

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 July 2021

**Public Authority:** Department for Business, Energy and Industrial Strategy ("BEIS")

**Address:** 1 Victoria Street  
London  
SW1H 0ET

### Decision (including any steps ordered)

---

1. The complainant requested information on the government's investment in OneWeb<sup>1</sup>.
2. The Commissioner's decision is that BEIS has appropriately relied on the exemption at section 43(2), Commercial interests, and the public interest favours maintaining the exemption.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

### Background

---

4. Formed in 2012, OneWeb develops satellite technology from its bases in the UK and the US. It aims to implement a constellation of Low Earth Orbit (LEO) satellites with a network of global gateway stations and a range of user terminals to provide an affordable, fast, high-bandwidth and a low-latency communications service, connected to the internet of things devices, and a pathway for mass adoption of 5G services.
- 

<sup>1</sup> OneWeb is a Low Earth Orbit (LEO) broadband satellite communications company building a capability to deliver broadband satellite internet services worldwide.

OneWeb is also the developer of a positioning system rivalling GPS and the EU's Galileo satellite navigation systems, to which the UK was a developer and contributor but has now lost access after leaving the EU in January 2020.

5. OneWeb filed for bankruptcy in the US in March 2020. The company was in urgent need of investment to continue its operations. BEIS explained that due to the compressed timetable for investment, HM Treasury was unable to subject the proposed investment to a full Green Book compliant business case. Instead, the National Security Strategic Investment Fund (NSSIF), on Government's behalf, sought professional financial advice on the company's prospects. In addition, a Technical Assessment of OneWeb along with a Strategic Case were prepared.
6. On 26 June 2020 BEIS' Acting Permanent Secretary and Accounting Officer, Sam Beckett, wrote to the Secretary of State in this regard, as follows:

"Moreover, there remain a very broad range of uncertainties and possible outcomes around this case, so it is hard at this time to be confident in the underlying assumptions or the likely returns.

Given the time and data available, HM Treasury have not subjected this to the scrutiny of a full Green Book compliant business case, including considering whether alternative options for investment might provide a better return. And there are other wider considerations in the overall strategic case that cannot currently be captured in the financial model.

You will recall that following earlier discussions you also asked the UK Space Agency (UKSA) to procure a separate independent technical assessment. It highlights the substantial technical and operational hurdles that OneWeb would need to overcome in order to become a viable and profitable business. Taking that into account, UKSA consider that there is a high likelihood of further investment being required to complete the constellation and encourage user uptake of the services, increasing the risk that further HMG investment would be required in order to realise the potential benefits. As a result, UKSA's judgement is that the independent technical assessment further illustrates the considerable uncertainties in the modelling done for HM Treasury."<sup>2</sup>

---

<sup>2</sup> <https://www.gov.uk/government/publications/ministerial-direction-for-the-purchase-of-oneweb>

7. On 3 July 2020 it was announced that HM Government and Sunil Bharti Mittal's organisation Bharti Global would invest a similar amount with other creditors holding much lesser stakes.
8. On 17 September 2020 a hearing was held by the Business, Energy and Industrial Strategy Committee at which oral evidence<sup>3</sup> was provided. The Chair of the Committee Darren Jones MP stated:

"Today's hearing is in respect of the OneWeb satellite purchase by the Government, which was announced on 3 July this year. At the time, the acting permanent secretary felt unable to authorise the purchase without what is called a ministerial direction, due to the speed at which the Government acted in putting forward their offer. We launched an inquiry to try to understand the background of the purchase, and also the technical aspects of the OneWeb satellite system and what that means for the UK post Brexit when we lose access to European satellites such as Galileo and Copernicus."

9. In concluding the oral evidence the Chair advised:

"...the Committee does need to understand all the answers to these questions in its role in holding the Government to account on spending significant amounts of public money in a surprising way when this was announced in July. We will have further hearings in due course with Ministers, the UK Space Agency, hopefully with OneWeb, and with others. Hopefully the Secretary of State has now received my letter and understood that it is not for the Government to interfere with the witnesses we call or the questions that we ask on this Committee. We look forward to further co-operation to ensure that we can hold the Government to account openly and transparently on this issue moving forward."

## **Request and response**

---

10. On 1 August 2020 the complainant wrote to BEIS and requested information in the following terms:
- 

<sup>3</sup> <https://committees.parliament.uk/oralevidence/891/pdf/>

“On 26th June the BEIS acting permanent secretary Sam Beckett wrote to the Business secretary requesting a ministerial direction concerning the government’s proposed investment in OneWeb, as subsequently announced by the business secretary on 3 July.

In her letter Ms Beckett mentioned that a full Green Book business case had not been completed. But it mentions a “financial model” and a “strategic case” and an “independent technical assessment”.

Please let me have copies of these documents and any others concerning matters such as value for money, potential investment returns on the investment and any security implications.”

11. BEIS responded on 18 August 2020 with a refusal notice in reliance of section 43(2), Commercial interests.
12. Following an internal review BEIS wrote to the complainant on 8 September 2020 upholding its initial response.

