



National Audit Office

The UK's independent public spending
watchdog

Switchboard +44 (0)207 798 7000

Direct Line +44 (0)207 798 7264

Email FOI@nao.org.uk

Reference FOI- 1543

Date 2 September 2022

ROLLS ROYCE HYBRID AIRCRAFT PROGRAMME.

Thank you for your request of 4 August 2022 in relation to the Rolls Royce Hybrid Aircraft Programme. Your request was considered in accordance with the terms of the Freedom of Information Act 2000 (FOIA).

We can confirm that we hold information in scope of your request. Your specific request is set out at Annex A for your reference where we also provide our full response. While we hold some information in scope of your request, we consider it to be exempt from disclosure under Section 33 (Public audit functions), Section 43 (commercial interests) and Section 21 (information accessible to applicant by other means) of the FOIA.

Annex B explains the exemptions and how they apply to your request, and our consideration of the Public Interest Test in relation to the s.33 and s.43 exemptions.

I hope you find this information helpful. Annex C sets out the steps you may wish to take if you are not satisfied with the way we have handled your request for information under the FOIA.

Yours sincerely

NAO FOI Team

Annex A

Request for information about Rolls Royce Hybrid Aircraft Programme

Freedom of Information Questions and Answers

(Your request in italics, NAO response in plain text)

“I ask once again for the technical application for the Rolls Royce E-FanX grant, so I can assess if it was fraudulent or not. Since this project failed miserably, Rolls can no longer claim that their hybrid technology is proprietary information. This is a failed project with failed technology, paid for by the government, and I should be allowed to view it to see if it was a fraud from the very beginning. Please forward to me, the technical application for the Rolls Royce Hybrid E-FanX grant and for the Cranfield Hybrid Fresson grant.”

NAO response

We have searched our records and can confirm that we hold information falling within the scope of your request – but consider this information exempt from disclosure. The following exemptions apply: section 21 information accessible to an applicant by other means, section 33 public audit functions, and section 43 commercial interests.

Please see Annex B for details of these exemptions and how they apply to your request.

Annex B

This annex sets out the exemptions that we have applied to your request.

Section 33 Freedom of Information Act 2000 – Public Audit

Section 33 of the Freedom of Information Act 2000 (FOIA) provides that:

33.-(1) This section applies to any public authority which has functions in relation to—

(a) the audit of the accounts of other public authorities, or

(b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.

(2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

(3) The duty to confirm or deny does not arise in relation to a public authority to which this section applies if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

Reasons why we have applied the Section 33 exemption:

We have applied the Section 33 exemption to information we hold in scope of your request and which we are withholding from release namely *ATI project application/technical* documentation.

We have applied this exemption because we consider it is critically important to an effective audit process. It enables us to gather information and knowledge and engage in a free and frank way with audited bodies as we carry out our audits. Much of the information we obtain is volunteered to us by the bodies and people we engage with, and we consider our work would be less collaborative, more inhibited, and so less effective if people thought audit information would be released subsequently.

We believe that were we to release this information, the *Department for Business, Energy & Industrial Strategy (BEIS)* would be reluctant to share documents pertaining to this matter with the NAO in the future. This would undermine the efficiency of the audit and our ability to conduct appropriate first and second stage reviews of audit work. Furthermore, releasing the information would damage our working relationship with government. This would be likely to impact adversely on the conduct, cost and effectiveness of public audit. Therefore, we consider that disclosure of this information would be likely to prejudice the exercise of the NAO's functions as set out in the National Audit Act 1983. For this reason, we have applied the public audit exemption available under Section 33(2) of FOIA.

Reasons why the public interest in maintaining the exclusion outweighs the public interest in disclosing the information in this case:

The NAO is independent of government and scrutinises public spending on behalf of Parliament. Our work serves the public interest by helping Parliament hold government to account, providing transparency on matters of public interest and driving improvement in the use of public resources.

We recognise that there is a public interest in knowing that the use of public money is subject to appropriate levels of accountability and transparency, delivered through an effective audit function. However, we consider that disclosure of sensitive audit evidence supplied to the NAO by departments in pursuit of our statutory functions and beyond that published in our reports, would impair the audit process for the reasons set out above. Departments would be reluctant to engage with us which would delay and diminish the audit process.

