

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 August 2022

Public Authority: Department for Business, Energy and Industrial Strategy ("BEIS")

Address: 1, Victoria Street
London
SW1H 0ET

Decision (including any steps ordered)

1. The complainant has requested information on the report sought by the National Security Strategic Investment Fund ('NSSIF') relating to the Government's investment in OneWeb¹. They also requested information on any reports on the health impacts of electromagnetic radiation or radiofrequency radiation from satellites considered with regard to the investment.
2. The Commissioner's decision is that BEIS has appropriately applied the exemption at FOIA section 43(2)- Commercial information to the information held.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 17 September 2020, the complainant wrote to BEIS and requested information in the following terms:
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¹ OneWeb is a Low Earth Orbit (LEO) broadband satellite communications company building a capability to deliver broadband satellite internet services worldwide.

"Re the request for a direction below, the National Security Strategic Investment Fund (NSSIF) had on government's behalf sought professional financial advice on the company's prospects into the purchase of OneWeb by the government.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902931/OneWeb - request for ministerial direction.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902931/OneWeb_-_request_for_ministerial_direction.pdf)

The letter above states: 'That work involved scrutinising the business plan from the firm's management, including its revenue projections, through a financial model. It drew on expertise provided by a space-sector consultant. The model was also adjusted to ensure that it reflects a more conservative projection of the likely returns.'

This request is for a copy of the report sought by NSSIF which relates to the statement above.

In addition, a request is made for any reports considering the health impacts of using electromagnetic radiation/radiofrequency radiation from satellites on humans, animals, pollinators and trees in considering the implications of this investment."

5. BEIS responded on 29 September 2020 refusing the request in reliance of section 41(1) – Information given in confidence and section 43(2) – Commercial interests. BEIS explained that the additional request was outside of its remit and "not part of the astronomy community's assessment of interference issues."
6. The complainant requested an internal review on 13 October 2020, as follows:

"My request was refused on the grounds of confidentiality outweighing the public interest in disclosing. It is important for the public to understand whether or not the government followed cogent financial advice. I suspect that did not happen in this case and wish to see the financial information."
7. Following an internal review BEIS wrote to the complainant on 28 October 2020 upholding its application of sections 41(1) and 43(2) to withhold the information held.

Scope of the case

8. The complainant contacted the Commissioner on 17 February 2021 to complain about the way their request for information had been handled. They explained:

"The information is vital for the public to understand what has happened and why the government spent £500m for a less than controlling stake in a defunct company which is not able to achieve the purposes the government hoped it would achieve – eg a replacement for its removal from the Galileo space satellite programme by the EU which provided satellite navigation services."

9. The Commissioner contacted the complainant on 22 January 2022 explaining that he had considered a similar request recently and provided a link² to his decision notice. He explained that as the decision was so recent he would expect BEIS to provide very similar submissions as in the previous case and the outcome would likely be the same, that being the engagement of the section 43(2) exemption with the public interest favouring maintaining the exemption. In this light the Commissioner asked the complainant if they wished to provide any further reasoning to support their case. He asked if there were any further arguments they would like to put forward in support of their position that could significantly impact on the balance of the public interest, such that the Commissioner's decision would be effected.
10. The complainant responded on 7 April 2022 they did not address the previous decision notice or the balance of the public interest but provided the following:

"How is it ok for the government to lie to the public with impunity and not disclose info when challenged which will demonstrate that they are lying in accordance with the laws of the land.

In its statements when the govt bought the defunct 5g company, they said it would replace the EU Galileo satellite navigation system the UK was being kicked out of because of Brexit. They knew that was a lie because the advice they received from the Space Agency, which they won't disclose, told them this was not possible.

In what universe can such a flagrant breach of our sacred Nolan principles of being in public office allowed to remain hidden?

The only commercial sensitivity here is the gross and flagrant lie to the public and the possible over payment against all internal government advice."

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/4017810/ic-64176-m6f6.pdf>

11. The complainant has not complained to the Commissioner about BEIS' response to their additional request regarding material considering health impacts. The Commissioner is aware that BEIS engaged with the UK Space Agency to also confirm that no reports on satellite radiation health implications exist within the remit of the UK Space Agency.
12. Therefore the Commissioner considers the scope of his investigation to be BEIS' application of FOIA section 41(1) and 43(2) exemptions to the report referenced in the primary request.

Reasons for decision

13. Section 43 – Commercial interests

Section 43(2) of FOIA states:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

14. In order for a prejudice based exemption, such as section 43, 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 or 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
15. BEIS provided the Commissioner with the information it holds in the scope of the request, which comprises the withheld information. It explained that disclosure of the withheld information would prejudice commercially sensitive interests of the company and its investors by

disclosing information on OneWeb's structure and finance options which would not otherwise be in the public domain. Using this information, assumptions may be drawn by competitors on OneWeb's commercial strengths, weaknesses and future planning allowing its competitors a competitive advantage. BEIS concluded that:

"This would weaken OneWeb's ability to compete for contracts and do business with suppliers and customers."

16. BEIS stated the following:

- Revealing commercially sensitive information about the company to its competitors would undermine the company's ability to compete effectively in a global market.
- Disclosure would undermine trust and an effective working relationship between the company, its other investors and HM Government.
- Damage to OneWeb's commercial interests and ability to secure future investment, partnerships or customers by disclosure of information not intended for public scrutiny.

17. BEIS' view is that disclosure **would** harm OneWeb and its ability to compete and secure contracts which would cause significant commercial damage to the company and would give competitors information that they would not otherwise be able to obtain legally.

18. The Commissioner is satisfied that the harm alleged by BEIS relates to the commercial interests of OneWeb. He therefore accepts that the alleged prejudice is relevant to the section 43 exemption. He considers that the first criterion set out in paragraph 14 is met.

19. With regard to the second criterion, having viewed the document which comprises the withheld information, the Commissioner accepts that the information is commercially sensitive as the document covers analysis of OneWeb's business strategy and position in the market, including financial analysis. The Commissioner notes that the information is also subject to a non-disclosure agreement. Consequently he accepts the causal relationship between releasing this information and prejudice to the commercial interests of OneWeb is real and of substance. He also acknowledges the potential prejudice for undermining trust between the Government and any other current or potential future commercial partner, by disclosure of information with the potential to damage the commercial interests of partners with the effect of reducing the open and frank sharing of information between businesses and HM Government.

20. The Commissioner accepts that BEIS has demonstrated the application of the higher threshold level of 'would' prejudice the commercial interests of OneWeb and OneWeb's investors. He agrees that

competitors would find benefit from the information which in turn would result in prejudice to OneWeb's commercial interests. He considers the anticipated prejudice is more likely than not.

21. The Commissioner therefore finds that the exemption at section 43(2) was correctly engaged by BEIS. This exemption is subject to the public interest test as set out in section 2(2)(b) FOIA. The Commissioner must decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing withheld information.

The public interest

22. The complainant has explained her concerns and suspicions regarding the Government's investment in OneWeb as set out above in paragraphs 8 and 10. The Commissioner accepts that the complainant considers there to be a significant public interest in allowing public scrutiny of the withheld document.
23. In favour of disclosure BEIS stated that the requested information would provide greater transparency in the Government's decision to invest in OneWeb.
24. In favour of maintaining the exemption BEIS advised that the withheld information would make public information about OneWeb's business structure and finance options which as a commercial company would not usually be in the public domain. BEIS explained that disclosure would increase the risk of commercial prejudice to current and potential investors as well as companies contracting with OneWeb.
25. Furthermore BEIS provided details of the public scrutiny of the Government's decision to invest which has now taken place, albeit after its response to the request. This includes the following Select Committees which conducted oral non-inquiry sessions with transcripts disclosed online:
 - BEIS Strategy Committee on Thursday 17th September 2020³. The Committee held an evidence session to have a technical overview of UK satellite strategy and of satellite-based broadband against the backdrop of the OneWeb deal.

³ <https://committees.parliament.uk/oralevidence/891/pdf/>

- Science and Technology Committee on Wednesday 9th February 2022⁴. The Committee scrutinised the UK's national space strategy, addressing the strengths and weaknesses identified during the inquiry of the Committee to date. The Committee also scrutinised Government's decision and the way it invested in OneWeb.
- Defence Committee on Tuesday 8th March 2022⁵. The Committee focused on steps to protect the UK's space assets in the face of growing threats from its adversaries and the increasingly congested space environment. The Committee scrutinised OneWeb's commercial operations in light of Russia's invasion of Ukraine.

Balance of the public interest

26. The Commissioner is aware of the controversy and concerns surrounding the Government's investment in the private company OneWeb. He set out in the earlier decision notice⁶ previously referenced, his consideration of the public interest test. The request in this case concerns only one part of the information requested in that case.
27. The Commissioner will not repeat his considerations from the previous decision notice other than to note that the further scrutiny expected at the time of the previous notice has taken place and is readily available to inform the public.
28. The Commissioner notes that due to the size of the Government's investment into OneWeb it has subsequently responded to Parliamentary Questions on the advice it received to support the decision to invest with responses published online in addition to the select committee information. Scrutiny of the operation of OneWeb in Parliamentary Questions remains on-going⁷.

⁴<https://committees.parliament.uk/oralevidence/3427/pdf/> - in particular Q419-483

⁵ <https://committees.parliament.uk/event/7205/formal-meeting-oral-evidence-session/> - in particular Q204-9,222-7, 259-60

⁶ IC-64176-M6F6 (n2)

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https://www.parallelparliament.co.uk/writtenanswers/search?search_term=OneWeb&order_field=datenew

29. In reviewing the balance of the public interest the Commissioner is satisfied that his previous decision notice reached the appropriate conclusion. He remains persuaded that the public interest in not creating commercial prejudice and not impairing the success of a company in which public money is invested carries more weight than furthering the understanding of the decision of the Government to invest in OneWeb that would be served by the disclosure of the withheld information. Having made his decision based on the circumstances at the time of the request he considers that the scrutiny taking place since the time of the request, which continues to date, has supported his conclusion.
30. The Commissioner therefore has decided that the public interest favours maintaining the exemption and withholding the requested information.
31. As the section 43(2) exemption is upheld the Commissioner has not considered the application of section 41.

Right of appeal

32. 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

33. 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.
34. 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

Susan Hughes
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Information Commissioner's Office
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SK9 5AF