### **Scope of the case**

---

13. The complainant contacted the Commissioner on 8 October 2020 to complain about the way his request for information had been handled. He explained:

“Neither the internal review response nor the initial refusal contains any substantive explanation of why the exemption applies or why balancing public interest considerations favours non-disclosure. It is now standard for business cases on significant public procurements and investments to be published. All involve the commercial interests of major companies but it is accepted that the public interest in being able to examine what amount to very large commitments of public money overrides any company’s commercial interests to the extent that these might be harmed, if at all.”

14. The Commissioner considers the scope of her investigation to be the application of section 43(2) to the withheld information. In providing its submissions to the Commissioner BEIS also included reliance on section 41, information provided in confidence, in respect of some of the information.

### **Reasons for decision**

---

15. Section 43(2) of FOIA states:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).<sup>4</sup>

16. In order for a prejudice based exemption, such as section 43, to be engaged the Commissioner believes that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met, i.e. disclosure 'would be likely' to result in prejudice or disclosure or 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

17. BEIS provided the Commissioner with the information held within the scope of the request, which comprises the withheld information. It explained to the Commissioner that the commercial information included in the withheld information had been provided by OneWeb under conditions restricting its further disclosure. It advised that the withheld information contains details of OneWeb's business structure, technology assessment and finance options, which comprises commercial information which would otherwise not be in the public domain. Using this information, conclusions may be drawn by competitors on OneWeb's commercial strengths, weaknesses and future planning, giving competitors an advantage over OneWeb, resulting in prejudice to its commercial interests.

---

<sup>4</sup> The full text of section 43 is available here:  
<http://www.legislation.gov.uk/ukpga/2000/36/section/43>

18. Furthermore BEIS considers that assumptions drawn from the information could affect OneWeb's ability to conduct business with suppliers, customers and investors and could weaken its ability to compete with similar companies.
19. BEIS noted the causal relationship set out above in paragraph 15 as follows:
  - Revealing commercially sensitive information about the company to its competitors would undermine the company's ability to compete effectively in a global market.
  - Disclosure would undermine trust and an effective working relationship between the company, its other investors and HM Government ('HMG').
  - Damage to OneWeb's commercial interests and ability to secure future investment, partnerships or customers by disclosure of information not intended for public scrutiny.
20. BEIS' view is that disclosure *would* harm OneWeb and its ability to compete and secure contracts which would cause significant commercial damage to the company and would give competitors information that they would not otherwise be able to obtain legally.
21. The Commissioner is satisfied that the harm alleged by BEIS relates to the commercial interests of OneWeb. She therefore accepts that the alleged prejudice is relevant to the section 43 exemption. She considers that the first criterion set out in paragraph 15 is met.
22. With regard to the second criterion, having viewed the three documents which comprise the withheld information, the Commissioner accepts that the information is commercially sensitive as the documents cover analysis of OneWeb's business strategy and position in the market, including financial data. The Commissioner notes that the information is also largely subject to non-disclosure agreements. Consequently she accepts the causal relationship between releasing this information and prejudice to the commercial interests of OneWeb is real and of substance. She also acknowledges the potential prejudice for undermining trust between HMG and any other current or potential future commercial partner, by disclosure of information with the potential to damage the commercial interests of partners with the effect of reducing the open and frank sharing of information between businesses and HMG.
23. The Commissioner accepts that BEIS has demonstrated the application of the higher threshold level of *would* prejudice the commercial interests of OneWeb. She agrees that competitors and other potential investors would find benefit from the information which in turn would result in

prejudice to OneWeb's commercial interests. She considers the anticipated prejudice is more likely than not.

24. The Commissioner therefore finds that the exemption at section 43(2) was correctly engaged by BEIS. This exemption is subject to the public interest test as set out in section 2(2)(b) FOIA. The Commissioner must decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing withheld information.

### **The public interest**

25. The complainant wrote to the Commissioner on 1 December 2020 indicating the press release<sup>5</sup> regarding HMG's investment. He added:

"I think this lessens some of the commercial sensitivities. It also shows the strategic important[sic], and thus public interest in understanding the basis for, this investment. Concerns over the investment, as evidenced by comments from experts at this parliamentary committee hearing for example, serve to emphasise the need for better understanding of the deal."

26. The Committee referenced by the complainant is that of 17 September 2020 referenced above in paragraphs 7 and 8. The Commissioner would point out that she must consider a public authority's response to a request, at the time of the internal review. Notwithstanding this she notes the complainant's comments in demonstrating the public interest in this investment of public money.

27. With regard to the 17 September 2020 Select Committee BEIS explained its view to the Commissioner as follows:

"Public scrutiny of the decision to invest in OneWeb has already taken place using information in the public domain, such as the Ministerial Direction and associated letters. In addition, Parliament is in the process of scrutinising HMG's investment in OneWeb via the BEIS Select Committee. The BEIS Select Committee has already conducted an oral non-inquiry session into OneWeb. The extent of the public scrutiny from obtaining the information requested under this FOI would not be substantially more than the public scrutiny that has already taken place or is due to take place."

