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[redacted]

FOI2023/00560

13 April 2023

Dear [redacted],

Thank you for your email of 11 January where you requested the following information (I quote):

"Re: Part 1

In relation to how many export licence applications, respectively, were concerns raised on 26, 27, 28 October and 9 November? (Information is given as to the number of licence applications about which concerns were raised on 23 November, but the same was not done for the other dates.)

Re: the concerns raised on 26 October "and subsequently" on 27 and 28 October respectively: were these the same concerns being raised again, or were they new/different concerns? And were they in relation to the same export licence application(s) or different ones?

Please provide copies of the concerns raised on 26, 27 and 28 October, 9 November and 23 November 2016, as indicated in your response.

Re: Part 2

It is my understanding that there is "a weekly denials meeting here we discuss any case or licence application where any of the three advisory Departments are proposing to recommend refusal": see https://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/foreign-affairs-committee/fco-policy-on-arms-exports/oral/44451.pdf . Given that DIT houses the ECJU, which coordinates export licensing policy, I had assumed that DIT would hold the records relating to the weekly denials meeting. Is this not the case? Please advise which Department holds the information regarding denials meetings.

Re: Part 3

Please release the email, with an attached email chain, that was sent to the Secretary of State for International Trade, Rt Hon Liam Fox MP and Minister Garnier on 21 December 2016; and the ministerial submission that was sent to Minister Garnier on 10 November 2016."

Under the Freedom of Information Act 2000 ('the Act'), you have the right to:

- know whether we hold the information you require.
- be provided with that information (subject to any exemptions under the Act which may apply).

A machinery of government change was announced on 7 February 2023. We are currently treating requests as specifically for information held under the previous Department for International Trade (DIT) remit. We are handling requests in this way unless otherwise advised or if we consider the request clearly relates to areas under transition.

I can confirm that the department holds some of the information you have requested.

Information that can be disclosed relating to part 1 of your request:

In respect of part 1 of your request, the number of concerns raised on 26, 27, 28 October and 9 November follows:

A DIT official recorded discussions between ECJU officials which concluded Criterion 2 concerns about 502 *"…export licence applications*" *"…to Saudi Arabia"* on 26 October 2016

A DIT official recorded discussions between ECJU officials which concluded Criterion 2 concerns about 38 *"…export licence applications" "…to Saudi Arabia*" on 27 October 2016.

A DIT official recorded discussions between ECJU officials which concluded Criterion 2 concerns about 613 *"…export licence applications" "…to Saudi Arabia"* on 28 October 2016.

A DIT official recorded discussions between ECJU officials which concluded Criterion 2 concerns about 11 *"…export licence applications" "…to Saudi Arabia"* on 9 November 2016.

We have interpreted the request to include extant licences. All export licence applications were carefully assessed against the Consolidated EU and National Arms Export Licensing Criteria (Consolidated Criteria) and a licence would not be granted if to do so would be a breach of the Criteria.

Information not held by DBT:

Regarding the request i.e.*, "Re: the concerns raised on 26 October "and subsequently" on 27 and 28 October respectively: were these the same concerns being raised again, or were they new/different concerns? And were they in relation to the same export licence application(s) or different ones?"*, the Department does not hold information as to whether the concerns recorded on 27 October were in relation to the same export licence applications as recorded on 26 October or 28 October. Compared to 26 October, concerns were recorded about some of the same and some different export licence applications on 28 October.

The information held in respect of the concerns recorded on 26, 27, and 28 October 2016, and those recorded on 9 November and 14 December 2016, were, as noted above, concerns recorded under criterion 2 of the Consolidated Criteria. These were not "*new/different concerns*".

Information relating to part 2 of your request:

Regarding the information requested in Part 2 of your request i.e*. "Please advise which Department holds the information regarding denials meetings"*, I can confirm that the department holds information regarding refusals meetings, however no in scope information was found in relation to your previous request (FOI2022/03830).

Exempt information from part 1 and 3 of your request:

The information that falls within scope of part 1 of your request i.e., for *"…copies of the concerns raised on 26, 27 and 28 October, 9 November and 23 November 2016, as indicated in your response*", and a copy of the concerns recorded on 14 December 2016, is exempt from disclosure by virtue of sections 36 (prejudice to the effective conduct of public affairs). Some information also falls under sections 43 (commercial interests), 40 (personal information), and 41 (information provided in confidence) of the Act.

Additionally, the information you have requested at part 3 of your request i.e., for release of *"…the email, with an attached email chain, that was sent to the Secretary of State for International Trade, Rt Hon Liam Fox MP and Minister Garnier on 21 December 2016; and the ministerial submission that was sent to Minister Garnier on 10 November 2016"* is exempt from disclosure by virtue of section 36. Some information also falls under sections 40 and 41 of the Act.

