

Arms trade and public controls: the right to information perspective

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I Introduction

It was recently reported that “the UK was the top global defence exporter in 2007, winning a UK record £10 billion (\$19 bn) of new business and a 33% market share”.¹ Such exports² are regulated by government departments – the Department for Business Enterprise and Regulatory Reform (BERR) (formerly Department for Trade and Industry), the Ministry of Defence (MoD) and the Foreign and Commonwealth Office (FCO) have powers to exercise and roles to play in endorsing or denying arms sales abroad.³

While the industry does have significant economic and security benefits to both Britain and the weapon-recipient countries, there are always questions of a legal and ethical nature attached to the business. This is why the British public is keen to learn how, to whom and on what basis arms supplies are authorised (and denied) by government officials.

The Scott Inquiry of 1993–96 into the legality and legitimacy of machine tools and weapon equipment sales to both Iran and Iraq, when both were at war, and the five-volume report (and the findings therein) published as a result of the inquiry greatly augmented the public’s awareness of the issue. Scott was critical of ministers for lack of transparency and for misleading Parliament and the public on the issue.⁴ One of his recommendations was

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1 UKTI, *DSO Today*, 17 June 2008; see also Z Yihdego and A Savage, “The UK arms export regime: progress and challenges” (2008) *Public Law* Autumn 546–7. The SIPRI Trend Indicator Value of major conventional weapons transferred from the twenty largest suppliers between 1977 and 2006 placed the UK at number six in the list.

2 The piece concerns conventional weapons such as war planes, battle tanks, major artilleries, small arms, light weapons, explosives, and ammunition and components of these weapons. For a list of such weapons see UN General Assembly Resolution 46/36L 1991, Transparency in Armaments, Annex – UN Register; see also UN Group of Governmental Experts on Small Arms, *Report of 1997* (1997), para. 25.

3 “Introduction to the Export Control Organisation and to export controls” (2006) January, at <http://www.berr.gov.uk/files/file18678.pdf> (accessed 24 November 2008).

4 R Scott, *Report of the Inquiry into the Export of Defence Equipment and Dual-use Goods to Iraq and Related Prosecutions* (London: HMSO, 1996), at p. 211, d1.165.

that it is the duty of ministers to give accurate and reliable information about arms transactions to the public (and Parliament).⁵

In response to this and the overall demand for better governance in Britain, the Labour Government, as part of its election manifesto and in the light of promises to ensure openness and accountability of government, undertook various legal, political and practical measures across governmental activities, including in the area of arms export control. In the late 1990s, when parliamentary scrutiny on arms exports intensified, ministers began submitting detailed reports (both written and oral) to Parliament, and the process of promulgating an appropriate law also started. Despite criticism of delays, the Export Control Act 2002 (ECA 2002) was passed and came into force in May 2004. As the main UK legislation on weapon exports, it refers to some guiding principles (including human rights, humanitarian, security and sustainable development standards) for arms export decision making and imposes reporting obligations upon ministers.⁶

There is no doubt that the post-Scott era brought important changes to levels of transparency, accountability and responsibility on arms transfer. However, the public and civil societies (including Parliament, the press and courts) continue to raise crucial questions of responsibility on arms export authorisation (for example, exports to Israel, Tanzania, Saudi Arabia), possible corruption (for example, the BAE Systems–Saudi bribery allegation),⁷ and inappropriate use of public power (for example, halting an inquiry by the Serious Fraud Office (SFO)). What is interesting, however, is that some of these issues have been dealt with and investigated not only by parliamentary Select Committees but also by courts (and tribunals), including the House of Lords, upon the initiation of members of the public, the relevant aspects of which are considered in this piece (see section IV below).

This article examines the impact of the Freedom of Information Act 2000 (FoIA) on public accountability as it relates to arms sales. It looks at the application of the Act (both the principle as enshrined in s. 1(1) and the exemptions in s. 1(2), with emphasis on the harm-based exemptions); the interpretation and application of *some* of these by the Information Commissioner (IC) and the Information Tribunal (IT) in respect of arms export-related information; and at recent judicial decisions, as appropriate.

This examination will involve asking: first, to what extent can the FoIA be relevant to the subject of arms trading? Second, how should the public interest be defined in arms sales cases? Third, how is the law and the underlying concept of public interest applied in practice (by government departments, the IC and the IT)? And finally, what are the roles and limits of the public in scrutinising the Government?

II Relevance of the FoIA in general

Section 1(1) of the FoIA grants citizens a statutory right to official information and “the assumption lying behind the FoI legislation is that the release of information is something which is desirable in general terms, with the burden lying on government to justify refusal

5 Scott, *Report* (n. 4 above), at d4.57; see also A Tomkins, *The Constitution after Scott: Government unwrapped* (Oxford: OUP, 1998), pp. 25–49.

6 For a detailed account of the history and developments see Z Yihdego, “Arms sales and parliamentary controls: the role of the Quadripartite Committee” (2008) 61(4) *Parliamentary Affairs* 661–80; see also M Blakeney, “Export controls in the United Kingdom” (2003) 9(6) *IntLLR* 148–58; for reports of the Government from 1997 to 2007, see <http://collections.europarchive.org/tna/20080205132101/www.fco.gov.uk/servlet/Front%3fpagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029395474> (accessed 24 November 2008).

7 See, e.g. Committees on Arms Export Controls, *First Joint Report of Session 2007–08* (2008) HC 254, 17 July. The report dedicated about ten pages to the corruption issue relating to arms trading (pp. 50–60).

to release in particular cases”.⁸ The law is subject to class and harm-based exemptions. The latter include any disclosure of information which will “prejudice or would be likely to prejudice” national security (s. 24), defence and the armed forces (s. 26), international relations (s. 27) and the economy (s. 29); but the authorities, as per s. 2, are required to release the information unless “in all circumstances of the case, the public interest in maintaining the exemptions *outweighs* the public interest in disclosing the information”.⁹ In contrast, class-based exemptions, such as any disclosure of information which may contravene another Act of Parliament – such as the Official Secrets Act (OSA) 1989 (s. 12) – and a disclosure of information which may lead to “actionable breach of confidence” (s. 41), are neither subject to the harm nor to the public interest tests, although some of these have successfully been challenged in the light of the public interest test¹⁰ (see further section IV below).

