

**Ministry of Defence Access to Information  
Guidance Note**

Version 6

June 2009

**Guidance Note E3: Appendix A- International Relations**

**Part 1:** Terms of the FOI exemption for International Relations, and principles relevant to consideration of requests for information provided by other countries, international bodies and collaborative partners.

**Part 2:** The process for consultation with these international third parties (N.B. Annex A sets out specific arrangements for consultation where US information is involved. Annex B sets out relevant points of contact).

**Part 3:** The status of Treaties, MOUs and other arrangements that govern international relationships.

**Part 4:** The position of Defence Attaches and UK personnel working with other countries or international bodies.

**Part 5:** Special provisions relating to the timescale for handling requests for international information.

**Part 6:** Proactive release of information about international relationships.

The relationships with overseas partners and organisations are wide-ranging and complex. Common sense and pragmatism must therefore be applied depending on the nature of the request and the relationship.

**1 Terms of International Relations exemption and principles for application**

1.1 The Act includes an exemption for information that would be prejudicial to international relations. This has two parts. The first relates to information if its disclosure would prejudice relations between the UK and another state, international organisation, the interests of the UK abroad or the promotion or protection by UK of those interests. The second part relates to information if it is 'confidential information' obtained from another State or international organisation (such as NATO or the EU).

1.2 There is a legitimate public interest in information about international relationships and the exemption will therefore not apply on a blanket basis to all information that falls within its scope. To claim the exemption it must be able to show that the disclosure of information in each case would prejudice, or would be likely to prejudice, the UK's international relations or that the information was received in confidence from another state or international body. Even when the exemption does apply, it will be necessary to apply the public interest test before withholding any information.

1.3 The concept of 'public interest' is not defined in the Act as it will change over time and in light of specific circumstances. In the case of information received from or relating to another country, any arguments in favour of releasing information would have to be balanced against the importance of ensuring that relationships with our partners and allies are not undermined. In assessing this balance, it will be important to remember that MOD relies on maintaining the flow of information with friends and allies to sustain its defence posture. While it is difficult to ring-fence the types of information that are likely to be of concern, it is possible to conclude that the release of **any** information without consent, whether or not it is believed to be genuinely sensitive, has the potential to undermine international relationships and so curtail the future flow of information. As a general principle, therefore, the policy is to consult international partners whenever it is necessary to consider the disclosure of information in which they have an interest.

1.4 What information might be covered by the international relations exemption?

# Ministry of Defence Access to Information Guidance Note

Version 6

June 2009

**Information potentially relevant to the exemption covers a broad spectrum and could include, for example:**

- Reporting on, or exchanges with, foreign governments or international organisations such as the EU, NATO, or the UN.
- Information about MOD activities or relationships with overseas companies
- Details of inward and outward State visits or visits by Ministers and officials
- Discussion within MOD and with other government departments about particular States or international issues
- Information relevant to actual or potential cases before an international court
- Details of the UK's positions in multilateral or bilateral negotiations

1.5 These examples are not exhaustive and are provided as an illustration only of the kind of information that might trigger use of the exemption or the exception. It is also important to remember that other exemptions might be relevant to information that relates to an international relationship. In particular, it might be appropriate to consider using the exemptions for defence or for commercial information.

## **2 Process for consultation with International Third Parties**

See ANNEX B for separate procedures for consultation with US interlocutors. (sent to US for update June 09)

2.1 It is important that we can continue to share information, confident in the knowledge that partners will be consulted and that the Act gives protection for confidential information supplied by partners. Our most extensive defence relationship is with the USA and, because of this, specific arrangements for consultation about requests for information have been agreed: these are set out in Annex B. The following guidelines should be used as a yardstick for dealing with all other international partners and/or international organisations.

2.2 Our approach will be to withhold information when release would clearly cause harm to relations with our international interlocutors. At the same time, we believe that our ability to withhold information will be strengthened if we can demonstrate that we are complying with the spirit of the Act by avoiding unnecessary secrecy.

2.3 In dealing with some requests, it will be essential to consult officials from partner nations about the possibility and implications of disclosing information. Having the views of foreign experts on the subject will obviously help us to decide how to reply. Evidence of these views will also be important in defending our position in the event that an applicant appeals against any decision to refuse information.

2.4 There are basically two scenarios for dealing with request where consultation with an international partner is necessary:

- requests where there are established links between the MOD and international partner policy staffs; and
- requests where there is no readily identifiable/single point of contact.

2.5 Having agreed channels for consultation will mean we can give quick and effective consideration to the implications of disclosing information in which we share an interest. It should be emphasised that International partners do not have a right of veto, but as a matter of principle desk officers should always seek to consult with international partners regarding FOI requests, as they may be able to assist in the application of exemptions.

