



Ministry
of Defence



DE&S Policy Secretariat – Ships

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Alex Beard
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16 January 2020 Our Reference: FOI2019/12990

Dear Alex Beard

Request for Information under the Freedom of Information Act 2000

Further to our letter of 17 December, I am now in a position to provide you with a substantive response to your request under the Freedom of Information Act 2000 (FOIA).

You requested the following information:

In publicly available records the MOD is recorded as acquiring 'single use military equipment asset under construction - capital in year addition,' for £27,488,888.83. This was from BAE SYSTEMS SURFACE SHIPS LIMITED, with a payment date of 23/08/2019 and a transaction number of 424563.

I would like to request copies of briefing documents, agendas and any other material that was prepared ahead of the most recent meeting between MOD representatives and the company.

Request is for Information relating to the above payment of the contract to BAE Systems.

Your correspondence has been treated as a request for information under the FOIA and I can confirm that the Ministry of Defence (MOD) holds information within the scope of your request.

Under Section 16 (1) (the duty that public authorities have to explain and offer assistance), I can clarify that the payment disclosed under the MOD's transparency arrangements had been mis-titled and does not relate to the 'purchase of buildings' but is rather associated with the procurement of Type 26 Frigates. I can also confirm that the only information held that is within the scope of your request is the invoice to which the payment relates.

As I have explained in my earlier letter there are provisions in the FOIA under which certain information is exempt from release. We have considered the information you have requested and concluded that it is exempt from release under Section 43 (commercial interests). As the exemption under this section of the FOIA is qualified it has been necessary for us to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosure. The decision to release or withhold the information depends on where the balance of public interest lies and an assessment of the public interest factors on both sides of the argument.

The public interest test is now complete, and I can advise you that the balance of public interest was found to lie in favour of withholding all of the information under the qualified exemption Section 43 identified above.

The factors considered in favour of disclosure included the strong presumption towards openness enshrined in the FOIA and the legitimate public interest in the commercial and financial framework within which the Type 26 Frigates are being procured. The factors against disclosure include the need to maintain our duty to respect the legitimate commercial confidentiality of our suppliers. To disclose the information in scope of your request would provide an insight into the commercial and financial frameworks that underpin contracts between the MOD and BAE Systems (BAES). Such a disclosure would confer on BAES' competitors in any future competitions or negotiations a substantial advantage in winning contracts with the MOD. This would seriously disadvantage BAES and prejudice the maintenance of a level playing field between bidders, or potential future bidders in subsequent competitions. The maintenance of a level playing field between competing suppliers is essential to effective commercial competition and a failure to do so would prejudice the ability of the MOD to achieve value for money for the taxpayer. There is clearly a very strong public interest in not placing a major supplier and UK employer at a commercial disadvantage; equally there is also a strong public interest in maintaining the ability of MOD to conduct effective commercial competitions. For these reasons we have concluded that the balance of public interest lies in maintaining the exemption under section 43(2) of the FOIA. In this case we have set the level of prejudice at the higher level of 'would'.

If you are not satisfied with this response or 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, 1st Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail 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 wish to complain about the handling of your request, or the content of this response, you can request an independent internal review by contacting the Information Rights Compliance team, Ground Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail { [HYPERLINK "mailto:CIO-FOI-IR@mod.gov.uk"](mailto:CIO-FOI-IR@mod.gov.uk) }). Please note that any request for an internal review should be made within 40 working days of the date of this response.

If you remain dissatisfied following an internal review, you may raise your complaint directly 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. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website at { [HYPERLINK "https://ico.org.uk/"](https://ico.org.uk/) }.

Yours sincerely,

DE&S Secretariat (ships)