An explanation of how these exemptions apply to this information follows.

Section 36 (prejudice to the effective conduct of public affairs)

Section 36(2) (b)(i)&(ii) of the Act applies because, in the opinion of a Qualified Person, the disclosure of the information would be likely to inhibit (i) the free and frank provision of advice, or (ii) the free and frank exchange of views for the purposes of deliberation. In applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosure. In particular, we have considered that:

• Releasing case notes, and advice in relation to specific licence applications, would be likely to inhibit the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation.

• There is a real concern that the nature and quality of the information provided in case notes, including those that relate to case assessment, and the views shared between officials in those case notes, would be significantly impaired by the risk the advice might in future be disclosed. There is a real concern that the nature and quality of information, and the views shared by officials provided in ministerial submissions, would be significantly impaired by the risk that the advice might in future be disclosed. For example, to avoid criticism of the views expressed during the assessment process, officials might simplify the information included in case notes and communications that relate to licence applications i.e., officials might be less inclined to include the same level of detail as they do now. This will make it harder to take decisions on issues relating to export licensing because it is imperative that decisions are taken following a well-informed risk assessment, having considered all the information available including well thought out arguments concerning risk and impact.

We have also considered the arguments in favour of disclosure. In particular, that transparency improves engagement between the public and government and that it is desirable that the

public can satisfy themselves that decisions are taken on the basis of the best available information. However, we concluded that any arguments in favour of disclosure were outweighed by those against. This is because we concluded that the public interest in maintaining the integrity of assessments made and the advice and views shared between officials in case notes outweighed any arguments in favour of transparency in the circumstances of this case.

Section 43 (commercial interests)

Section 43(2) applies because disclosure of some of the information falling within scope of part 1 and part 3 of your request, would be likely to prejudice the commercial interests of the licensees who applied for the export and trade licences.

Export and trade licence applications and the documents associated with them contain commercially sensitive information about proposed exports and trading activities (including sensitive information about the applicant, the type of goods they are trading in, end-users and other third parties, and goods value) that could be of use to competitors. Disclosure of the requested information would reveal specific sensitive information, derived from confidential contracts, that would be likely to damage the trading relationship between the UK licensee and their customer or customers. This would be likely to risk a loss of any current contracts in place and would be likely to risk future trading opportunities with that customer or customers, and with other potential customers who would be likely to be concerned that their information might be disclosed under the Act if they trade with the UK licensee.

Section 43 is a qualified exemption subject to the public interest test. In applying section 43(2), we have had to balance the public interest in withholding the information against the public interest in disclosing the information. Whilst we recognise that there is a general public interest in the disclosure of information, as greater transparency makes the Government more accountable, we do consider that, against this, there is a public interest in ensuring that the commercial interests of external businesses or other organisations are not damaged or undermined by disclosure of information which is not common knowledge, and which could adversely impact on future business.

In addition, by releasing such information, the confidence businesses or other organisations have in the Department for Business and Trade may be damaged, making them reluctant to provide us with commercially sensitive information in the future. In this case, we consider that the public interest in favour of disclosing such information is outweighed by the necessity to protect the commercial interests of third parties.

Section 40 (Personal information)

Section 40(2) of the Act provides an absolute exemption for personal data as defined under the Data Protection Act. Personal data of third parties can only be disclosed in accordance with the data protection principles. In particular, the first data protection principle requires that disclosure must be fair and lawful and must comply with one of the conditions in Schedule 2 of the Data Protection Act.

Section 41 (information provided in confidence)

Section 41(1) applies to information provided to the Department, disclosure of which would constitute a breach of confidence over which a person could take legal action. The information

concerned must have the necessary 'quality of confidence' in that the information is not trivial nor is it readily available by other means.

If the information concerned has the quality of confidence, it can only be disclosed by consent, if required by law or if there is an overriding public interest in disclosure. We consider that the relevant information does have the necessary quality of confidence and therefore, that disclosure of this information would result in an actionable breach of confidence. Moreover, we believe there is a strong public interest in protecting that confidence and there are no public interest considerations in relation to this information requiring us to set the duty of confidentiality aside.

Information about another date on which concerns were recorded:

DBT has located new information that falls in scope of your previous request, our reference: FOI2020/03830. I can confirm that a DIT official recorded discussions between ECJU officials which concluded Criterion 2 concerns about 431 *"…export licence applications" "…to Saudi Arabia"* on 14 December 2016.

Appeals procedure

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original request and should be addressed to the Information Rights Unit:

Information Rights Unit
Department for Business and Trade
Old Admiralty Building
London
SW1A 2DY
Email: foi@trade.gov.uk

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Yours sincerely**,**

Department for Business and Trade