In principle, therefore, the public has the right to have access to official information. Authorities have the duty to inform the public about the workings of their respective departments. Most of the exceptions have to be strictly interpreted and justified against the public interest criterion. The laws (primary and secondary) must also be interpreted in accordance with the protection of convention rights, including the right to freedom of expression, as enshrined in Art. 10 of the European Convention on Human Rights and enforceable under s. 3 of the Human Rights Act 1998.¹¹

The FoIA has also provided an implementation framework, the starting point being a request for official information from a relevant *public* department; if this information is denied by authorities then there is the right to appeal to the IC. Even if the IC decides in favour of openness (relying on the public interest test), ministers (for example, the secretaries for BERR, MoD and the FCO on matters of arms trading) can veto¹² the decision. Other procedures include an appeal to the IT and a court of law (s. 18).¹³ However, it is of note that “[E]very month there are an average of 20 decisions by the commissioner and five by the tribunal”,¹⁴ the contents of which cover matters of arms exports (see section IV below).

Now, it has to be asked whether information concerning arms transfer must, as of right (and as the duty of the Government), be communicated to the public. If yes, to what extent and in what circumstances? Scott’s response to these questions relied on the notion of ministerial accountability and underlined that authorities are required to provide “the public as full information as possible about the policies, decisions and actions of the Government, and not to deceive or mislead . . . the public”¹⁵ on this subject. He added that “[W]ithout

8 See H Fenwick, *Civil Liberties and Human Rights* (London: Cavendish, 2002), p. 380; see also I Walden, “Accessing public information: features of the FoIA” (2005) 7 *Electronic Business Law* 8–10.

9 Fenwick, *Civil Liberties* (n. 8 above), pp. 390–1.

10 For example, breach of confidence-based civil actions taken by the state against private individuals (in particular journalists) are subject to the harm and public-interest (either to disclose or withhold information) tests, and, as shown in *AG v Jonathan Cape* [1976] QB 752 and *Lion Laboratories v Evans and Express* [1985] QB 526; [1984] 2 All ER 417, CA, are less likely to prevail over freedom of information and expression; see also Walden, “Accessing public information” (n. 8 above), p. 8.

11 The details of which are not, however, within the scope of this article; see Human Rights Act 1998, c. 42, s. 3, see also Sch. 1 for the convention rights and freedoms; see also Fenwick, *Civil Liberties* (n. 8 above), p. 139.

12 Fenwick, *Civil Liberties* (n. 8 above), p. 394.

13 The particulars of which are not concerns of this work. For an excellent account of the procedures and relevant considerations see e.g. Walden, “Accessing public information” (n. 8 above), p. 8.

14 For the level of requests and appeals see e.g. I Hasan, “Freedom of information” (2008) 35 *Law Society Gazette*, 18 September, p. 20.

15 Scott, *Report* (n. 4 above), at v1, 1–5, d4.57; see also Tomkins, *The Constitution* (n. 5 above), pp. 38–41.

the provision of full information it is not possible for . . . the public, to hold the executive fully to account.”¹⁶ For Scott, therefore, withholding information concerning the arms business “should always require special and strong justification”.¹⁷

These views were praised by commentators, although the Scott Report was criticised for not exploring the usual exceptions to freedom of information, inter alia concerns of national security, foreign policy and commercial confidentiality.¹⁸ But authors have later begun to look at these exceptions in the light of the newly introduced FoI legislation.

In her (general) commentary on the FoIA, Fenwick argued that:

the use of the national security exemption, albeit accompanied by the harm test, may mean that sensitive matters of great political significance remain undisclosed. In particular, the breadth and uncertainty of the term “national security” may allow matters which fall only doubtfully within it to remain secret. Had the Act been in place at the time of the change in policy regarding arms sales to Iraq, the subject of the Scott Report, it is likely information relating to it would not have been disclosed since it could have fallen within the exception clauses. The whole subject of arms sales will probably fall within the national security exemption and possibly within other exemptions as well.¹⁹

Before dealing with the last but crucial sentence of the quote, it may be helpful to identify two less contentious issues. Fenwick rightly observes that not only national security but also economic and financial interests could all be relied on by government as reasons not to disclose arms export-related information. The decision to quash an investigation by the Director of the SFO (who is appointed by and accountable to the Attorney General) concerning £1 bn-worth of bribes allegedly paid by BAE systems to the Saudi princes in relation to a £40 bn arms deal (known as the Al Yamamah project signed in the 1980s) could be a good case in point. The controversial payment was said to be made with the complicity of the MoD. Authorities gave various, and at times contradictory, reasons for discontinuing the inquiry. The SFO justified its decision by “the need to safeguard national and international security” and that it was “necessary to balance the need to maintain the rule of law against the wider public interest”. Also, while the Prime Minister (then Tony Blair) relied on both “national interest” and a risk to “thousands of British jobs”,²⁰ the Attorney General claimed that economic factors had not played a part in the decision; the move was made on “national security” grounds, in particular concerns over the “war on terror”,²¹ the merits of which will be discussed later (see section IV below).

Fenwick is also right to argue that the breadth of “national security” is not well defined and so may be used (or abused) by authorities to withhold arms sales-related information. In the Al Yamamah controversy, the Attorney General admitted that the Government withheld facts and details of the case for purposes of “national security”. He particularly stressed that “the SFO would have been cautious about unnecessarily revealing information

16 Scott, *Report* (n. 4 above), at d4.58; see Tomkins, *The Constitution* (n. 5 above), pp. 49–52.

17 Scott, *Report* (n. 4 above).

18 *Ibid.*, p. 714.

19 Fenwick, *Civil Liberties* (n. 8 above), p. 391.

20 B Carlin, T Helm et al., “Blair refuses to order fresh BAE arms inquiry”, *Daily Telegraph*, 8 June 2007; see also L Lustgarten, “Constitutional discipline and the arms trade: the Scott Report and beyond” (1998) 69(1) *The Political Quarterly* 501–5; see also BBC Timeline, “BAE corruption probe”, <http://news.bbc.co.uk/1/hi/business/6182137.stm> (accessed 24 November 2008).

