

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 March 2015

**Public Authority:** Cabinet Office  
**Address:** 70 Whitehall  
London  
SW1A 2AS

#### Decision (including any steps ordered)

---

1. The complainant requested a copy of a Joint Intelligence Committee report pertaining to *Exercise Able Archer*<sup>1</sup>. The Commissioner's decision is that the public authority was entitled to withhold the information requested on the basis of the exemptions at sections 23(1) and 24(1) FOIA.
2. No steps required.

#### Request and response

---

3. The Commissioner understands that the complainant wrote to the public authority on 9 July 2014 and requested information in the following terms:

*'...the 23 March 1984 Joint Intelligence Committee report, reference JIC(84)(N)45, entitled, "Soviet Union: Concern About a Surprise NATO Attack," which was written in response to the NATO military exercise codenamed Able Archer 83.'*

---

<sup>1</sup> A simulation exercise by the North Atlantic Treaty Organisation (NATO) in 1983 intended to gauge the effectiveness of NATO's Command, Control and Communications procedures in the event of a nuclear war.

4. The Commissioner understands that the public authority responded to the request on 23 July 2014. It declined to provide a copy of the Joint Intelligence Committee report on the basis of the exemptions at sections 23(1), 24(1) and 27(1)(a), (b), (c) and (d) FOIA.
5. The Commissioner understands that the complainant requested an internal review on 6 August 2014.
6. On 15 September 2014 the public authority wrote to the complainant with details of the outcome of the review. It upheld the original decision above in full.

### **Scope of the case**

---

7. On 20 October 2014, the complainant contacted the Commissioner to complain about the way his request for information had been handled. He challenged the application of exemptions on a number of grounds which the Commissioner has summarised further below.
8. The public authority considers the Joint Intelligence Committee report, reference JIC(84)(N)45 of 23 March 1984 (the report) exempt from disclosure under section 23(1), and, insofar as any of the information does not engage section 23(1), it is exempt under section 24(1). The public authority also considers parts of the report additionally engage the exemption at section 27(1)(a), (b), (c) and (d).
9. The scope of the Commissioner's investigation therefore was to determine whether the report was correctly withheld on the basis of the exemptions at sections 23(1) and 24(1) and if necessary, also consider whether some of the information was correctly withheld on the basis of the exemptions at sections 27(1)(a), (b), (c) and (d).

### **Reasons for decision**

---

#### Sections 23(1) and 24(1)

10. Section 23 (1) states:

*'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).'*

11. To successfully engage the exemption at section 23(1), a public authority must be able to demonstrate that the relevant information was

*directly or indirectly supplied by, or relates to any of the bodies listed at section 23(3).*

12. Section 24 (1) states:

*'Information which does not fall within section 23(1) is exempt information if exemption from section 1(1)(b)<sup>2</sup> is required for the purpose of safeguarding national security.'*

### **Complainant's submissions**

13. The submissions by the complainant in support of his position that the report or at least parts of it should be disclosed were as follows:

14. *'Even if some information must remain withheld, it is entirely likely that the document holds much information that can be segregated and released with great benefit to the public interest.'*

15. *An abundance of documents have already been released by the US and UK governments on the 1983 Soviet "War Scare" referencing information on the Soviet defector Oleg Gordiyevsky and British and US intelligence – including human intelligence and signals intelligence. These include:*

- *Photographs and records of Oleg Gordiyevsky meeting and debriefing President Reagan,*
- *British Ministry of Defence documents confirming the "unprecedented Soviet reaction" as well as intelligence sharing between US and the UK,*
- *A classified CIA 1996 Studies in Intelligence article "The 1983 War Scare in US-Soviet Relations" by Ben. B. Fischer, a History Fellow at the CIA Center for the Study in Intelligence,*
- *A Department of State document confirming a British source alerted the US to the danger, and*
- *A US Air Force After Action Report of the NATO Command Post Exercise Able Archer 83.*

---

<sup>2</sup> Section 1(1)(b) imposes a general duty on public authorities to disclose information to an applicant following a request, subject to exemptions such as the one contained in section 24(1).

