



Ministry  
of Defence

Ministry of Defence  
Main Building  
Whitehall  
London SW1A 2HB  
United Kingdom

Ref: FOI2019/11365

E-mail: DSA-Enquiries@mod.gov.uk

25 November 2019

[REDACTED]  
[REDACTED]  
[REDACTED]

Dear [REDACTED]

Thank you for your email of 2 October 2019 requesting the following information:

“On, or around, 30th November 2017 Mr David Green of the Scottish Crown Office sent you a copy of a document, 'Justification for Opening the Tornado FAI case'. Please can you provide me with a copy of the covering letter along with the MoD response.”

I am treating your correspondence as a request for information under the Freedom of Information Act 2000 (FOIA).

As communicated to you in our letter of 23 October 2019 a search for the information has now been completed within the Ministry of Defence, and I can confirm all the information in scope of your request is held.

However, it was believed that the information you have requested falls within the scope of qualified exemptions provided for at sections 28 (UK Internal Relations) and 31 (Law Enforcement) and as such it was necessary for us to decide whether, in all circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosure.

Section 28 has been applied because during our initial search for the information it was found that a similar request has previously been refused by the Scottish Administration under the Freedom of Information (Scotland) Act 2002. Disclosure of information previously refused by the Scottish Administration was required to be assessed against the potential to jeopardise the relationship between the UK MOD and the Scottish Administration. A Public Interest Test was required to establish whether release of the information would outweigh the risk of damaging relationships between administrations. We have now completed the Public Interest Test and the balance of public interest was found to be in favour of withholding the information given that, overall, the public interest is best served in not releasing the details as to do so would be likely to prejudice the relationship between UK MOD and the Scottish Administration inhibiting the future provision of free and frank advice and exchange of views between the two administrations. For these reasons I have set the level of prejudice against release of the exempted information at the lower level of “would be likely to” rather than “would” and the information will not be disclosed.

Section 31(2)(e) has been considered because disclosure of the information would be likely to, prejudice any civil proceedings which are brought by or on behalf of, a public authority and which arise out of an investigation conducted for the purpose of ascertaining the cause of an accident. The Public Interest Test has now been completed and the balance of the public interest test concluded that as a Fatal Accident Inquiry for the accident in question will not be taking place, the balance of the public interest was found to be in favour of releasing this information. However, as the information falls entirely within the scope of Section 28 it is being withheld for the reasons cited above.

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact us in the first instance at the address above. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail [CIO-FOI-IR@mod.gov.uk](mailto:CIO-FOI-IR@mod.gov.uk)). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not normally investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.org.uk>.

Yours sincerely

DSA Secretariat