21 O Morgan, “Blair faces new challenges over Saudi arms deal”, *The Observer*, 7 January 2007.

which could have gone widely into public circulation, leading to the very damage to national security which the decision to stop the investigation was designed to avoid”.²²

In accordance with the FoIA, such decisions have to be assessed against the public interest test. Concerning the same case, the Attorney General told the House of Lords that the move was made on “public interest grounds – the risk of non-cooperation from Saudi Arabia on the ‘war on terror’ threatens Britain’s security”.²³ However, the then leader of the Liberal Democrats, Menzies Campbell, criticised the Government for not revealing information about the allegations and said that “these events make yet another powerful case for transparency and more effective scrutiny”²⁴ on the issue. Moreover, several NGOs, called upon the UK Government to reopen the case, referring to national and international obligations and interests of Britain, and recalling “the devastating impacts of corruption on democracy, sustainable development, human rights and poverty”,²⁵ a claim some elements of which were endorsed by the High Court but later rejected by the House of Lords (see section IV below).

However, it is argued here, based on the FoIA and the responses of MPs and interest groups to the BAE–Saudi and other similar affairs, that the use of the “national security” (and other harm-based) exemption(s) in respect of arms sales can convincingly (at least theoretically) be challenged if public interest demands full disclosure. Fenwick’s view on national security-based exemption is certainly right if stated in this context. The problem is how and through which mechanisms the public interest regarding confidentiality over matters of arms export can be determined – on the first question Scott recommended a public debate.²⁶

III Factors for public interest test

The first factor for determining the public interest concerns national security. Normally, these concerns relate to threats from, and policies of, war, armed forces and intelligence services.²⁷ It has also been extended to threats arising from terrorism, sensitive weapons and technologies, and aviation security.²⁸ In this sense, and as shown in Sch. 3(2) of the ECA, the arms trade and related policies have legitimate national security dimensions. Britain can therefore lawfully consider its national security interests without contravening domestic and international norms. In reality, authorities rely heavily on national security to justify the supply of weapons, even in predominantly commercial arms deals, but with adverse impacts on human rights, security and development abroad.²⁹

22 D Leigh and R Evans, “Attorney General says BAE details were withheld for fear of leaks”, *The Guardian*, 14 June 2007.

23 Morgan, “Blair faces new challenges” (n. 21 above).

24 M Campbell, “Attorney General politically inept over BAE Systems”, 14 June 2007, at <http://www.libdems.org.uk/news/story.html?id=12764&navPage=news.html> (accessed 24 November 2008).

25 “Legal challenge to decision to drop BAE corruption inquiry: NGO letter to Prime Minister Tony Blair”, 15 January 2007 at <http://www.thecornerhouse.org.uk/item.shtml?x=548924> (accessed 24 November 2008).

26 Scott, *Report* (n. 4 above), at k8.14.

27 See e.g. US National Security Act 1947. See also I Cameron, *National Security and the European Convention on Human Rights* (London: Martinus Nijhoff, 2000), pp. 39–52.

28 *R v Director of Serious Fraud Office*, House of Lords [2008] UKHL 60; see also Anti-terrorism, Crime and Security Act 2001.

29 See e.g. J Aitken, *Officially Secret* (London: Weidenfeld & Nicolson, 1971), pp. 138–9; see also the use or “abuse” of the Anti-terrorism Act in the recent financial crisis, BBC News, “Iceland: Britain’s unlikely new enemy”, 15 October 2008, at <http://news.bbc.co.uk/1/hi/magazine/7667920.stm> (accessed 13 November 2008).

This led Lustgarten and Leigh to submit that:

The Protection of human rights and the health of democratic institutions is the core of what should be regarded as national security, and often national security is as much in jeopardy from the actions of those in positions of political and economic power at home as it is from any threats from overseas.³⁰

Indeed, the excessive discretion of the executive in using the notion of national security in arms sales can have serious adverse impacts on national security in two senses. First, the unrestrained use of the concept may work against the UK's security interests in practical ways. For example, exported weapons can be diverted to others or may later be used against the exporting country (at home and abroad) and its allies. A parliamentary Joint Committee Report of 2002–03 underlined that:

... an effective arms export control regime can make an important contribution to the security of the United Kingdom ... Yesterday's ally of convenience can become today's enemy. Future generations must not have cause to regret equipment supplied today to allies in the war against terror.³¹

Second, general (and excessive) reliance on national security as a reason to withhold information would mean less transparency, fewer checks on arms sales decision making and a high probability of defects in such transactions, the consequences of which may endanger UK national security. Thus, while there will always be an overlap between security and non-security reasons for arms sales, national security should not be used as a shield for other essentially distinct interests. Authorities are required specifically and exceptionally to justify their reliance on national security relating to the public interest test.

The House of Lords' ruling in *R v Director of the Serious Fraud Office*³² – the subject of which concerned the controversy over stopping an inquiry into alleged bribery involving BAE Systems and Saudi officials – appears to have endorsed this approach. While the niceties of the case are dealt with elsewhere (section IV below), Lady Hale's words are particularly pertinent here.

The “public interest” is often invoked but not susceptible of precise definition. But it must mean something of importance to the public as a whole ... The withdrawal of Saudi security co-operation would indeed have consequences of importance for the public as a whole. I am more impressed by the real threat to “British lives on British streets” than I am by unspecified references to national security or the national interest. “National security” in the sense of a threat to the safety of the nation as a nation state was not in issue here. Public safety was. (Para. 53).

The second factor to consider is the economic interest attached to the arms trade. Clearly, the arms industry (as in other democracies) is a highly significant sector of the British economy. An average of £5 bn income annually, 90,000 jobs and the tax which is levied from the industry and employees are considerable economic and commercial

30 Lustgarten, “Constitutional discipline” (n. 20 above), p. 501; see also L Lustgarten and I Leigh, *In From the Cold: National security and parliamentary democracy* (Oxford: OUP, 1994).

31 Quadripartite Committee, *Strategic Export Controls – Annual Report for 2001*, HC 474, 20 May 2003, para. 1.

32 [2008] UKHL 60.

imperatives.³³ Some city councils³⁴ and universities and colleges³⁵ have, for example, shares in the arms industry. Most banks and pension funds are said to have shares also. The Government's Annual Report of 2004 made it clear that "[T]he vibrant UK defence industry is . . . significant in terms of employment and the economy more generally."³⁶ The Al Yamamah deal alone covers £40 bn of revenue. In the BAE–Saudi arms deal debate, the Government emphatically mentioned that thousands of jobs would have been at risk had the inquiry proceeded.

However, many sensibly argue that the economic and commercial significance of the arms trade is exaggerated. The monetary gain from the industry is "less than half a per cent of GDP". The Government subsidises the industry at the rate of more than £400 m per annum, and so taxpayers have a legitimate interest in what should and should not be done using their money.³⁷ The industry also gets other privileges, such as a credit guarantee, from the state.³⁸ Moreover, the economic advantages cannot decisively justify the moral and ethical issues attached to the commerce in weapons.³⁹ This is why the shares of some public entities in the arms industry have been criticised as unclean investment.⁴⁰ It is thus justified to say at the very least that the British public and its democratic institutions have a direct interest in the economics of the arms trade.

