



# Ministry of Defence

Ref: FOI2016/06026

Mr O. Sprague  
E-mail address:  
[request-339169-  
1b3dccbe@whatdotheyknow.com](mailto:request-339169-1b3dccbe@whatdotheyknow.com)

Ministry of Defence  
Main Building (04/D/29)  
Whitehall  
London SW1A 2HB  
United Kingdom

Telephone: 0306 770 2757

E-mail: [polres-hd@dgsap.mod.uk](mailto:polres-hd@dgsap.mod.uk)

01 December 2016

Dear Mr Sprague,

Thank you for your correspondence dated 08 June 2016, in which you made the following request for information:

*I am asking for relevant documents in the form of departmental minutes; submissions; briefing notes; written statements; correspondence electronic or otherwise and / or any other relevant information available on the replacement, destruction or removal of stocks of BL-755 cluster bombs in Saudi Arabia or the United Arab Emirates following the entry into force of the Cluster Munitions Convention 2008. (CMC)*

*Specifically, I wish to receive copies of documents relating to:*

- 1) Records held by the department on the legal implications relating to supply, training, maintenance, upgrade or other assistance relating to stocks held of BL-755 cluster munitions by either Saudi Arabia or UAE under pre-existing defence contracts following the entry into force of the 2008 CMC.*
- 2) Records held by the department of any initiatives to destroy, remove or replace existing stocks of BL-755 cluster munitions in Saudi Arabia or UAE following the entry into force of the 2008 CMC*
- 3) Records held by the department relating to guidance issued to UK persons working under existing defence contracts in either Saudi Arabia or UAE detailing those persons' legal obligations under the 2008 CMC or the corresponding Cluster Munitions (Prohibitions) Act 2010.*
- 4) Records held by the department of changes made to training, maintenance or re-supply contracts as they relate to existing stocks of BL-755 Cluster munitions held by Saudi Arabia or the UAE following the entry into force of the 2008 CMC*

*If it is not possible to provide information relating to all four points noted above, I would like to be provided with whatever information is available relating to any of the information requested above.*

I am treating your correspondence as a request for information in accordance with the Freedom of Information Act 2000 ("the Act").

A search for the information has now been completed within the Ministry of Defence (MOD), and I can confirm that some information in scope of your request is held, although no information has been found in respect of the United Arab Emirates. Additionally, we have found no records of guidance issued to UK personnel working in Saudi Arabia on the legal implications of the Cluster Munitions Convention or the associated Cluster Munitions (Prohibitions) Act 2010.

The United Kingdom (UK) and Saudi Arabia signed a government-to-government agreement for the supply of 500 BL-755 cluster munitions in 1986; the last delivery against this agreement was made in 1989. In line with the UK's commitment to the Oslo Declaration, however, the UK Government informed the RSAF that it could not support BL-755s beyond 2008. All contracted manpower support for the maintenance, handling and storage of these munitions was also withdrawn at the end of 2008.

The decision to withdraw support, taken in 2007, meant that the UK could not conduct any future In-Service Surveillance (ISS) programme in respect of the BL-755 after 2008. The UK's assurance process mandates that an ISS programme is conducted to provide the empirical evidence required to demonstrate that the munition, hardware and energetic materials remained Safe and Suitable for Service (S3) beyond its known life. The last BL-755 ISS programme was conducted in 2006 and demonstrated that it would remain S3 until 2008. Accordingly, the UK could not continue to assure BL-755 S3 beyond 2008. While the lack of a future ISS meant BL-755 S3 could not be assured beyond 2008 in accordance with the mandated UK process, it does not explicitly mean that RSAF BL-755 stocks were not S3. The RSAF was also free to retain BL-755 stocks under its own engineering authority.

