Dear [Name],

Thank you for your email of 23 October 2014 in which you requested the following information (I quote):

1. I would like to request a list of the names of all companies that applied for licences for the export of equipment with Military List ratings during 2013. I would like the list to be broken down by destination country and Military List rating.

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).

I can confirm that the Department holds the information you have requested. The information that can be released is attached at Annex A.

The remaining information (the names of companies that applied for licences to export equipment with Military List ratings to Israel during 2013, to the extent that these names have not been disclosed previously under the Act and are therefore not in the public domain) is exempt from disclosure by virtue of sections 41(1) (information provided in confidence) and 38 (Health & Safety) of the Act. An explanation of how these exemptions apply to this information follows:

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. We consider that full disclosure in this instance would result in an actionable breach of confidence as 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.

Section 38 applies because we consider that disclosure of information about companies that have been granted licences to export arms to Israel, where these names have not been...
previously disclosed and are therefore not public knowledge, would or would be likely to endanger the physical health, safety and welfare of their staff and would be likely to risk damage to their premises. We consider that the risk of harm has increased since the launch of Operation Protective Edge on 8 July 2014.

Consequently, there is an increased risk of protests against those companies that have exported military equipment to Israel. This includes the risk of direct action (e.g. slur campaigns, violent protests and/or harm to employees or premises) being taken against the companies that have supplied equipment or services to Israel. For example, a Birmingham-based company associated with exporting to Israel was targeted during the summer of 2014, when protestors caused their factory to close for a number of days.

In reaching this decision I have carefully weighed the arguments for and against disclosure, and have considered whether the public interest in this issue outweighs the concerns noted above. However it is important to remember that these companies behaved responsibly by applying for export licences and that they were engaged in legitimate commercial transactions. It would therefore be wrong to risk harm to their future business transactions. The public interest in this matter lies in knowing that the Government acted properly as it was the Government that authorised the exports through the licensing system.

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 letter and should be sent to the Information Rights Unit at:

Information Rights Unit
Department for Business, Innovation & Skills
1 Victoria Street
London
SW1H 0ET
E-mail: foi.requests@bis.gsi.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

[redacted]

Head of the Export Control Organisation
Dear Information Rights Unit

I would like to request an internal review of FoI 2014/23719. This relates to the decision to withhold the names of companies applying for licences to export to Israel that had not been disclosed previously under the Act.

In terms of the two exemptions used:

Section 41: it is not clear how Section 41 is relevant to this small sub-set of companies when it is not applied to the hundreds of other companies.

Section 38: non-violence is at the heart of CAAT’s work and it is completely committed to peaceful protest (for example, see our protest guidelines at www.caat.org.uk/about/action-guidelines). While I realise that we cannot control how information is used when in the public domain, there appears to be no existing basis to fear for the health & safety of employees. Even the example cited refers to a peaceful protest that did not remotely endanger the employees of UAV Engines Ltd.

Public interest: In the response, the public interest consideration is just baldy stated rather than argued.

According to the UN, 2,205 Palestinians were killed, including 521 children, during the attack on Gaza. There was, and continues to be, a strong public interest in the UK’s lack of criticism of Israeli military action and the continued supply of arms to Israel. This has been evidenced in many ways but perhaps most obviously by numerous mainstream newspaper articles, the resignation of then Foreign Office Minister Sayeeda Warsi, and calls by the Deputy Prime Minister and Business Secretary to suspend arms licences. The Government acknowledged this widespread concern by carrying out two reviews of arms sales to Israel. Both UK Government policy and company actions are part of this public debate and concern.

I look forward to hearing from you and hope the withheld information will be released.

Yours faithfully

[signature]

Research Co-ordinator
Campaign Against Arms Trade
020 7281 0297
www.caat.org.uk
Dear

INTERNAL REVIEW OF FREEDOM OF INFORMATION REQUEST 2014/23719

I am writing in response to your request for an internal review of the above case. I have now reviewed the information which was withheld by the Department in its response to your original request. I set out my decision below.

Your original request was made on 23 October 2014 and asked for the following information (I quote):

I would like to request a list of the names of all companies that applied for licences for the export of equipment with Military List ratings during 2013. I would like the list to be broken down by destination country and Military List rating.