The third factor which may be relevant when considering where the public interest lies concerns the applicable legal rules and adherence of authorities to such rules. As reflected in the ECA and the Consolidated Criteria, arms transfers in violation of arms embargoes, whenever there is a risk of the use of them in conflicts, terrorism and against humanitarian principles, contravene Britain's "international obligations and commitments".⁴¹ Arguably, however, as there is not an arms trade treaty or an express statutory restriction which applies to the trade in most conventional weapons, and the application of international human rights is limited to Britain's territory and jurisdiction, respect for human rights and concern about conflicts in other countries (in which the UK has no jurisdiction) may not bind the Government to refrain from supplying weapons.

33 S Brittan, "The ethics and economics of the arms trade" (2001) *Royal Society of Arts Journal* 08, at http://www.samuelbrittan.co.uk/text87_p.html. para. 15; see also P Ingram and I Davis, *The Subsidy Trap: British Government financial support for arms exports and the defence industry* (Oxford: Oxford Research Group, 2001), p. 4; see also Scott, *Report* (n. 4 above), at d1.24.

34 CAAT, "Local councils have over £300 million invested in BAE", 9 July 2007, at <http://www.caat.org.uk/press/recent.php?url=090707aprs> (accessed 5 December 2008).

35 CAAT, "Clean investment: universities and colleges", at <http://www.caat.org.uk/campaigns/clean-investment/unis2006/> (accessed 5 December 2008).

36 UK Strategic Export Controls, *Annual Report 2004* (2005) Cm 6646, July, p. 1.

37 Ingram and Davis, *The Subsidy Trap* (n. 33 above), pp. 4 and 8; see also S. Martin, "The subsidy savings from reducing UK arms exports" (1999) 26(1) *Journal of Economic Studies* 15–37; see CAAT, *Submission to the Quadripartite Committee* (January 2005), para. 30. Their estimate of the subsidy is "around £890 million per year"; see Saferworld, "The good, the bad and the ugly: a decade of Labour's arms exports", 21 May 2007, at <http://www.saferworld.org.uk/newslist.php?lang=en&id=347> (accessed 5 December 2008).

38 Ingram and Davis, *The Subsidy Trap* (n. 33 above), p. 9.

39 Lustgarten, "Constitutional discipline" (n. 20 above), p. 500; see also Z Yihdego, "Irresponsible transfers of small arms and humanitarian norms: principles of humanity and public conscience perspective" (2006) 2(3) *Journal of Human Security* 29–42; see also CAAT, *Submission* (n. 36 above), para. 34. It was reported that "voters would be happy to see Government support for arms exports removed".

40 See CAAT, "Clean investment" (n. 35 above).

41 See Export Controls Act 2002 (criterion two); see also *The Consolidated EU and National Arms Export Licensing Criteria*, 26 October 2000 – HC 199–203W.

Many would strongly reject this viewpoint;⁴² at least, aiding and abetting other wrongdoing states or non-state-actors through arms provision is unacceptable and may entail state responsibility in appropriate circumstances, and this covers complicity in human rights violations and abuses.⁴³ Even if one implausibly adopts the second argument, arms transfer contrary to national policy (the Consolidated Criteria) would obviously raise questions of legal and constitutional legitimacy.⁴⁴

The fourth factor in assessing where the public interest lies is that moral and ethical issues constitute vital bases for arguing against (or maybe in favour of) the unrestrained international arms sales. Those who oppose unrestricted arms transfer from Britain submit that it is immoral to make profit from the supply of tools of conflict, crime and human misery.⁴⁵ They particularly focus on the immorality of supplying arms to repressors of civil liberties, those engaged in armed conflict and to the least developed countries. Others, however, regard military, economic and material benefit as more important than human security “in foreign policy”;⁴⁶ they rely on the need to have a competitive defence industry, and on the fact that, even if the British arms industry were to refrain from arms supply, another state would definitely take over the trade instead.⁴⁷

Brittan responds:⁴⁸

It is like saying that you should not stop knocking your head against a brick wall until your friends have also stopped knocking theirs . . . The argument that others will export weapons if Britain desists is a dangerous defence for any aspect of the arms trade. The very same argument was used to defend the slave trade in the 18th century and the opium trade to China in the 19th century.

Some may also argue that “Britain . . . must withdraw from the arms trade” and the arms industry should be converted to “civilian uses”, a policy which will “cause major unemployment” in the short term, but “for reasons of constitutional and moral scruple may be justifiable to achieve the higher good”.⁴⁹ This is neither a new argument, as it was a popular view even during the time of the League of Nations,⁵⁰ nor inconceivable if there

42 See e.g. Z Yihdego, *The Arms Trade and International Law* (Oxford: OUP, 2007), ch. 8; for human rights treaty perspective, see D McGoldrick, “Extraterritorial application of the International Covenant on Civil and Political Rights” in F Coomans and M Kamminga (eds), *Extraterritorial Application of Human Rights Treaties* (Oxford: OUP, 2004), pp. 52–3.

43 International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts* (2001), Art. 16; see also B Frey, “Small arms and light weapons: the tools used to violate human rights” (2004) 3 *Disarmament Forum* 44.

44 Scott, *Report* (n. 4 above), at d3.30(v), rightly referred to the view that “public opinion and Parliamentary opinion would not understand a volte face in policy”.

45 Saferworld, “The good, the bad and the ugly” (n. 37 above), p. 4; see also P Towle, *Ethics and the Arms Trade* (London: Institute of Economic Affairs, 1998), p. 30; see UK Strategic Export Controls, *Annual Report* (n. 36 above), p. 1; for general discussion on ethics as a constitutional concern, see D Woodhouse, *In Pursuit of Good Administration: Ministers, civil servants and judges* (Oxford: Clarendon Press, 1998), pp. 15–22. She referred to the Matrix Churchill case as an example of unethical conduct of ministers and civil servants (p. 19).

46 Lustgarten, “Constitutional discipline” (n. 20 above), pp. 508–9. He characterised this argument as “amoralist view”; this line of argument was also rejected by Lord Scott in his *Report* (n. 4 above), at d4.59–60.

