

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 March 2023

Public Authority: UK Space Agency (an executive agency of the UK Government)

Address: Polaris House
North Star Avenue
Swindon
SN2 1SZ

Decision (including any steps ordered)

1. The Commissioner's decision is that UK Space Agency (UKSA) is entitled to withhold information about the SABRE project under section 43(2) of FOIA. Disclosure would be likely to prejudice another person's commercial interests and the public interest favours maintaining the exemption.
2. UKSA has indicated that it has withdrawn its reliance on section 43 with regard to some of the information and that it will now disclose this. UKSA has therefore breached section 10(1) of FOIA as it did not communicate that information within 20 working days of the request.
3. UKSA must now take the following step to ensure it complies with the legislation:
 - If it has not already done so, disclose to the complainant the milestone description headings and Government Financing Activity values information.
4. UKSA must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner

making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. The complainant made the following information request to UKSA on 23 February 2022:

“The overall revised milestone targets for the SABRE Project as referred to at Response 1 of your letter”

6. UKSA’s final position was to refuse the request under section 43(1), which concerns trade secrets, and section 43(2) of FOIA.

Reasons for decision

7. This reasoning focusses on UKSA’s application of section 43(2) to the complainant’s request. If necessary, the Commissioner will consider UKSA’s reliance on section 43(1).
8. Background to the Synthetic Air Breathing Rocket Engine (SABRE) project is available in the Commissioner’s related decision [IC-182325-J3L0](#).
9. Under section 43(2) of FOIA information is exempt information if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority that holds it.
10. UKSA is withholding information in a document headed ‘Revised SABRE Funding Milestone Details’. In its submission to the Commissioner, UKSA confirmed that the requested document has commercially sensitive information. It goes into detail about trade secrets of Reaction Engines Limited (REL) – namely the development of REL’s technology which is not in the public domain or well known. UKSA also maintains that releasing information about the timeliness of delivery is commercially sensitive and would harm REL’s ability to be competitive. It is therefore UKSA’s view that this information should not be released.
11. However, UKSA says it also considered what information it can release, in discussion with REL. It says it is content that the milestone description headings and the Government Financing Activity (GFA) values are not trade secrets, nor are they commercially sensitive. There is a clear public interest in disclosing information about Government funding, to be transparent and accountable. UKSA is therefore content to release the milestone description headings and associated GFA

amounts invoiced within the revised SABRE funding milestones document. This is also in line with the above decision in IC-182325-J3L0. UKSA therefore proposes to release a redacted version of the document.

12. As set out above, UKSA maintains that the details of REL's technology development should be withheld. The technical details of custom technology components developed by REL as part of the SABRE project are trade secrets in that they are not widely known, and steps are taken to keep this information from being released. This includes confidentiality agreements that staff sign and steps REL takes to protect information at its research and testing sites. They are therefore not easily accessible to competitors. The document goes into a significant amount of detail setting out exactly what was delivered, including the changes from the original milestones. Should this information be placed in the public domain, REL's competitors could use this to aid their own technology developments. This would put them at a significant competitive advantage.
13. Releasing the information in an unredacted document would also impact REL's ability to attract potential clients, particularly where the milestones have not been met or gone over schedule. This would therefore impact their competitiveness. The document does not include any reasoning behind the delays, including whether there was prior agreement behind the delays to delivery. Releasing this information into the public domain would be likely to cause reputational damage to REL with future clients, who would consider REL less credible.
14. The Commissioner has reviewed the information being withheld. He is satisfied first, that the harm UKSA envisages relates to commercial interests; REL's. Second the Commissioner accepts that a causal link exists between disclosure and commercial prejudice. Disclosing the commercial information would give REL's competitors an insight into REL's technology developments. This would be likely to commercially disadvantage REL. Without context, the unredacted document could also cause REL reputational damage which could also harm its commercial interests.
15. Finally, UKSA has indicated that the prejudice it envisions would be likely to happen, rather than would happen. This is a realistic level of likelihood which the Commissioner will accept. His decision is therefore that UKSA was entitled to apply section 43(2) to the withheld information, and he will go on to consider the associated public interest test.

Public interest test

16. In their complaint to the Commissioner the complainant has argued that, in relation to both section 43(1) and 43(2), there is a high public interest in not only how taxpayer money is spent and managed in general but how it is done in the particular context of potentially ground-breaking technology. They say there is specific public interest in the milestones that were set for the SABRE project and how they were achieved given the substantial amounts of taxpayer money provided to REL. The complainant says that the interest is heightened in light of the changed scope of the SABRE project and revised milestones and the fact that the SABRE project has received greater funding and further commitments than set out in the Grant Offer Letter.
17. In its submission, UKSA acknowledges the public interest in transparency where taxpayer money is involved.
18. However, UKSA argues that there is also a public interest in allowing companies to remain competitive and promote competition. There is a further public interest in companies being able to share commercially sensitive information with the Government without worry that the information will be released to their detriment. On balance UKSA considers the public interest favours maintaining the section 43(2) exemption.
19. The Commissioner considers that disclosing the milestone description headings and GFA information satisfies the public interest in transparency about the SABRE project to a satisfactory degree. In his view there is greater public interest in companies involved in the UK space industry being able to compete fairly and for UKSA having the option of working with a range of strongly performing companies that are willing to engage with it. As such, the Commissioner is satisfied that the public interest favours maintaining the section 43(2) exemption.
20. Because the Commissioner has found that the withheld information engages section 43(2) of FOIA and the public interest favours maintaining this exemption, it has not been necessary to consider UKSA's application of section 43(1).

Procedural matters

21. On receipt of a request for information, under section 1(1) of FOIA a public authority must communicate to the applicant non-exempt information.
22. Section 10(1) of FOIA places an obligation on a public authority to comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
23. In this case the complainant submitted their request to UKSA on 23 February 2022 and UKSA has not communicated the non-exempt information to them within the timescale required under section 10. UKSA has therefore breached section 10(1) of FOIA.

Right of appeal

24. 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

25. 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.
26. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF