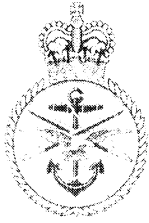


From Andrew Tranham



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CIO-CI-Information Access Review

D/CIO/3/18/1/563  
(20-07-2011-095056-001)

Mr Chris Cole  
20 Wilkins Road  
OXFORD  
OX4 2HX

Via email: [chris@dronewars.net](mailto:chris@dronewars.net)

20 January 2012

Dear Mr Cole,

### **FREEDOM OF INFORMATION ACT 2000 – INTERNAL REVIEW**

1. I am writing in response to your e-mail dated 29 July 2011 in which you requested an internal review of DSTL's decision to withhold the document 'An Unmanned Combat Air System Concept of Use' (UCAS CONUSE) in response to your request, under the Freedom of Information Act 2000 (the Act). The purpose of the internal review is to consider whether the requirements of the Act have been fulfilled. The scope of the review is defined by Part VI of the Code of Practice under Section 45 of the Act, which can be found at <http://www.justice.gov.uk/guidance/docs/foi-section45-code-of-practice.pdf>. I have now completed a full independent review of the handling of your request and I apologise for the delay.

#### **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 17(1) which states that, where it claims that information is exempt, the public authority must, within 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 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 give 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.

3. Your request for information dated 7 July 2011 was as follows:

*“As you will be aware there is a great deal of public interest in the development of unmanned combat systems.*

*I hereby request, under the Freedom of Information Act, a copy of ‘An Unmanned Combat Air Systems Concept of Use’, dated 2008, ref no. R0001C94E.*

*The abstract in Defence Reporter from Spring/ Summer 2009 states that the document provides “a broad outline of how it is envisioned that an Unmanned Combat Air System (UCAS) will be employed both in preparation for, and when operationally deployed from 2020 and beyond.” Given that the document does not contain details of current UAV operations there seems no reason why the document cannot be released”.*

DSTL responded on 26 July 2011 and the information was withheld engaging section 26(1) (Defence) and section 27 (International Relations) of the Act. Given that the reply was provided within the timescale for a response and there was a brief explanation as to why the exemptions were engaged albeit a brief one, I find that the reply complied with the Act. You were correctly advised of your right to appeal.

### **Substance of the Reply**

4. As part of this internal review, I asked the MOD subject matter experts to review the information again and I find that some information contained within the UCAS CONUSE can now be disclosed to you. However, some information is withheld under the exemptions that were cited to you and a further explanation of the public interest arguments is outlined below.

## **Section 26 (defence)**

5. The relevant qualified exemption that applies to the information withheld is section 26(1)(a) and (b) of the Act. Section 26 protects information if its release would, or would be likely to, prejudice (a) the defence of the British Islands or any colony, or (b) the capability, effectiveness or security of any relevant forces. Disclosure of information from the UCAS CONUSE document would demonstrate openness and improve public understanding on the development and employment of a potential UAS. It would also increase confidence in the military's responsible current and future use of UAS, in particular help to allay concerns that the deployment of UAS are carried out in accordance with International Law. The report details the types of capabilities that the UAS would have and potentially how they might be operated and maintained. Though some of this information is disclosed in open source documents, information about how missions are undertaken is not and therefore the test of the public interest test has concluded that this should not be disclosed.

6. The information withheld provides details of the capability of UAS and there is a risk that it could be used by enemy forces to adapt their tactics in order to reduce their operational effectiveness. This would increase the security threat to our own forces and those of our allies.

7. I find that although disclosure would provide information to members of the public about both the use and capability of UCAS, the balance of the public interest lies in withholding most of the information because its release would prejudice the effectiveness of the Defence forces involved in current and future operations. Some information in the scope of this request is released where there is no risk to the operational effectiveness of the Defence forces and those of our allies. Section 26(1) is, therefore, correctly applied to the remaining withheld information.

## **Section 27 (international relations)**

8. Section 27 (information which if disclosed, would prejudice the UK's international relations or the UK's interests abroad) and in particular section 27(1)(a) relations between the UK and any other State is considered here. Like section 26, section 27 is a qualified exemption and the information requested can only be withheld if the public interest in doing so outweighs the public interest in disclosure. A test of the public interest test has concluded that although disclosure of information would provide further understanding of the nature of our military cooperation with other State(s) in the use of current and future UAS, there is a need to maintain good relations with the States involved. Working relationships would be likely to be damaged by the release of information that has been provided in confidence. This would be likely to inhibit willingness of the countries concerned to participate or share information about the development or deployment of the UAS with the UK in future. Section 27(1)(a) relations between the UK and any other State is therefore engaged.

## **Section 23(5) / section 24(2) NCND**

9. In addition, the MOD neither confirms nor denies whether it holds any additional information within the scope of your request which would be exempt from disclosure by virtue of section 23(5) (information supplied by, or relating to bodies dealing with security matters) and section 24(2) (national security), which is a qualified exemption. Section 23 is an absolute exemption and does not require a public interest test to be conducted. To the extent section 24(2) applies, we have concluded that in all the circumstances of the case,

the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in confirming whether any information is held. The Act recognises that it is sometimes necessary for public authorities to be exempt from the duty to confirm or deny whether it holds information where to do so would result in the harm the specific exemption is designed to prevent – though any exempt information may or may not be held. I find that that necessity arises in responding to your request. Confirmation or denial of whether there is or is not security or intelligence interest and/or capability could be exploited by individuals or organisations with consequent damage to national security.

#### **Section 40 (personal data)**

10. 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 starting point 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. I can, therefore, inform you that the personal information has been withheld in accordance with this policy.

#### **Conclusion**

11. In conclusion I find that:

- Your request was handled in accordance with the Act;
- Some information from the report is now released to you and I attach the redacted UCAS CONUSE document;
- However, some information is withheld under section 26(1)(defence) and section 27(1)(a)(international relations) of the Act. A small amount of information is withheld under section 40 (personal data). The exemptions listed are correctly applied to the withheld information, as is the right for the Department to neither confirm nor deny whether any information is held that would be exempt from release under section 23(5) (information supplied by, or relating to bodies dealing with security matters) and section 24(2) (National Security).

12. 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](http://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,*  
*AG Cranham*