The Department responded to your request on 5 February 2015 (the Response). The Response explained that the information you requested is exempt from disclosure by virtue of sections 41(1) (Information Provided in Confidence) and 38 (Health & Safety) of the Act.

In compliance with the Freedom of Information Act 2000 (‘the Act’) I have conducted an internal review of the original response. In performing this review I have considered whether the original response to your request was correct.

In requesting an internal review you have stated that it is not clear how Section 41 is relevant to this small sub-set of companies when it is not applied to the hundreds of other companies. You have also said that you consider that, in respect of Section 38, there appears to be “no existing basis to fear for the health & safety of employees” and have questioned the danger posed in relation to the protest referred to in the response. Finally, you have also said that you consider that the public interest test was not carried out in full.

I can confirm that Section 41(1) is relevant to the names of companies that have applied for licences for the export of equipment with Military List ratings to Israel because of the impact that disclosure would have on the companies in question. The company names that relate to licence
applications for Israel were provided to HMG in confidence and, following the further hostilities that have taken place, there is a greater risk of harm to these companies from disclosure of their names in this context. Guidance issued by the Information Commissioner’s Office confirms that there are certain situations when a breach of confidence is not actionable. One of these situations is when it is in the public interest to disclose the information requested. Each request for information is considered on a case-by-case basis and, in respect of your specific request, it was considered that it was in the public interest to disclose the names of companies that had applied for licences to export military goods to all destination except in the case of Israel. In these cases, for reasons provided in the ECO’s response, it was not considered that the public interest was strong enough to override the duty of confidence. This risk was considered too great to enable us to release names related to applications for exports to this particular destination. This is because of the heightened sensitivities related to Israel at the present time and, in particular, the strong concerns related to trade with this destination at this time and at the time of the request and during the time specified in the request. Consequently disclosure could result in an actionable breach of confidence as a result of the risks identified by the Export Control Organisation (ECO).

The heightened concerns surrounding trade with Israel means that Section 38 is also engaged. As stated in the ECO’s response, there is an increased risk of protest, either in person, by phone, by written communication or publicly expressed opinion, to companies that have engaged or have sought to engage in trade with Israel. The risk to employees can range from physical, emotional/psychological and representational damage.

Your request for information was considered alongside another request for information for the names of companies that had applied for licences to export goods to Israel. During consideration of these requests the ECO contacted the companies who had applied for licences to export goods to Israel. A number of these companies expressed objections to disclosure and some referred to the risk to the health and safety of their employees and their premises and the protest referred to in the ECO’s response shows that such concerns are not unfounded.

The ECO has carefully considered the public interest in this case and concluded that it lies firmly on the side of non-disclosure of the company names for the reasons provided above and in the ECO’s response. The argument for disclosure is that there is a general public interest in disclosure of this information to enable public scrutiny of UK business activity, particularly in respect of destinations where regional tensions have arisen or increased, as greater transparency makes Government more accountable. However, we do consider that against this there is a public interest in maintaining the principle of confidentiality in cases where the risk of harm of disclosure is too great and ensuring that the health and safety of individual employees of external businesses is not endangered by disclosure of information which is not public knowledge and which could adversely impact on the health and safety of employees.

Furthermore, we consider that general public interest arguments about the disclosure of what we do and do not licence are answered by the general disclosure made in the publication of the Annual and Quarterly Reports on Strategic Export Controls. These reports contain detailed information on export licences issued, refused or revoked, by destination, including the overall value, type (e.g. Military, Other) and a summary of the items covered by these licences. They are available to view on the Strategic Export Controls: Reports and Statistics website at https://www.exportcontroldb.bis.gov.uk/eng/fox.

As noted in the ECO’s letter, it is important to remember that these companies behaved responsibly by applying for export licences and that they were engaged in legitimate commercial
transactions. It would therefore be wrong to risk harm to their future business transactions. The public interest in this matter lies in knowing that the government acted properly as it was the Government that authorised the exports through the licensing system.

Having considered the information being withheld in light of your request for an internal review, I have concluded that sections 41(1) and 38 were correctly applied to the information falling within scope relating to applications for exports to Israel and that the information should remain withheld for the reasons set out in [redacted]'s letter.