The NAO's work puts information into the public domain and helps Parliament hold government to account. In our view, the balance of public interest rests with the NAO being able to deliver an effective and efficient public audit function and report our findings to the public.

Consequently, given the negative impact that would result from disclosure, we consider it appropriate to maintain the Section 33 public audit exemption.

Section 43 Freedom of Information Act 2000 – Commercial interests

Section 43 exempts information whose disclosure would, or would be likely to, prejudice the commercial interests of any legal person (an individual, a company, the public authority itself or any other legal entity).

- (1) Information is exempt information if it constitutes a trade secret.
- (2) 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).
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

Reasons why we have applied the Section 43 exemption:

The National Audit Office (NAO) is a public body for the purposes of Section 43. We have applied section 43(2) to information held relating to commercially sensitive government information.

Section 43(2) of FOIA exempts from disclosure information which would be likely to prejudice the commercial interests of any person (including the public authority holding it). It is a prejudice-based exemption, so the test is whether or not an individual's commercial interests would be prejudiced by disclosure and again, it is subject to balancing the public interest. The factors that weigh against disclosure are:

1. Much of the information sought by you concerning Cranfield and their partners was provided in confidence and is not in the public domain.
2. If commercially classified information was released, it would weaken their position in a competitive environment by revealing market-sensitive information or information of potential usefulness to competitors.
3. It is also important that organisations like Cranfield can talk frankly with government and that they can expect confidence to be maintained in market-sensitive communications.
4. Disclosure of this information is also likely to prejudice the commercial interests of bidders.
5. This classification is in line with the Ministry of Justice's working assumptions on the application of the Act to information secured during a tendering process.
6. Furthermore, if disclosure were permitted other companies or individuals would be less likely to provide the NAO with information in the future without fear of suffering commercially as a result.

Reasons why the public interest in maintaining the exclusion outweighs the public interest in disclosing the information in this case:

The NAO is independent of government and scrutinises public spending on behalf of Parliament. Our work serves the public interest by helping Parliament hold government to account, providing transparency on matters of public interest and driving improvement in the use of public resources. We recognise that there is a public interest in the disclosure of commercial information to ensure public money is subject to appropriate levels of accountability and transparency, delivered through an effective audit function.

However, we consider that disclosure of sensitive audit evidence supplied to the NAO by departments in pursuit of our statutory functions and beyond that published in our reports, would impair the audit process for the reasons set out above. Additionally, it would prejudice the commercial interests of *Rolls Royce Hybrid E-FanX grant and the Cranfield Hybrid Fresson grant*. These factors all weigh in favour of non-disclosure and therefore we are not permitted to release the information requested.

Section 21 Freedom of Information Act 2000 – Information accessible to applicant by other means.

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

Reasons why we have applied the Section 21 exemption:

We are not obliged, under Section 21 of the FOIA to provide information that is reasonably accessible to you, and much of the information you are seeking concerning Cranfield's Fresson plans and projects is in the public domain. However, to be helpful you can find some of the information you are seeking at:

[Project Fresson by Cranfield Aerospace Solutions](#) and [E-Fan X - Electric Flight - Airbus](#).

Section 21 is an absolute exemption and is not subject to the Public Interest Test.

Annex C

Statement of Policy

Our policy is to respond to requests made under the Freedom of Information Act 2000 as helpfully and promptly as possible, having regard to the principles set out in the Act. I therefore hope you are happy with the way we have handled your request. If you are not, then you should take the following steps.

In the first instance, within 40 working days, write to the National Audit Office Freedom of Information (FOI) Team at FOI.requests@nao.org.uk or by post to:

FOI Team, Green 2, National Audit Office, 157-197 Buckingham Palace Road, London, SW1W 9SP

The Head of FOI will arrange a review, which will be conducted by a senior member of staff who was not involved in decisions relating to your original request. Once the review has been completed, we will write informing you of the outcome.

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:

<https://ico.org.uk/>

or

Information Commissioner's Office Wycliffe House Water Lane Wilmslow Cheshire SK9 5AF