16. *Michael Herman of the Soviet Division at GCHQ from 1977 to 1982, has recently discussed the contents of this document at length. He also strongly recommended its declassification as it benefits the public interest.'*

### **Public authority's submissions**

17. The public authority provided the Commissioner with a letter from a very senior official in the Cabinet Office (SO) with the experience and authority to validate the provenance of the report. The SO assured the Commissioner that most of the information in the report was either received from one of the bodies listed in section 23(3) or is directly related to them. The SO also explained that the information in the report not considered exempt under section 23(1) is considered exempt under section 24(1).
18. The public authority acknowledged that there was a general public interest in better public understanding of the steps the authorities take to maintain national security, including an understanding of the lessons learned from exercises such as Able Archer.
19. However, those interests have to be weighed against the very strong public interest in safeguarding national security. It submitted that there is a very weighty public interest in protecting assessments of the effectiveness and impact of exercises such as Able Archer, including the reaction of the Soviet Union to the exercise.
20. The public authority took into account the age of the information and concluded that, although it was almost 30 years old, the information was still relevant today in the context of the UK's national security.
21. The public authority explained that it had recently reviewed the information held on Exercise Able Archer as part of a recent annual transfer of records to the National Archives and all of the information has been retained by the authority under the terms of section 3(4) of the Public Records Act. Other States and UK Government departments were entitled to make their own judgements about the information they make public.

### **Commissioner's findings**

22. The Commissioner has considered all the submissions of both parties. He accepts that in the circumstances of this case, the assurance provided by the SO with regards to the application of section 23(1) to most of the information in the report is sufficient.
23. He further accepts the assurance provided by the SO with regards to the application of section 24(1) to the remainder of the withheld

information. The Commissioner considers that in the circumstances of this case, the SO's letter and the additional explanation subsequently provided by the public authority are sufficient for the purpose of his investigation.

24. The Commissioner therefore finds that most of the information in the report is exempt from disclosure on the basis of section 23(1) because it was supplied by, or relates to, one of the bodies listed in section 23(3).
25. He also finds that the information in the report not exempt on the basis of section 23(1) is exempt from disclosure on the basis of section 24(1). He accepts that in the circumstances, exemption from disclosure is required for the purpose of safeguarding national security.
26. Section 23(1) is an absolute exemption which means that there is no requirement to carry out a public interest test to determine whether or not the information withheld on that basis should have been disclosed in any event in the public interest.

*Balance of the public interest*

27. Section 24(1) is a qualified exemption which means that it is subject to a public interest test. Therefore, the Commissioner also had to consider whether in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the information withheld on that basis.
28. The Commissioner accepts that there is a public interest in understanding the lessons learned from Exercise Able Archer. He accepts that it could potentially add value to what is already publicly known regarding the exercise.
29. However, the Commissioner agrees with the public authority that there is a strong public interest in safeguarding national security. Given that the report is still relevant to national security today, the Commissioner considers that there is a strong public interest in not disclosing it.
30. Whether or not some information pertaining to Exercise Able Archer has been disclosed in the past is not relevant to the question of whether the withheld information in this case should be disclosed. That fact on its own does not increase the public interest in the disclosure of the report. The recommendation of a former official that the report should be de-classified is of very limited relevance. These factors certainly do not match the very strong public interest in safeguarding national security.
31. The Commissioner therefore finds that the public interest in maintaining the exemption at section 24(1) outweighs the public interest in disclosing the information in the report withheld on that basis.

32. In view of his decision above, the Commissioner did not need to consider the applicability of the remaining exemptions relied on by the public authority.

## Right of appeal

---

33. 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: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. 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 .....**

**Graham Smith**  
**Deputy Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**