

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 March 2024

Public Authority: Ministry of Defence
Address: Whitehall
London
SW1A 2HB

Decision (including any steps ordered)

1. The complainant submitted a request to the Ministry of Defence (MOD) seeking a range of information about the Army Officer Selection Board (AOSB), including "detailed selection criteria and [the] pre-set standard" against which candidates are assessed. The MOD initially responded to this part of the request by stating that it did not hold any information in scope. At the internal review stage it explained that it had identified a "framework" which it considered to fall within the scope of the request. However, the MOD withheld this on the basis of section 26(1)(b) (defence) of FOIA.
2. The Commissioner's decision is that the withheld information is exempt from disclosure on the basis of section 26(1)(b) of FOIA and that in all the circumstances of the request the public interest favours maintaining the exemption. However, the MOD breached section 17(1) of FOIA by failing to provide the complainant with a refusal citing section 26(1)(b) within 20 working days of the request.
3. No steps are required.

Request and response

4. The complainant submitted two emails to the MOD on 1 June 2023 seeking the following information:

'[a] Please provide the detailed selection criteria and pre-set standard that the Army Officer Selection Board assesses candidates against at Main Board.

[b] Please also provide the scores required at the Psychometric/Mental Aptitude Testing phase for a candidate to be deemed below average, average or above average in the Numerical Reasoning, Verbal Reasoning and Abstract Reasoning tests. Is emphasis placed on answering all questions, or is accuracy preferred?

[c] How is Intellectual Potential and Practical Application of Intellect assessed?'

5. And:

'[d] Please provide a breakdown of the results/outcome of candidates who presented for AOSB Briefing and Main board, that identified as BAME or Ethnically Diverse. Please break this down for the years 2020, 2021, 2022 and 2023.

[e] Does/Will the British Army provide any support to these under-represented groups at AOSB to improve Diversity and Inclusion of the Officer Corps?

[f] Please break this down for the years 2020, 2021, 2022 and 2023.'

6. The MOD responded to the requests on 14 June 2023. In relation to question 'a' of the requests, the MOD explained that it did not hold any information falling within the scope of this question. By way of advice and assistance it explained that:

"you may find it helpful to note that the only 'standard' that Army Officer Selection Board works to is the ability to complete officer training at RMAS [Royal Military Academy Sandhurst]. The over-all success rate of Direct Entry candidates at RMAS is around 96%, suggesting that AOSB is successful at selecting those likely to pass RMAS. The selection process is validated regularly by training reviews and by the ARITC Occupational Psychologist. Each candidate is assessed on their individual merits and selections are made based on untrained potential."

7. The MOD also provided information falling within the scope of the questions b, c, d and e (no specific response was provided to question f given the response provided to question e). In relation to the data provided for question d, the MOD explained that figures less than 5 had been replaced with '~' to reduce the risk of personal data being disclosed. The actual figures were considered to be exempt on the basis of section 40(2) (personal data) of FOIA.

8. The complainant contacted the MOD on 20 June 2023 and asked it to conduct an internal review of this response in the following terms:

'Please review this decision, as I believe the exemption has been applied wrongly [ie to question d]. Note that I am not requesting personal information.

With reference to the question [ie question a], "Please provide the detailed selection criteria and pre-set standard that the Army Officer Selection Board assesses candidates against at Main Board", I do not believe all the information has been provided. There would surely be some sort of checklist which assessors use.'

9. The MOD informed the complainant of the outcome of the internal review on 20 November 2023. With regard to question a, the MOD explained that:

"As part of this review, I have investigated further whether a 'checklist' or similar is used during Briefing and Main Board assessments. I can advise that there is no specific 'checklist' used by the AOSB assessors, however, whilst this is the case, I have considered whether any information is held that might reasonably meet the description of your request. As such, I can advise that there is a "framework" utilised which provides for the consistent application of the assessment process."

10. The internal review response explained that this framework document was considered to be exempt from disclosure on the basis of section 26(1)(b) of FOIA.
11. With regard to question d, the internal review withdrew the application of section 40(2) and the MOD provided the complainant with a copy of the information previously withheld on the basis of this exemption.

Scope of the case

12. The complainant initially contacted the Commissioner on 29 August 2023 in order to complain about the MOD's response to questions a and d, along with its failure to complete the internal review. Following the completion of the internal review, the complainant confirmed that he wished to challenge the MOD's decision to withhold the framework document on the basis of section 26(1)(b) of FOIA. His submissions to support this complaint are set out below. He was also dissatisfied with the MOD's delay in locating the information which it now accepts fell within the scope of this part of his request.

Reasons for decision

Section 26(1)(b) – defence

13. Section 26(1)(b) of FOIA states 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.”

14. In order for a prejudice based exemption, such as section 26, to be engaged the Commissioner believes that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure would be likely to result in prejudice or disclosure would result in prejudice. If the likelihood of prejudice occurring is one that is only hypothetical or remote the exemption will not be engaged.