Should you wish to pursue any matters concerning this letter, please feel free to contact me.

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

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

Yours sincerely

[Redacted]

Director, for International Affairs, Trade Policy, and Export Controls
Further information for the Information Commissioner's Office, relating to BIS internal review 2014/23719

A change from previous practice
The information requested was for 2013 export licence applications. A previous request for 2012 licence applications had been provided in full (BIS, 2014/17372) for all companies and to all destinations. Beside Israel, there are many destinations for arms sales that are very controversial, for example, Saudi Arabia, Bahrain, Egypt, Libya, Mexico, China and Russia. The change of approach is unclear given that there have been campaigns and protests against company arms sales for decades.

Section 41: obligation of confidence
It is not clear that there is an obligation of confidence for the information provided by the companies to BIS. Exporters were aware at the very latest in March 2013 that any submitted information may be made public:

4. We are updating the declaration on the Standard Individual Export Licence (SIEL) application form, so that any information provided in an application may be made public under the Freedom of Information Act (FoIA) 2000.
5. Companies will be able to tick a box if they feel disclosing such information would be harmful to their interests, but will be asked to provide a full explanation. ECO will take their views into account, but cannot guarantee that the information will not be disclosed in compliance with FoIA, if it is subject to a related request.” (BIS Notice to Exporters, 21.3.2013, bit.ly/1Jj7upL)

Section 41: authorisation of use of information
The internal review response states that “the ECO contacted the companies who had applied for licences to export goods to Israel”, and goes on to suggest that some companies did not object to disclosure. Information on all those companies that did not object should presumably have been provided but it is not clear that this was the case.

Section 38: widening the definition of Health and Safety
Both responses from BIS appear to widen the Act's definition of Health and Safety. The initial response includes “welfare” and the internal review response includes “representational damage” to individuals. The latter also suggests that protest “by phone, by written communication or publicly expressed opinion” could endanger the physical or mental health of employees.

The protest cited in the initial response did not remotely endanger the employees of UAV Engines. It is hard to envisage how a letter or “publicly expressed opinion” is harmful to Health and Safety.

The Public Interest
There is an overwhelming public interest in informed debate around the arms trade with Israel. The strength of the concern and public debate across society is demonstrated by:

- the government announcing two reviews of arms sales to Israel relating to the attack on Gaza in 2014 (Guardian, 4.8.2014, bit.ly/1xYwSYb and BIS, 14.7.2015, bit.ly/1TCe5i1)
- Committees on Arms Export Controls (CAEC) investigations into arms export licences for Israel in this period (for example, CAEC 2nd Joint Report, 20.3.2015, bit.ly/1MphuhW)
- the resignation of the then Foreign Office Minister Sayeeda Warsi, following which she stated "It appalls me that the British government continues to allow the sale of weapons to a country, Israel, that has killed almost 2,000 people, including hundreds of kids, in the past four weeks alone. The arms exports to Israel must stop." (Huffington Post, 5.8.2014, huff.to/1s7xfRU)
- calls by the then Deputy Prime Minister and then Business Secretary to suspend arms licences (Liberal Democracts, 5.8.2014, bit.ly/1CjjsvZ)
• widespread international concern regarding the attack on Gaza from respected international organisations. In July 2014, the UN High Commissioner for Human Rights remarked that “there seems to be a strong possibility that international humanitarian law has been violated, in a manner that could amount to war crimes” (Office of the High Commissioner for Human Rights, 23.7.2014, bit.ly/1EnEs3Q). Human Rights Watch accused Israel of “blatantly violating the laws of war” (Human Rights Watch, 4.8.2014, bit.ly/1xXUAU). An Amnesty International demand that the UK cease arming Israel elicited almost 60,000 expressions of support from the public (13.1.2015, bit.ly/1As4zT).

**Turning “Right to protest” to “Risk of protest”**

The two BIS responses explicitly change the “right to protest” to a “risk of protest”, seeming to deem any protest a Health and Safety danger.

An issue that is acknowledged as of great concern might be expected to require increased transparency and accountability. This concern over arms to Israel is highlighted by BIS in its response, but in order to close down rather than increase transparency and accountability.
Dear [Name],

Please see the attached following your complaint to the Information Commissioner regarding your FoI request under our reference FOI2014/23719. Please note that the spreadsheet provided also includes the information previously released to you.