The consultation process with International Partners should operate as follows:

**Ministry of Defence Access to Information  
Guidance Note**

Version 6

June 2009

**(a) Process where there are established channels of communication with International Partners**

In the case of information on subjects in which there are regular contacts and/or established forum for bilateral dialogue, it is proposed that the relevant staff who are expert on the subject should liaise direct. The sequence of events would be as follows:

(I) Following receipt of a request, the UK policy officer will establish what information is held/needs to be considered in answering a request.

(II) Unless there is a clear-cut and readily sustainable case for refusing the information which has been received from international partners, developed bilaterally, or in a multinational domain, the officer will then consult his counterpart as quickly as possible (via the 20 working day deadline<sup>1</sup>) with a view to establishing:

- whether the information is already in the public domain (e.g. to ensure consistency, it would be important to know whether the same or related information had already been released by partners);
- whether the information is covered by an absolute exemption (this is only likely to be the case if the information was provided by/relates to one of the UK intelligence agencies or the Special Forces).
- whether the information is considered to have been provided in confidence and continues to require that confidentiality. (Where this is not the case, the exemption for International Relations may still allow non-disclosure as it also covers information that would, or would be likely to, prejudice international relations); and
- assuming the information is covered by the International Relations (and therefore non-absolute) exemption, the factors and relative weight of those factors, that are relevant in assessing the balance of public interest.
- whether the information is covered by any of the other exemptions, such as defence or commercial interests (remember that all of the exemptions that apply in a particular case should be applied in the response)

(III) The UK desk officer will then prepare a reply to the applicant in light of the dialogue at (II) above, and agree with the relevant international partner / point of contact what – if any – information will be provided.

**(b) Process where there are no established channels for communication:**

In any cases where there is no immediately obvious channel for bilateral dialogue (e.g. where there is no existing relationship, or, if a request ranges over a number of subjects. In these instances the desk officer handling the request should instead inform one or more of the following as appropriate;

- The responsible/lead MoD policy branch (e.g. PRRN, PDRS, DPIO)
- The appropriate MoD Defence Attaché in-country or, where in existence, the UK liaison officer
- Lead Foreign Office policy branch in UK
- For NATO cases, UK DEL NATO in Brussels

There will be other situations where there is still no identifiable lead. In these instances, desk officers should consult with CIO CI Access for further guidance.

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<sup>1</sup> Where it will not be possible to respond to the request within the 20 working days, desk officers should write to the applicant and provide an estimated date for when the response will be sent.

**Ministry of Defence Access to Information  
Guidance Note**

Version 6

June 2009

**2.6** For both scenarios a t a and b) above Defence Security (Def Sy) **must** be advised immediately of the details of any request for access to foreign owned classified information received. While the MOD recipient of the FOI access request for the foreign classified information must consult the foreign owner as described above, Def Sy will advise the Cabinet Office Security Policy Division of the access request and, in accordance with its obligations under applicable defence bi-lateral Security Arrangements/Agreements, inform the overseas security authority in the originating country of the request and with whom the MOD recipient is consulting in that country about the disclosure. CIO CI Access will consult with NSLG.

Please contact: Defence Security (Def Sy), xxxxxxxxxxxxxxxxxxxxxxxx or xxxx

Internal email xxxxxxxxxxxxxxxxxxxx or xxxxxxxxxxxxxxxxxxxx

**3 Status of Treaties, MOUs and other arrangements that govern international relationships**

**Requests relating to NATO**

3.1 The working assumption is that if a request is received for information that the MOD holds, but has originated from a NATO document, then the desk officer should refer the request to UK DEL NATO in Brussels, who will approach and consult with NATO authorities and partners regarding the request. Note that UK DEL will also cover FOI issues with SHAPE. Desk Officers may also wish to seek guidance from DPIO in the UK for NATO related requests.

3.2 In terms of assessing whether an exemption applies to information held by the MOD relating to NATO, the most likely will be the international relations exemption. S27(2) provides that information is exempt if it is it confidential information obtained from another State or an international organisation (which would include NATO).

**MOUs**

3.3 MOU's do not have legal standing, but they nonetheless represent formal commitments. Most contain clauses about the handling of information. Although non compliance with such clauses/terms would not break international law, it would represent a breach of good faith. MOD has honoured the terms of MOU's in the past, and other nations are likely to view them as binding. The existence of a clause about mutual agreement to disclosure is therefore likely to provide stronger evidence of harm to International Relations than if no arrangement was in place.

3.4 The fact that the disclosure of information would require MOD to break its obligations will weigh heavily on the side of non-disclosure. Any decision to disclose information contrary to the terms of an international agreement could well have repercussions for the UK's standing with other nations and also affect our ability to hold others to their international obligations or promises.

3.5 Desk Officers should be aware that the s41 exemption (information provided in confidence) will not generally apply to information exchanged under treaties or other arrangements between the UK and her allies. The legal premise for this is that the Courts are not generally competent to adjudicate upon or to enforce rights arising from transactions entered into by independent sovereign states on the international law plane. Therefore, the exemption under s41 should not generally be applied to information exchanged under treaties or other arrangements between the UK and her allies.