The MOD’s position

15. In its internal review response, the MOD explained that disclosure of the withheld information would reveal specific elements of the selection process at AOSB. In the MOD’s view this would undermine the recruitment process including potentially lowering the standard of recruits into RMAS, who without the advantage of this insight might not be successful. The MOD argued that this would have a negative effect on both the success rate through RMAS and overall recruitment into the Armed Forces, which could negatively affect the overall success rate of the Main Board and subsequently the number of appropriate candidates reaching RMAS. In turn this would impact on the capability and effectiveness of the Armed Forces. The MOD argued that disclosure of the information “would” result in prejudice rather than just being “likely to”.

16. The MOD elaborated on these points in a meeting with the Commissioner's office regarding this request. In particular, the MOD emphasised that the AOSB process relies on ensuring that candidates behaviours are authentic and not adjusted to what they believe will help them pass.

The complainant's position

17. The complainant argued that the MOD's position that disclosure of the withheld information would prejudice defence capabilities lacked concrete evidence. He argued that contrary to the Civil Service Commission's openness in providing detailed frameworks, the MOD had withheld similar information which in his view raised questions about the necessity and validity of the decision.

The Commissioner's position

18. With regard to the first criterion, the Commissioner accepts that the type of harm that the MOD believes would occur if the information was disclosed is applicable to the interests protected by section 26(1)(b) of FOIA.
19. With regard to the second criterion, the Commissioner accepts that there is a logical connection between the disclosure of the withheld information and an impact on the effectiveness of the ASOB recruitment process. This is because disclosure of the information would provide candidates with a detailed and genuine insight into the assessment process, and in particular how their performance across all aspects of this would be scored. In turn, the Commissioner accepts that it is plausible to argue that such an outcome could have a wider detrimental effect on the effectiveness of Armed Forces if it interferes with the recruitment process.
20. With regard to the third limb, the Commissioner is satisfied that the likelihood of such prejudice occurring is clearly one that is more than hypothetical. Moreover, he is satisfied that the higher level of likelihood, ie "would" prejudice, is met. He has reached this conclusion given the detailed nature of the information that has been withheld and the ways in which prejudice would occur. It is clear to the Commissioner that candidates to the AOSB process who had access to this material, prior to the assessment process, could use this to change their behaviour during the process. This could result in candidates being able to use such material to their advantage. Although disclosure of information under FOIA is disclosure to the world, and therefore in theory all candidates would have access to such material, the Commissioner accepts that on a practical level only a small number of candidates may, at least initially, take advantage of a disclosure in response to this request.

21. Conversely, access to the material may also result in candidates changing their behaviour to the extent that they perform worse than they may have done without sight of this material and therefore fail to provide a full or natural representation of themselves or their potential. In either scenario, the Commissioner is satisfied that the effectiveness of the assessment process would be materially undermined. Whilst the Commissioner acknowledges the complainant's point that similar information has been disclosed by other public bodies, the circumstances of each case must be considered on its own merits. For the reasons set out above the Commissioner is satisfied that the disclosure of information in this case would be prejudicial and therefore he accepts that section 26(1)(b) is therefore engaged.

Public interest test

22. Section 26 is a qualified exemption and therefore the Commissioner must consider whether in all the circumstances of the case the public interest in maintaining the exemption contained at section 26(1)(b) outweighs the public interest in disclosing the information.

23. The complainant argued that withholding the information falling within the scope of this request hinders transparency about the AOSB process and raises accountability concerns.

24. The MOD acknowledged that disclosure of the information would contribute to its commitment to openness and transparency, but furthermore would also provide greater insight into how the Army selects recruits for Officer training at the RMAS. The MOD recognised that there is a public interest in how the organisation is run, including the British Army's recruiting processes.

25. However, the MOD argued that there was a clear public interest in ensuring that the effectiveness of the AOSB selection process was not undermined as this would impact on overall recruitment into the Armed Forces.

26. The Commissioner accepts that there is a public interest in the MOD being open and transparent about its recruitment processes. Disclosure of the withheld information would provide a direct, and detailed, insight into how candidates at AOSB are assessed. However, the Commissioner agrees with the MOD that this has to be balanced against the need to ensure that the assessment process remains effective. In the Commissioner's view given the significant risk to the effectiveness of the process that disclosure would result in, the public interest favours withholding this information.

Procedural matters

27. In respect of exempt information, section 17(1) of FOIA requires that a public authority provide an applicant with a refusal notice within 20 working days of receiving their request if they are seeking to rely on an exemption to withhold information. In this case, the MOD did not identify that the framework document fell within the scope of question a, and inform the complainant that it considered it to be exempt from disclosure on the basis of section 26(1)(b), within 20 working days of this request. It therefore breached section 17(1) of FOIA.

Other matters

28. FOIA does not impose a statutory time within which internal reviews must be completed, albeit that the section 45 Code of Practice explains that such reviews should be completed within a reasonable timeframe.¹ The Commissioner expects that most internal reviews should be completed within 20 working days, and even for more complicated requests, reviews should be completed within a total of 40 working days.² In this case, as noted above, the MOD failed to meet these timescales.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

² <https://ico.org.uk/for-organisations/foi-eir-and-access-to-information/freedom-of-information-and-environmental-information-regulations/request-handling-freedom-of-information/#internal>

Right of appeal

29. 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

30. 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.
31. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF