

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 February 2023

Public Authority: Ministry of Defence

Address: Main Building
Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant has requested a breakdown of the support provided to Ukraine and, in particular, the proportion of that support that had reached Ukraine. The above public authority ("the public authority") relied on sections 24 (national security), 26 (defence) and 27 (international relations) in order to withhold the requested information.
2. The Commissioner's decision is that the public authority is entitled to rely on section 27 of FOIA and that the balance of the public interest favours maintaining the exemption. The public authority also breached section 17 of FOIA in responding to the request.
3. The Commissioner does not require further steps.

Request and response

4. On 30 June 2022, the complainant wrote to the public authority and, referring to two government statements itemising weapons and other equipment provided to Ukraine, asked to be told whether each item had been fully, partially or not, delivered onto Ukrainian soil.
5. On 10 August, following correspondence from the public authority, the complainant clarified that he was only seeking the information in respect of items donated by the UK Government. He also pointed to a recent ministerial statement to Parliament that not only listed the type of items

donated, but also their rough quantities.¹ The complainant stated that he wished to receive a more accurate range than that which had been provided in the statement and that he particularly wanted to know how much had actually reached Ukraine.

6. The public authority responded on 21 October 2022. It relied on sections 24, 26 and 27 of FOIA in order to withhold the requested information. It upheld this position following an internal review.

Reasons for decision

7. Section 27 of FOIA allows a public authority to withhold information whose disclosure would damage the UK's relationship with another country.

8. In its internal review, the public authority noted that:

"the requested information would provide Russia with a detailed picture of the equipment (the precise types and numbers available) that the UK has gifted to Ukraine within specified timeframes. Such information would be a valuable asset to anyone looking to identify or assess any perceived weaknesses in Ukraine's capability to defend itself. The release of any information that would provide Russia with an advantage in planning their operations within Ukraine's borders would place the Ukrainian Armed Forces and civilian population at risk.

"the release of the withheld information would provide Russia with valuable insight into Ukraine's defences. It has been assessed that such a release would undermine Ukraine's ability to defend itself and its people against an active aggressor, would not only harm relations between the UK and Ukraine, but those between the UK and other nations. For example, the release of operationally sensitive information that details the exact nature and number of items that have been delivered could inhibit the willingness of other nations to share intelligence or data with the UK. This loss of trust may impact on current and any future operations involving the supply or movement of military equipment to allied and partner nations, including those in need."

¹ <https://questions-statements.parliament.uk/written-statements/detail/2022-07-21/hcws259>

9. The Commissioner agrees that any information which would undermine Ukraine's ability to defend itself is likely to harm relations between the UK and Ukraine.
10. At the time the public authority responded to the request, the information in the public domain was only three months old – so it would still have been relatively recent.
11. If the public authority were to provide more detail about when particular items actually reached Ukrainian soil, it would be providing Russia and other countries with valuable information about the speed with which items can be transported to the front line.
12. The complainant has pointed out that he is not seeking "the date, place and time that certain missiles will be offloaded in Ukraine." That may be true but, in explaining what types and quantities had arrived in Ukraine by a given date, the public authority would be setting a benchmark. That benchmark could then be compared to public statements in which an intention to supply specific materials had been announced, to deduce the length of the gap between support being announced and it becoming operationally useful to Ukraine. That would allow Russia to make more detailed assessments of the effectiveness of supply chains and the speed with which materiel can be replaced.
13. Disclosing information that might assist Russia is, in the Commissioner's view, more likely than not to harm the UK's relations with Ukraine. To a lesser extent, it may also harm the UK's relations with other countries if it cannot be trusted to keep sensitive military information secret.
14. The Commissioner is therefore satisfied that section 27 applies.

Public interest test

15. The Commissioner agrees that a considerable amount of money has been spent on providing both lethal and non-lethal equipment to Ukraine. As of July 2022, that figure already stood at £2.3 billion. There is therefore a public interest in understanding how effectively that money has been spent. There is also a public interest in knowing (as the complainant has pointed out) whether the UK is backing up its words with actions.
16. However, the Commissioner considers that the public interest is largely met in this case by the laying of a ministerial statement before Parliament, setting out the materiel and other forms of assistance that had been provided. As the public authority has pointed out, the statement represented a careful balance between transparency and revealing information that might provide a battlefield advantage. Whilst only one such statement had been provided at the point the public

authority issued its refusal notice, further statements have been made with updated information.

17. The Commissioner also notes that the Ukrainian government has, very publicly, expressed its gratitude for the support it has received from the UK and has not indicated that the UK has failed to meet any of its commitments.
18. The Commissioner therefore considers that the balance of the public interest favours maintaining good relations with Ukraine by not disclosing information which could be of use to Russia. The public authority is thus entitled to withhold the requested information.

Procedural Matters

19. The public authority breached section 17 of FOIA in responding to the request as, although it was entitled to take additional time to consider the balance of the public interest, it did not inform the complainant, within 20 working days of receiving his request, of its estimate of the additional time required.

Other matters

20. Despite having taken additional time to consider its original refusal notice, the Commissioner notes that it took the public authority almost 60 working days to complete its internal review.
21. Whilst the review, when it did arrive, was commendably thorough, the Commissioner would note that the FOIA Code of Practice states that internal reviews should be completed within 40 working days.

Right of appeal

22. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Roger Cawthorne
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