commissioner disagreed with Mr Knight in relation to the public interest, "readily accepting" that there was a substantial public interest in UK military activity overseas, the use of un-manned drones, the use of public funds and public procurement for defence, and in accountability and transparency, both generally and specifically in a national security context. Nevertheless, Mr Goss submitted that the public interest was outweighed in this case to the extent that section 24 applied, by the public interest in safeguarding national security, and in relation to section 26, protecting the armed forces' capability and effectiveness. Mr Goss noted that this was not a case where the Appellant was alleging wrongdoing or a "cover up" by the MoD.

The Decision

39. The Tribunal decided that the MoD was entitled to refuse to disclose the information requested in parts 1b) and 1c), 2, 3 and 4 of the Request because that information was exempt pursuant to either section 23(1) or 24(1) FOIA in the alternative, and pursuant to section 26(1)(b).

40. Due to the nature of the withheld information and because the exemptions in section 23(1) and section 24(1) FOIA are mutually exclusive, it is appropriate to "mask" in this open Decision whether the Tribunal decided that section 23(1) or section 24(1) applied. Our decision in relation to the application of sections 23(1) and 24(1) is therefore set out in a closed annex which must not be disclosed to anyone except the Commissioner and the MoD.

41. In reaching our decision, the Tribunal applied the law as set out in paragraphs 12 to 27 above. We took into account the submissions of all parties and all the evidence before us.

Engagement of Exemptions

42. The Tribunal found the evidence of Group Captain Redican to be expert, frank, direct and measured, and in particular in the closed session, detailed and specific. We were satisfied that he had significant expertise and first-hand experience in relation to the relevant issues. The fact that at times, he expressed disagreement with previous disclosures of information by the MoD added weight to his evidence because it demonstrated the frankness and openness with which he responded to cross-examination.

43. To the extent that the Tribunal found that the withheld information was exempt pursuant to section 23(1) FOIA, we applied the *Rosenbaum* principles, noting to the extent relevant, that section 23 affords the "widest protection" of any of the exemptions. We noted that the "relates to" limb is not unlimited but must be used in a wide sense and may be informed by the context of the information. To the extent that section 23(1) applied, we considered whether any information could be disaggregated from exempt information.

44. To the extent that the Tribunal found that the withheld information was exempt pursuant to section 24(1), we applied the *Williams* principles. We noted the broad interpretation of "national security" in the first *Williams* principle and were satisfied that combatting Islamic extremism in Iraq and Syria through Operation Shader was a matter of national security for the UK.
45. The Tribunal did not accept, despite the statement in the Commissioner's letter to the MoD (see paragraph 33(e) above), that for section 24(1) to apply, there must be evidence of "specific and real threats to national security". Mr Goss submitted that this phrase appeared in a template letter published by the Commissioner, and not in its formal guidance. The phrase does not appear in the *Williams* principles which the Tribunal is bound to apply.
46. To the extent that the Tribunal found that section 24(1) applied, we took into account the need to respect the institutional competence and democratic accountability of the MoD in relation to national security matters (see the authorities in paragraph 23 above) and noted in particular the fifth principle in *Williams*:
- "National security is a matter of vital national importance in which the tribunal should pause and reflect very carefully before overriding the sincerely held views of relevant public authorities".
- We were satisfied that, in the context of section 26(1)(b), the Tribunal must have a similar respect, in relation to a request for information about UK military assets and capabilities, for the MoD's assessment of potential prejudice to the capability, effectiveness and security of relevant forces from disclosure.
47. In light of these authorities and the evidence of Group Captain Redican, the Tribunal accepted that changes in the conduct of Operation Shader, and in the wider Middle East and global political and security context, had led to a new assessment of the risks of disclosing statistical information about the use of Reaper and Typhoon on Operation Shader. To the extent relevant, we have addressed the MoD's assessment of the risk to national security from disclosure in the closed annex. In the context of defence, the Tribunal accepted the MoD's assessment that the risk to the capability, effectiveness and security of UK and allied armed forces was real, actual and of substance. That assessment was an evaluation of future conduct and risk in a complex, dynamic and changing situation, and not one necessarily based on past harm or prejudice. Rather than the risks changing overnight, from the previous quarter to the quarter which was the focus of the Request, the Tribunal found that the risks had changed gradually over time. While we were concerned in this appeal only with statistics for October to December 2022, it was likely, as Group Captain Redican believed, that the MoD could have refused to disclose statistics in respect of earlier quarters.
48. The Tribunal accepted the evidence of Group Captain Redican that while the withheld information was high level statistical information, it was capable of providing an insight into the TTPs for Reaper and Typhoon over time, in particular

when combined with other information from public and other sources, and in light of reduced activity on Operation Shader. It is impossible for the MoD or the Tribunal to know precisely what information is held by adversaries which might be combined with the withheld information for this purpose. However, the Appellant's own use and analysis of previously disclosed information demonstrated how a more and more accurate picture might be developed over time, allowing gaps and inconsistencies to be identified. The Tribunal also accepted the assessment of the MoD, as expressed by Group Captain Redican, of the ability of state actors to analyse and combine such information, and about their likely level of existing knowledge of the TTPs and capabilities of UK armed forces.

49. The Tribunal did not find, as suggested by the Appellant, that the difference of opinion expressed by Group Captain Redican in relation to previous disclosures of information, undermined the respect which we must have for the institutional capacity of the MoD. It is unsurprising that such disagreements exist within the MoD, given its size, and the complex and volatile environment in which it operates.
50. The Tribunal concluded that the exemptions in either section 23(1) or section 24(1) FOIA, and in section 26(1)(b), were engaged.

Balance of public interest

51. To the extent that the Tribunal found that section 24(1) FOIA was engaged, and in relation to section 26(1)(b), the Tribunal considered whether in all the circumstances of the case, the public interest in maintaining those exemptions outweighed the public interest in disclosure (section 2(2)(b)).
52. The Tribunal accepted the submissions of the Appellant and Mr Goss for the Commissioner that there is a substantial public interest in the use of Reaper and Typhoon by UK armed forces, in particular in relation to the use of un-manned drones in lethal strikes. That public interest is not undermined because the average member of the public needs an expert like the Appellant to interpret and analyse statistical information of the kind sought by the Request. As noted in the *BBC* case, disclosure of such information is important for transparency and accountability and to promote public debate and understanding. Transparency and accountability are arguably all the more important at times of heightened global political and security tensions.
53. However, as set out in the sixth *Williams* principle in relation to section 24 (paragraph 25 above), where the consequences of harm are serious, the public interest in avoiding even a low risk of such harm can be very strong. A similar approach is appropriate for section 26(1) in the circumstances of this case. The MoD's assessment is that disclosure of the withheld information is likely to prejudice the capability, effectiveness or security of UK armed forces. The consequences include putting such forces, and the lives of individual personnel, in danger, as well as the wider security of the UK and the safety of its citizens. Even if the risk of such harm occurring was low, the public interest in avoiding it is very strong.

54. The Tribunal took into account that where the public interest is at its highest, in the use of Reaper in lethal strikes, the MoD has published "strike statements" on its own initiative, and continued to do so after the date of the Request. It also disclosed the statistical information about the total number of missions undertaken and hours flown requested in parts 1a) and 5 of the Request. This provides some level of transparency and accountability in relation to the use of Reaper and Typhoon on Operation Shader and indicates that the MoD had balanced the risk of disclosure of particular types of information against the public interest, and was not simply applying a blanket refusal.
55. Other mechanisms than FOIA exist to ensure democratic scrutiny of the use of Reaper and Typhoon on Operation Shader, in particular Parliamentary Committees which can be given access to restricted information not available to the public through FOIA. Mr Goss helpfully drew the Tribunal's attention to the case of *R (Campaign Against Arms Trade) v Secretary of State for International Trade* [2017] EWHC 1754 (Admin), where, in relation to the granting of export licences for arms and military equipment, the Divisional Court concluded at paragraph 34 that national security assessments were "a matter of judgment and policy... and primarily matters for the executive", and that "there is an expectation, consistent with democratic values, that a person charged with making assessments of this kind should be politically responsible for them" (at paragraph 33).
56. Finally, the Tribunal found that the public interests in section 24(1) and 26(1)(b) overlapped and were capable of aggregation. To the extent that section 24(1) applied, the public interest in maintaining that exemption could be aggregated with the public interest in maintaining the exemption in section 26(1)(b).
57. Taking all this into account, the Tribunal concluded that the public interest in maintaining, to the extent relevant, the exemption in section 24(1), and the exemption in section 26(1)(b), outweighed the public interest in disclosure of the withheld information.

Conclusion

58. The information held by the MoD in relation to parts 1b), 1c), 2, 3 and 4 of the Request is exempt from disclosure pursuant to either section 23(1) or 24(1) FOIA in the alternative, and pursuant to section 26(1)(b).
59. The appeal is refused.

Signed

Date: 16 December 2024

Judge C. Goodman