47 Lustgarten, “Constitutional discipline” (n. 20 above), pp. 509–13; see also Scott, *Report* (n. 4 above), at d8.16.

48 Brittan, “The ethics” (n. 33 above), p. 10.

49 Lustgarten, “Constitutional discipline” (n. 20 above), p. 514.

50 See e.g. *Committee for the Regulation of the Trade in, and Private and State Manufacture of, Arms and Implements of War*, 12 November 1932 (3), The League of Nations, paras 9–10.

is a political and moral will to restrict arms production only for national defence and security, and not for international markets.⁵¹

However, Brzoska observes that “when the new Labour government in Britain announced a policy on using military technology in the civilian domain, it was called ‘defence diversification’ with no mention of diversion at all”.⁵² The consensus (although not necessarily the practice) appears to be that arms sales must be restrained, strictly controlled and scrutinised but not banned. Be that as it may, it is hardly possible to win the hearts and minds of the public to try to justify unethical deeds by relying on actual or potential wrongdoings of other countries and their arms industries. Having resort to strengthening multilateral efforts is rather a convincing remedy to fight unscrupulous arms sales competition.

The final but fundamental factor in assessing the public interest is that, for all the reasons cited above, (security, economic, ethical etc), the public has a legitimate interest in putting arms sales decision making under democratic control,⁵³ through the various available methods, notably parliamentary and public scrutiny.

In a few words, there are a number of different ways that the term “public interest” can be considered. It is not something which can be easily defined and its potentially ambiguous meaning has often provided a cloak with which to prevent the disclosure of information. The above factors are to be viewed as general considerations associated with the term, as is the “candour” argument, often stated as a reason to withhold information, which relates to the idea that it is in the public interest for ministers and officials to speak candidly without fear of constant scrutiny and suggests that those persons would not be able to perform their duties efficiently if all their decisions were subject to public scrutiny. There is, however, something which remains an important and perhaps overriding concern: the notion that members of the public have a right to adequate information as to what acts the Government is carrying out in their name. This is a basic yet essential right which allows the voters the opportunity to make a clear and informed choice on polling day and should be crucial to the running of democratic society.⁵⁴

IV The public’s right to arms sales-related information: the law in practice

“[K]nowledge by the people of the activities of government” and their ability “to restrain government and hold it accountable” are among the crucial features of democracy.⁵⁵ This also applies to the arms trade. By virtue of the FoIA and the ECA, the public has the right to know about the administration of arms exports, not only via Parliament but also from government authorities and departments. This reinforces the ability of the public to hold authorities to account, as clearly acknowledged by ministers in their 2006 report on the issue.⁵⁶ Although the Scott Report seems to consider the need for openness by officials towards the

51 See e.g. Ottawa Mines Convention 1997, for states which ceased or converted their production see http://en.wikipedia.org/wiki/Land_mine#Manufacturers (last accessed 13 November 2008).

52 M Brzoska, “Military conversion: the balance sheet’ (1999) 36(2) *Journal of Peace Research* 131.

53 Lustgarten, “Constitutional discipline” (n. 20 above), p. 508.

54 For a general account of the issue, see e.g. A Austin, “The Freedom of Information Act 2000 – a sheep in wolf’s clothing?”, in J Jowell and D Oliver (eds), *The Changing Constitution* 5th edn (Oxford: OUP, 2004), pp. 401–8.

55 R Pyper (ed.), *Aspects of Accountability in the British Systems of Government* (Gateshead: Tudor, 1996), p. 14.

56 UK Strategic Export Controls, *Quarterly Report* (2006) October–December, at <http://www.fco.gov.uk/Files/kfile/quarterlyreportoctober-december06.pdf> (accessed 13 November 2008); see also UK Strategic Export Controls, *Annual Report* (n. 36 above).

public in general and their admission of wrongdoing in particular,⁵⁷ the consequences of failure to comply with laws and policies should, in appropriate circumstances, go as far as the questioning, resignation and calling back of ministers from public office.⁵⁸

Yet, the right at issue is not absolute but subject to lawful exemptions (see section II above). However, the public interest test applies to such (harm-based) restrictions as evidenced by the MoD's provision of detailed (but general) data on weapon deliveries which was requested by the Campaign against the Arms Trade (CAAT) on the basis of the FoIA,⁵⁹ and the disclosure by some local government and academic institutions of their shareholdings in the arms trade, in response to FoIA-based requests.⁶⁰

The author has also used the FoIA to ask the Department for Trade and Industry (DTI) (now BERR), the MoD, the FCO and the IC to provide detailed information about "the requests they have received from members of the public in respect of arms export or delivery concerns and their responses to them". The replies received vary from procedural to substantive issues. The FCO formally refused the author's request on the basis that "it will take more than 3½ working days" to do so.⁶¹ However, the Export Control Organisation (ECO) of the DTI,⁶² the Defence Export Services Organisation (DESO) of the MoD⁶³ (which has now been dissolved) and the IC's office⁶⁴ replied positively with letters of 31, 8 and 5 pages respectively (plus pdf links to eight decided cases).

From these responses the following can be deduced. First, areas of interest of members of the public in 2006–07 included arms supplies to Saudi Arabia, Israel and Tanzania, the role of BAE and DESO in weapon deals and questions of pertinent policies.⁶⁵ Secondly, in their responses to the requests, these departments repeat or refer to the official reports of the Government on arms exports; they refuse the disclosure of specific information on arms sales referring, for example, to "information provided in confidence" (s. 41), "prejudice to the effective conduct of public affairs" (s. 36), "information accessible to the applicant by other means" (s. 21) and the outweighing public interest to withhold information.⁶⁶

Thirdly, most of the s. 50 FoIA decisions (of 2007) of the IC on arms sales-related complaints have been decided in favour of government departments. Out of the eight decided cases supplied to the author – four of which were about the UK–Saudi affair, brought against either the MoD or the National Archives – the complaints were not upheld by the IC on the ground that the requests were exempt under s. 1(2) and that "the balance of

57 Scott, *Report* (n. 4 above), at k8.1, k8.15–16.

58 For general discussion on public scrutiny, see Pyper, *Aspects of Accountability* (n. 55 above), pp. 15ff; for specific discussion, see I Leigh and L Lustgarten, "Five volumes in search of accountability: the Scott Report" (1996) 59(5) *Modern Law Review* 707–8.

59 CAAT, "Clean investment" (n. 35 above); see also Scott's recommendation (*Report*, n. 4 above), at k8.10.

60 CAAT, "Clean investment" (n. 35 above).

61 FOI Request-0584-07-FCO Reply, 26 July 2007; s. 12 of the FoIA makes provisions for public authorities to refuse requests for information where the cost of dealing with them would exceed the appropriate limit.

62 Letter dated 16 August 2007.

63 Ref DESP/14/09, 9 August 2007.

64 Ref FOI/693, 14 August 2007.

65 DESO's reply (Ref DESP/14/09, 9 August 2007) and the attached table which shows the twenty-five FoIA requests which demonstrate this.

66 The responses to the requests on Tanzania, Israel and Saudi Arabia arms supplies affirm this: ECO (DTI), letter dated 16 August 2007, annex.

the public interest favours withholding the information sought”.⁶⁷ In the complaint filed against the Export Credits Guarantee Department (ECGD) for refusing a “request for information about support given to BAE Systems”, however, the commissioner submits that:

the public interest is best served where access to information would: further public understanding of, and debate about, issues of the day; facilitate the accountability and transparency of public authorities for their decisions; and, improve accountability and transparency in the spending of public money. He has seen that ECGD commits significant sums of public money to support UK exports. These factors favour full disclosure of information by ECGD. The Commissioner considers that disclosing the general financial exposure of ECGD to public scrutiny can assist ECGD and its partners in managing their credit risks effectively.⁶⁸

The analysis and sifting of evidence by the commissioner seems to be a detailed search of the public interest concerning the subject at issue. Unfortunately, in assessing the public interest, the IC relied on only some aspects or factors, for example, economic benefits and international relations. Other important factors, such as the respect for human rights, were not mentioned. Some of the cases have been appealed to, and decided by, the IT.

In *Gilby v the Information Commissioner*⁶⁹ (of 2007), for instance, the appellant to the IT claimed that the denial of his FoI requests by the National Archives of FCO files of the late 1960s on arms sales (including tanks) to Saudi Arabi (and its National Guard) and their subsequent endorsement by the IC are contrary to his freedom to official information for two main reasons: first, s. 27 of the Act (prejudice to international relations) has been wrongly applied to exempt the information from disclosure while public interest relating to “corrupt practices” in those transactions outweigh public interest to withhold them. And second, the breach of confidence argument doesn’t work here as the Saudi Government is aware of the fact that the UK releases historical documents to the public.

The IC (joined by the FCO) rebutted these saying that there is strong evidence (which includes the statement of the then PM, the Attorney General and the testimony of the UK Ambassador to the Kingdom) that the release of such confidential documents would “seriously harm the bilateral relationships” between the UK and Saudi Arabia and that it would constitute a breach of confidence on the part of the British Government – so withholding the information best serves the public interest. It added that the 40-year rule to disclose information as historical documents is not automatic; it can be reviewed depending on the nature of archives.

The tribunal, questioning the reliability of the claim over corrupt practices and recognising the economic and other interests of the UK “both here and abroad”, agreed with the analysis and conclusion of the IC and dismissed the appeal saying:

The principal issue in these appeals is where the balance of public interest lies. The Commissioner’s conclusion . . . was that the public interest in maintaining the exemption outweighed the public interest in disclosure. . . Indeed, the clear evidence of HM Ambassador to Saudi Arabia, Mr William Patey, highlights the sensitivities at play in the UKG’s [United Kingdom Government’s] relationship with the SAG [Saudi Arabian Government] and the damage that would result

67 See e.g. Decision Notice (DN) FS50086784, 04/04/2007, MoD; DN FS50125539, 07/08/2007, National Archives; DN FS50111530, 04/07/2007, National Archives; DN FS50119364, 31/07/2007, National Archives.

68 DN FS50087290, 27 March 2007, para 21.

69 *Nicholas James Gilby v The Information Commissioner* EA/2007/0071,0078,009; for similar rejection, see also *Evans v The Information Commissioner* EA/2006/0064, 26 October 2007.

from disclosure. Whilst the Commissioner recognises that there is a strong public interest in transparency in relation to the transactions underlying these appeals, he considers that the balance in this case lies in favour of maintaining the exemption. (Para. 11)

Moreover, in *CAAT v The IC* (the MoD joined the latter),⁷⁰ an appeal decided a few months after the *Gilby* case, which concerns an MoD refusal of an FOI request by CAAT of seven memoranda of understanding (MoU), the subject matter of which is again the Saudi-UK arms deal of the late 1990s, the tribunal reached a pretty similar conclusion but with detailed legal and policy reasoning – the facts and issues have been summarised as follows.

The MoD rejected the request based on s. 27 (harm to international relations under subs. (1) and confidentiality under subs. (2)) and s. 43 (harm to commercial interest) of the FoIA. CAAT appealed to the IC against this decision. The IC upheld the s. 27 exemption but neither accepted nor rejected the s. 43 argument of the MoD (para. 8).⁷¹

The question before the tribunal was, thus, whether the disclosure of the MoU outweighed the public interest to not do so in terms of the confidentiality and the harm to international relations exemptions (para. 55). In respect of the first barrier to disclosure, the tribunal concurred with the MoD's argument that the MoU are confidential documents – the two states wanted them to be so treated. They can only be disclosed if the Kingdom of Saudi Arabia were to consent to that effect. However, the tribunal supported CAAT's criticism of the MoD that seeking consent from a foreign state is not compatible with British democracy and so the fact that these documents are confidential does not mean that the exemption of the MoU outweighed the public interest in disclosing them (para. 78).

It then went on to examine and apply the public interest balance test on disclosing or withholding the information in accordance with s. 2(2) of the FoIA and taking into account its case law – *Gilby and Department for Education and Skills v IC* (EA/2006/0006). While recognising that the presumption is always in favour of disclosure, and the need for greater transparency and accountability on the subject (in particular when there are concerns of corruption), the Tribunal concluded that:

Starting with the public interest in maintaining the exemption, the exemption under s. 27(2) and (3) is based on confidentiality arising out of circumstances in which information was obtained from a state . . . Thus parliament recognised and we accept that there is an inherent disservice to the public interest in flouting international confidence. (Para. 95)

It also made a distinction between confidentiality on matters of the arms trade and allegations of corruption. It indicated that had the MoU contained some evidence of corruption, its verdict would have been different, but the tribunal affirmed that it had read the MoU and there had been no evidence of corruption in the documents (para. 98). It must be noted that confidentiality under s. 27 (3), which is attached to international relations, and confidentiality under s. 41, which may lead to an actionable breach of confidence, are distinct, the former being subject to the public interest test but the latter “is not” (see further section II above).