The reasons for withholding the information have been reconsidered in light of the passage of time. The ceasefire has now held for over a year and we now consider that the situation has improved. We are therefore no longer relying on the exemptions that were applied when we considered the original request and subsequent internal review.

The information is therefore being released as originally requested.

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

Yours sincerely,

[Name]
Manager, Policy Unit, Export Control Organisation
Dear Freedom of Information Act 2000 (FOIA) Complainant: [Redacted] (Campaign Against Arms Trade)

I write further to the Department’s letter of 19 November 2015 to [Redacted], in which it provided him with all the information originally requested on 23 October 2014.

The Department has explained that in view of the passage of time since the request and the fact that the ceasefire in Gaza has held for over a year, it is no longer relying on the exemptions applied when this request was originally considered. Whilst the Commissioner welcomes the disclosure of the previously withheld information to the complainant and the ICO will now close its file on this matter, he does have concerns about how this request was originally dealt with and would expect the Department to heed the advice below in any similar future requests.

Although BIS acknowledged this request on the date of receipt and advised the complainant that it would reply ‘at the latest’ by 20 November 2014, he did not in fact receive the Department’s substantive response to his request until 5 February 2015, more than three months later. As the Commissioner noted in his letter to BIS of 2 October 2015, Section 10(3) of FOIA enables a public authority to extend the 20 working day limit up to a ‘reasonable time’ in those cases (such as this case) where the public authority requires more time to determine the balance of the public interest test.

Although the Act does not define what constitutes a ‘reasonable’ extension of time, the Commissioner’s guidance is very clear that a public authority should take no more than an additional 20 working days to consider the
public interest, meaning that the total time spent responding to the request should not exceed 40 working days. Any extension of time beyond an additional 20 working days should be exceptional and a public authority would need to demonstrate that the length of any time extension is justified.

In this case the Commissioner does not consider that an extension of over two months to consider the public interest test was reasonable and the Department will need to ensure that its extensions of time for public interest consideration in future cases are commensurate with the Commissioner’s guidance.

In his complaint to the ICO the complainant noted that in applying Section 38 (health and safety) to his request, the Department appeared to be attempting to widen the definition of health and safety beyond the clear and well-established meaning of the exemption.

It is important to be aware that Section 38 focuses on an endangerment to the physical or mental health or safety of any individual (as opposed to companies). The phrase ‘would or would be likely’ to prejudice or endanger means that there should be evidence of a significant risk to the physical or mental health or the safety of an individual.

The exemption is very specific and limited in its application. It must not be misapplied (as it was in this case) by a public authority to information the disclosure of which would or would be likely to lead to non-violent protest (such as factory or plant demonstrations) or more individual protest activity such as sending letters, making phone calls or expressing opinions in public, but where there is no credible evidence to suggest that disclosure would risk the health and safety of any individual or individuals.

In case reference FS50502939 (concerning a request to BIS for information on the UK companies who had applied for and had been granted licences for the export of equipment to the Bahrain government), the Commissioner recognised (within the context of Section 41) the wider public interest in preserving the principle of confidentiality. He considered that there is a strong public interest in the export licence application process operating effectively and ensuring that exporters who are applying for licences properly cooperate and engage with government departments. The Commissioner accepts that if information provided as part of the application process was disclosed and linked to specific companies this would undermine BIS’ confidentiality obligations and undermine this process.

The above case indicates that where the Department receives a request for detailed export licence related information the Commissioner will usually uphold an application of Section 41 to such information.
However, the position is likely to differ in respect of information as to the names only of such companies applying for export licences to a particular country. Such information is unlikely to undermine the effectiveness or the export licence application process or cause detriment to the commercial interests of the specific companies applying for such licences, and there is clearly a public interest in disclosure of such information.

The Commissioner would hope that the above clarification and guidance as to the extent and parameters of Section 38 and Section 41 in the context of export licence information will ensure that a more proportionate and exemption aware approach will be taken by BIS in respect of any future requests for similar such information.

Please note that a copy of this letter has been provided to [redacted] for his records.

Yours sincerely

CC: [redacted]