---

<sup>5</sup> <http://www.gov.uk/government/news/uk-government-secures-satellite-network-oneweb>



28. The Commissioner understands that the scrutinising in public undertaken by the Select Committee will address the public's concerns regarding the Government's actions and accountability in respect of OneWeb and the spending of public money without creating prejudice to the commercial interests of the organisation.
29. The Commissioner understands that a further Select Committee had been scheduled in March 2021 and is currently postponed pending a new date. Nevertheless she accepts that further public scrutiny by Committee is intended to take place.
30. BEIS explained that in addition to harming OneWeb's commercial interests it also considers that the interests of HMG and other current investors would be harmed by disclosure of OneWeb's commercially sensitive information.

### **Balance of the public interest**

31. The Commissioner has noted the controversy and concerns surrounding HMG's investment in the private company OneWeb. She is aware that there is a significant amount of information available online covering the views of different individuals and published by HMG.
32. The specific information held by BEIS (a financial analysis, a technical assessment and an internal document comprising the strategic case) is not in the public domain. It is, however, referenced at a high-level in the letter from Acting Permanent Secretary Sam Beckett, referenced above at paragraph 6. The letter concluded:

"Having reflected carefully on the information provided, I have concluded that whilst there may be a commercial case for investing alongside other commercial investors if you accept advisors' assessment of One Web's business plan projections, as a standalone high-risk investment with a possibility that the entirety of the investment is lost and no wider benefits accrued, I cannot satisfy myself that this investment meets the requirements of Value for Money as set out in *Managing Public Money*<sup>6</sup>. Therefore, whilst I believe the risks around the other Accounting Officer standards of regularity, propriety and feasibility are manageable, *Managing Public Money* requires me to seek a direction from you."

---

<sup>6</sup> <https://www.gov.uk/government/publications/managing-public-money>

<https://www.gov.uk/.../dao-0421-updates-to-managing-public-money-annexes>



33. The Commissioner noted the complainant's view that; "It is now standard for business cases on significant public procurements and investments to be published". In responding to the Commissioner's questions on this statement, BEIS explained that none of the documents comprising the withheld information are 'business cases'. As already established, a Green Book business case assessment did not take place for OneWeb. BEIS added that it is not usual practice to publish a financial model even after acquisition, due to the commercially sensitive information contained there.
34. BEIS explained that non-disclosure agreements had been created with regard to the financial model analysis and the technical assessment. The Commissioner asked why this was the circumstance on this occasion. BEIS advised that HMG does not usually invest private companies as a shareholder and this was therefore an unusual scenario. It was considered that the agreements balanced HMG's need to determine the appropriateness of the intended investment (by obtaining commercial and financial information) versus OneWeb's desire to protect its commercially sensitive information from future public disclosure.
35. The Commissioner accepts that there is a significant public interest in the transparency of decisions requiring the investment of large sums<sup>7</sup> of public money. It could be argued that, in this case, the obvious concerns of the Acting Permanent Secretary regarding the Value for Money requirements set out in *Managing Public Money* weigh in favour of disclosure of the information. However, the Acting Permanent Secretary also indicated that other factors outside her remit could influence the decision:
- "I appreciate that you are able to take into account wider considerations that I cannot bring to bear in my own assessment."
36. The Commissioner considers that the competing public interests in this case can be summarised as, on the one hand, the public interest in understanding the decision of HMG to invest in a bankrupt company and on the other, the public interest in not creating commercial prejudice to a company in which public money has been invested.
36. The Commissioner is persuaded that the decision to invest will receive further scrutiny from future Select Committees with the content of the discussion disclosed online. This serves to inform the public albeit not

---

<sup>7</sup> <https://www.bbc.co.uk/news/science-environment-53279783>

with the specific information requested in this case. She considers that not harming the success of the investment of public money must carry some considerable weight. If disclosure of the information prejudiced the commercial interests of OneWeb, impairing the success of the company in terms of its ability to compete and secure contracts, this would adversely impact on the returns on the investment of public money.

37. On balance, the Commissioner has decided that the public interest favours maintaining the exemption and withholding the requested information
38. Having found that the section 43(2) exemption to be engaged and the public interest favouring withholding the requested information, the Commissioner has not considered the application of section 41.

## **Other matters**

---

39. The complainant, as set out in paragraph 13 above, refers to a lack of “substantive explanations” in the responses he received from BEIS. The Commissioner has read the initial response and the internal review provided by BEIS to the complainant and notes that the explanations given for the application of section 43(2) and the balancing of the public interest are very limited. The Commissioner considers that BEIS could have provided more detail in both responses
40. The Section 45 Code of Practice includes a section on “Communicating with a requestor” which sets out the need for explaining the application of an exemption. In this case the Commissioner considers that both the initial response and the internal review.

## Right of appeal

---

41. 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](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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 .....**

**Susan Hughes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**