3.6 For further assistance regarding MOU's in the context of FOI, desk officers should consult wider MOD guidance or contact the International Relations Group.

**Requests relating to work of IPTs engaged in collaborative Programmes**

# Ministry of Defence Access to Information Guidance Note

Version 6

June 2009

3.7 The working assumption is that where bilateral contacts exist with partner nations in collaborative programmes, then desk-to-desk consultation should take place in the first instance. Where there is no discernable or direct contact with a partner, IPTs should then look to governance organisations (such as OCCAR, Letter of Intent Executive Committee or the NATO Eurofighter and Tornado Management Agency) for assistance. If there remains no point of contact IPTs should seek further guidance from the International Relations Group (IRG).

## 4 The position of Defence Attaches and UK personnel overseas

4.1 UK Liaison Officers working overseas are subject to the terms of the Act. However, UK Exchange Officers who are embedded in authorised seconded posts are subject to the rules of the overseas organisation in which they are working and therefore are not subject to the Act.

4.2 DAs are also subject to the terms of the Act. DAs have been issued with instructions on consultation procedures and are likely to work closely with the FCO at local level, when requests are received direct by Embassy's and depending upon the nature of the request. Where no direct contact or relationship exists between a UK desk officer and overseas partner, it will often be necessary to involve the DA to facilitate contact and consultation. PDRN, PDRS or the Defence Diplomacy Team should be contacted in the first instance before contact with the DA is made.

## 5 Special provisions relating to the timescale for handling requests for international information

5.1 Under the terms of the Freedom of Information Act requests for information must normally be answered within 20 working days. This represents a tight deadline and there will be occasions when it is impractical to comply. Separate Regulations<sup>2</sup> will allow the deadline to be extended to up to 60 working days in some very specific circumstances at the discretion of the Information Commissioner. Two of the situations covered by the Regulations might be relevant in the context of international relations;

- Firstly, if the authority cannot comply with the usual time limit because it has to obtain information from an individual actively involved in an operation of the armed forces or in the preparations for such an operation. The discretion granted to the Information Commissioner is intended to cover cases where, for example, information needs to be obtained from people who are actively involved in activities such as the operations in Afghanistan or Iraq, or the lead up to such operations.
- Secondly, when the information needed to answer a request is held outside the UK. This situation might arise when the information itself is not held in the UK (e.g. it is only held in a military HQ overseas), or when additional information has to be obtained from outside the UK before answering. For example, an authority might need to obtain information from staff who are based overseas, before answering the request.

5.2 Desk Officers should always seek to answer requests within the 20 day timescales. However, where this would be impractical for the reasons outlined above, it may be appropriate to seek the approval of the Information Commissioner to extend the timescales to up to 60 days. Desk officers must therefore inform **CIO CI Access** as early as possible. Under the terms of the Regulations it is necessary to consult the Information Commissioner within 20 working days of receipt of the request, if this course of action is to be pursued. **CIO CI Access** will in turn inform the desk officer of the outcome.

5.3 Where further information in response to a request is required from operational units of the armed forces based overseas, and no direct contact or relationship exists with that unit, desk officers should contact PJHQ for advice.

## 6 Proactive release of information about international relationships

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<sup>2</sup> Freedom of Information (Time for Compliance with Request) Regulations 2004

**Ministry of Defence Access to Information  
Guidance Note**

Version 6

June 2009

6.1 Where regular contact and close links exist with an overseas partner, and where this relationship attracts a high level of public interest, it will be appropriate for the lead policy branch to discuss with their international partners the possibility of making information available to the public proactively (for example, it might be possible to disclose the terms of an MOU or exchange of letters covering the relationship). There are advantages in taking this course of action, including the reduction in requests where information of interest already lies in the public domain, and, the likely reduction of time spent consulting with international partners about FOI requests.

6.2 For further guidance and advice on the proactive disclosure of international information, please contact CIO CI Access.

**Points of Contact**

For further information and clarification of requests which may require consultation with international partners, desk officers should contact the following;

General FOI Policy	<b>CIO CI Accessops</b> Tel: xxxxxxxxxx
Enquiries relating to specific nations	Contact the relevant Policy and Defence Relations North/South Desk Officer
All cases where disclosure is requested of classified information provided/owned by another country	Defence Security (Def Sy) Tel xxxxxxxxx or xxxx Internal email xxxxxxxxxxxxxxxx or xxxxxxxxxxxxxxxx
NATO related queries	NEP-Asst Hd NATO xxxxxxxxxxx
Defence Attache queries	Defence Diplomacy, DDip-TPTrg xxxxxxxxxxxxx, xxxxxxxxxxxxx
BDS (W) British Defence Staff Washington	Email: xxxxxxxxxxxxxxxxxxxxxx
Commercial issues	xxxxxxxxxxxxx
MOU's (Equipment)	International Relations Group. email xxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxx
Information required from operational units of the Armed Forces	xxxxxxxxxxxxxxxxxxxx