⁷⁰ *CAAT v Information Commissioner* LTL30/7/2008.

⁷¹ For absolute exemptions on transactions of commercial nature, see e.g. Walden, “Accessing public information” (n. 8 above), p. 8. He underlined that “[C]onfidential [commercial] information is considered an absolute exemption, where the disclosure would be an actionable breach of confidence. However, the courts recognise that ‘public interest’ considerations may arise in such an action (see *AG v Guardian Newspapers (No 2)* [1990] 1 AC 109, 282), which effectively means that confidential information faces a similar situation to that applicable to the qualified exemptions.”

Likewise, regarding the second controversy, the content of which was about prejudice to international relations and other related issues, CAAT submitted that the arms trade is not in the interest of the UK (rather it is in the interest of the industry in question), and a potential misuse of weapons by Saudi Arabia and the alleged corruption in the transactions, among others, are relevant to the public interest test. While the bad human rights situation in Saudi Arabia had been noted by the tribunal, the claim of the appellant was rejected for several reasons: first, securing good relations with Saudi Arabia (including “the sales in arms and services in connection therewith”) “is to the interest of” Britain; second, the issue involves not the interests of companies or individuals but rather of the UK in general; third, Saudi Arabia is important to the UK in terms of the interests of British citizens living there, the influence and power of the country in the region and the continuing interest of Britain in the relationship; and, finally, as mentioned earlier, the claim of corruption was said to be unproven (paras 79–90).

It is no surprise that CAAT has to date not filed an appeal against this (or other similar) decision(s) before a court of law. The House of Lords’ ruling in *R v Director of the Serious Fraud Office* (of 2008), as referred to by the IT in the above-mentioned case, seems to have had a crucial impact on the controversy under consideration – although not about FoI (it is, rather, a judicial review case), the relevant aspects of it are worth looking at.

Initially, the SFO decided to halt an inquiry into the alleged bribery involving BAE Systems and the Saudi prince on grounds *inter alia* of national security threats to the UK and its citizens – it was stated that Saudi Arabia threatened to withdraw from its security and intelligence cooperation with Britain on “the war on terror”; the claimant (a civil society) challenged the decision before the High Court⁷² as contrary to the British criminal justice system and democracy and as an improper use of the notion of national security to justify the action. The court essentially endorsed this and concluded that the threat (from Saudi Arabia) was an intervention into the British legal system which was not impartially challenged by the director – the court emphasised “we intervene in fulfilment of our responsibility to protect the independence of the Director and of our criminal justice system from threat. On 11 December 2006, the Prime Minister said that this was the clearest case for intervention in the public interest he had seen. We agree.”⁷³

Yet, the Law Lords *unanimously* disagreed with the decision and overturned it. For the Lords “the right question was whether, in deciding that the public interest in pursuing an important investigation into alleged bribery was outweighed by the public interest in protecting the lives of British citizens”, they also thought that the issue was “not whether his [the Director’s] decision was right or wrong, nor whether the Divisional Court or the House agreed with it” (para, 1).

Lord Bingham, referring to “[T]he decision of the then Attorney General to release Leila Khalid to avert a threat by the PLO to execute Swiss and German hostages” and its subsequent endorsement by the Divisional Court as a defensible act (paras 39–40), considering the evidences and their interpretation including “the withdrawal of co-operation might lead to ‘another 7/7’” and the need “to take account of threats to human life as a public interest consideration”, strongly disagreed with both the formulation of the issue by the lower court and its judgment (paras 35–47).

72 *R v Director of the SFO* [2008] EWHC 714; for a good summary of the High Court’s decision, see Yihdego and Savage, “The UK arms export regime” (n. 1 above), pp. 559–60.

73 *R v Director of the SFO* [2008] EWHC 714, paras 161, 18.

Lady Hale agreed and further pointed out that:

The . . . British public may still believe that it was the risk to British commercial interests which caused him [the Director] to give way, but the evidence is quite clear that this was not so. He only gave way when he was convinced that the threat of withdrawal of Saudi security co-operation was real and that the consequences would be an equally real risk to “British lives on British streets”. (Para. 52)

However, she also added:

I do not however accept that this was the only decision he could have made. He had to weigh the seriousness of the risk, in every sense, against the other public interest considerations. These include the importance of upholding the rule of law and the principle that no-one, including powerful British companies who do business for powerful foreign countries, is above the law. It is perhaps worth remembering that it was BAE Systems, or people in BAE Systems, who were the target of the investigation and of any eventual prosecution and not anyone in Saudi Arabia. The Director carried on with the investigation despite their earnest attempts to dissuade him. He clearly had the countervailing factors very much in mind throughout, as did the Attorney General. (Para. 55)

Some observations are worth making here: the Lords referred to a specific security (or public) threat and not national security in general, which suggests extreme and/or exceptional cases (like hostage taking and the responses to it). They did not refer to economic/commercial considerations to justify the action, despite the Government’s reliance on them to halt the inquiry. Indeed, they seemed to reject commercial justification as a reason for the Director’s action, although, they also rejected the need to scrutinise the substantive aspect of the Director’s decision, without which it appears to be difficult to weigh where the public interest balance lies – to continue with the inquiry or halt it – without examining both the facts and the judgment made based on them. In any event, although the case was basically concerned with a question of (un)lawful exercise of public power, the decision is likely to have an indirect and perhaps a major impact on FoI vis-à-vis national security questions. In short, the cases considered provided evidence that the public is entitled to get (official) information concerning arms sales as a matter of principle, and we have witnessed the realisation of this to some extent. Authorities may deny this right if they can specifically justify the balance of public interest in favour of doing so on clear and strong threats to national security, international relations, etc. Commercial confidentiality has also been assessed in the light of the public interest criterion. The practices of the IC, the IT and the House of Lords endorsed this.

These developments give a twofold impression. On the one hand, the ever-increasing challenges by members of the public, including involving tribunals and courts, will certainly increase the level of public scrutiny and awareness on arms sales issues. The assurances given by the tribunal (and others) regarding the bribery matter and the gravity of the threat which arose from Saudi’s threat to cease security cooperation with Britain are of significant value also, as is the fact that tribunals and courts have managed to see confidential evidence in the course of examining the public interest which should mean more oversight and scrutiny over arms dealings. In particular, the ruling of the High Court in favour of civil societies was generally seen as a major development – these are significant successes, indeed.

On the other hand, however, the overall trend of the IC and the IT (in adopting a restrictive approach to the public’s right to specific arms trade-related information), which seems to be generally supported by the House of Lords, means that it will be extremely difficult for the public to have access to such information even when serious public concerns are involved; and whether the assurances given by the Tribunal or the House of

Lords can fully satisfy the public on the problems and doubts is difficult to envisage. What is clear, however, is that these and the hesitation to consider other principles (especially human rights) by the tribunals may lead to disappointment, at least to some portions of the public (such as CAAT, the Corner House, Mr Gilby, and their supporters) who are undoubtedly determined to scrutinise the Government and arms companies with the intention of upholding constitutional principles and other international standards (for example, the fight against corruption, the need to halt arms supplies to repressive regimes and to armed-conflict situations).

V Conclusion

How to conclude then on the roles and limits of the public in controlling the Government using their right to (official) information? Certainly, the introduction of the FoIA 2000 and its implementation have considerably improved the public's role in scrutinising government actions (and omissions) in the field of arms supplies. These efforts are represented inter alia by civil societies, individual members of the public, journalists and even academics. There are encouraging outcomes as well as disappointments. One of the positive developments includes the general acceptance by the law, authorities, tribunals and members of the public that official information concerning arms transactions must be disclosed to the public unless there is a compelling and a specific reason to protect the public interest by withholding it. In principle, therefore, contrary to what some may have believed not long ago, the public is entitled to have access to arms trade-related official information – specifically, the whole subject matter of the arms trade is not exempt from disclosure.

In addition, members of the public have begun to exercise this right by making requests to appropriate departments (for example, the BERR, MoD, FCO). The responses of these departments have been quite positive in respect of general information. What is remarkable is that refusal decisions by departments have been challenged before the IC and the IT, although the outcomes usually favour the departments. The decisions of the IC and IT (and the House of Lords) appear to suggest that the exemptions for harm to national security, international relations, confidentiality etc must strictly and specifically be proved in consideration of the public-interest test – the extensive search for evidence by the IT and the House of Lords seems to affirm this. Additionally, the IT and the Law Lords seem to focus more on harm to security and international relations than on commercial factors, contrary to the claims of departments (for example, the MoD).

Yet, dozens of questions (and disappointments) remain. So far, the practice of officials, the IC and the IT suggests that specific information (for example, individual licences, arms sales contracts, and communications between officials and lobbyists (as shown in *Evans v IC EA/2006/0064*, 26 October 2007)) should not be disclosed, as the public interest to do so outweighs the public interest to disclose the secrets. This conclusion can be generally correct; but the problem is, however, if the public has overriding concerns over some transactions (for example, the use and misuse of arms, corrupt practices, tax evasion, public subsidy, etc). The IT responded to this question by ensuring that the MoU with Saudi Arabia do not indicate any corrupt practices; the Lords emphasised that the problem with the action of the Director of the SFO was purely a matter of grave security concern (as opposed to a commercial concern).

Are these and similar assurances satisfactory in terms of ensuring both public confidence and democratic controls? Those who are actively campaigning to promote accountability and transparency on this matter will certainly say no; to some extent this doubt has merit, for the simple reason that neither the IT nor the House of Lords addressed the details of the allegations raised by members of the public, Parliament and the

press, although their observations and judgments are of significant value. Also, neither the FoIA institutions nor the Lords seem to be courageous enough to define clearly and address the competing issues – for example, national security and confidentiality versus human rights and democratic values (transparency and accountability, for example) as matters of public concern. Equally, authorities may reasonably say that confidential documents are shared with the IT and parliamentary committees, publication and reporting schemes are in place and therefore democratic oversight is already there – it is not in the interest of the public to disclose particular information to individuals (and civil societies). These developments (and defences) may be real but are they enough?

This and other problems relating to the notion of freedom of information led Leigh et al. to envisage that:

Laws of this type [the FoIA] enable members of the public to initiate a bureaucratic procedure to extract information specifically requested, a rather more limited tool than the investigative powers of a parliamentary or other public body. Serious deficiencies would remain, requiring a more innovative approach.⁷⁴

The fact that some Government departments frustrate FoIA requests for the most inadequate reasons⁷⁵ embraces this claim (for example, the refusal by the FCO as mentioned earlier).

The initiatives of members of the public and interest groups to gain and publish information using the FoIA and related mechanisms must, however, be considered as a major accomplishment. Their embryonic practices, along with other endeavours, may be the birth of strong public scrutiny on arms trade matters. This is not to deny the deficiencies of this process as one public scrutiny mechanism (as considered earlier). In the US, this field has gone far further in favour of freedom of information. For example, interest groups obtain prior notifications from Government to Congress of arms export licences as part of the right to information.⁷⁶ But the public's right to government information as a tool of scrutiny is still important in Britain, along with other methods, notably parliamentary checks. Each complements the other in promoting transparency, accountability and responsibility in respect of the arms business (similar to that of other sensitive Government activities).

On the basis of the practices and some shortcomings, one final point is worth making: The public interest in its full sense has to be at the centre of decision making either to disclose or withhold information by relevant departments, the IC and the IT. So far, the consensus (in Government plus tribunals) seems to accept that the public is entitled to general but not specific information on this subject matter. But it would be absurd to deny disclosure of specific information if so doing is in the interest of the public. The first step should be to conduct public debate and research from which some general factors can be formulated on public interest with respect to the arms trade. As discussed, security, economic, legal and ethical advantages and disadvantages of openness or secrecy with regard to the business in question, must be taken into account, openness being the principle and secrecy an exception to it.

74 Leigh and Lustgarten, "Five volumes" (n. 58 above), p. 715.

75 In December 2006, *The Independent* newspaper published an article highly critical of the departments' conduct. Crucially, the newspaper submitted a number of requests for information under the Act from the serious (asking for the documents relating to the legality of the Iraq war to be revealed) to the not-so-serious (asking for more information regarding the sweater given to Tony Blair by George Bush and for the names of people on Tony Blair's Christmas card list). Unfortunately, the not-so-serious requests received similar responses, deemed "not in the public interest" and "harmful to international relations" respectively. See R Verkaik, "What freedom of information?", *The Independent*, 28 December 2006.

76 See e.g. Yihdego, "Arms sales" (n. 6 above), pp. 678–80.