The decision to withdraw ISS support was notified at short-notice, potentially producing a capability gap before planned, alternative capabilities could be integrated onto the RSAF Tornado. The UK consequently initiated discussion on a demilitarisation programme for the remaining BL-755 stocks that involved assistance with their removal and destruction and options to fill an interim capability gap. Records are held of exchanges between the RSAF and the MOD Saudi Armed Forces Projects (MODSAP) that include discussion of proposals for the demilitarisation of the RSAF's remaining BL-755 stocks. These exchanges, during the period 2007 to 2010, were conducted under long-standing government-to-government arrangements and are considered confidential to the two Governments. Their disclosure would be viewed by Saudi Arabia as a breach of confidentiality; one that would be likely to prejudice relations between the nations and damage the UK's political, commercial and broader economic interests. These exchanges also include personal information. I therefore consider this information exempt from release under section 27(1)(a) and (c) (International Relations), section 29(1)(a) (Economic Interests of the UK), section 40(1) (Personal Data) and section 43(2) (Commercial Interests) of the Act.

Sections 27, 29 and 43 are qualified exemptions and are subject to public interest testing, which means that the information requested can only be withheld if the public interest in doing so outweighs the public interest in disclosure.

These sections have been applied because the release of the above information would be a breach of a pledge of confidentiality and thereby likely to adversely affect relations with a key, strategic ally and trading partner. This could undermine progress on shared defence and national security goals and damage the UK's reputation for honouring its international obligations. The UK's close relationship with Saudi Arabia also continues to provide substantial economic and commercial benefits for the UK and industry, not least in terms of employment, which it would clearly not be in the public interest to jeopardise. Of course, there is a presumption in the Act towards the release of information and the release of the information requested would provide some further insight into the UK's broader commitment to the goals of the Cluster Munitions Convention. Therefore, although I have concluded that on balance the public interest lies in maintaining these exemptions, I can confirm that the above exchanges included information on the following matters related to the removal and destruction of Saudi stocks of BL-755:

- a) An invitation for specialist RSAF Explosive Ordnance Disposal (EOD) personnel to attend the trial destruction of a redundant and unserviceable BL-755 munition, which had been returned to the UK in 2005 in support of the surveillance programme carried out in 2006. The trial was eventually held at Pendine Range in May 2009 and confirmed BL-755 disposal procedures. Four RSAF personnel observed the trial and also received training



in EOD techniques for BL-755. The trial and training was provided at no cost to the RSAF.

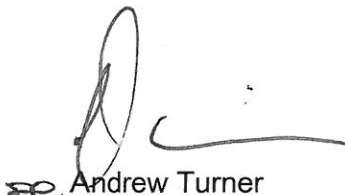
- b) Offers to remove and destroy RSAF stocks of BL-755, most recently in 2010, and reduce the impact on Saudi Arabia's defence capability by upgrading the RSAF's stock of Paveway 3 precision-guided bombs, which had originally been gifted by the UK in support of the UK's commitment to the Ottawa Convention. This support was offered at no cost to the RSAF in line with the UK's commitment to the Cluster Munitions Convention, but ultimately was not taken up by the RSAF.

The MOD has received legal advice on the UK's obligations under the Cluster Munitions Convention and the Cluster Munitions (Prohibitions) Act 2010 in respect of the delivered stocks of RSAF BL-755. This information is subject to legal professional privilege and considered exempt from release under section 42 (Legal professional privilege) of the Act. Again, this is a qualified exemption, which should only be applied where the public interest in doing so outweighs the public interest in disclosure. The release of this information would support the Act's objective of promoting openness and transparency and offer greater insight into government decision making on this matter. On the other hand, it is recognised that the concept of Legal Professional Privilege (LPP) reflects the strong public interest in protecting the confidentiality of communications between lawyers and their clients. Such confidentiality promotes respect for the rule of law by encouraging clients to seek legal advice and allows for full and frank exchanges between clients and their lawyers. Indeed, the strong public interest in protecting the LPP has been recognised by the courts and the Information Tribunal. I have therefore concluded that the balance of public interest lies in favouring of withholding this information.

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 me in the first instance. 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, 1<sup>st</sup> Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail [CIO-FOI-IR@mod.uk](mailto:CIO-FOI-IR@mod.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 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, <https://ico.org.uk/>.

Yours sincerely,



Andrew Turner  
Head of Policy & Resources

