



FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 26 June 2006

Name of Public Authority: Foreign and Commonwealth Office
Address of Public Authority: Old Admiralty Building
London
SW1A 2PA

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint from the above person (the "complainant") which states that on 18th February 2005 the following information was requested from the Foreign and Commonwealth Office (FCO) under section 1 of the Freedom of Information Act 2000 (the "Act"):

"a copy of the bidding document which won Tarmac and their sub-contractor the contract to construct GCHQ's new building."

It is alleged that the FCO is mistaken in stating that it does not hold a copy of the bid document.

The Commissioner's Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner notes in passing that the FCO has not sought to rely upon the exemption at section 23 of the Act. This provides that information is exempt if it relates to any of the bodies listed in subsection (3) which includes, "The Government Communications Headquarters." This is a class-based exemption, that is not one subject to a test of prejudice, and also an absolute one, that is not one subject to the public interest test. The sensitivity of much of the information held by or relating to GCHQ and the scope of section 23 are not in doubt. However, the Commissioner welcomes the decision of the FCO not to rely upon the exemption where it is unnecessary to do so.

The Commissioner's decision is as follows:

The FCO issued a Refusal Notice in which it stated that it did not hold the bid document and referred the complainant to the Report by the National Audit Office into the funding of the project and the awarding of contracts.¹ The complainant requested an Internal Review of that decision which re-affirmed that the FCO does not hold the information requested.

The complainant wrote to the Commissioner requesting a review and provided a copy of a letter from a sub-contractor of Tarmac which stated that the agreement with the FCO would not permit the disclosure of the bid document without permission from the FCO. This statement suggested to the complainant that there was an agreement between the sub-contractor and the FCO rather than just between Integrated Accommodation Services and the FCO.

The Commissioner sought clarification from the FCO who responded to the Commissioner's investigations with the following information:

The Secretary of State for Foreign and Commonwealth Affairs contracted with Integrated Accommodation Services (IAS) for the provision of GCHQ's services accommodation at Benhall for a period of 30 years. During this process the Foreign Secretary was acting in his capacity as GCHQ's supervising Minister, not as Minister for the Foreign and Commonwealth Office (FCO).

The Parties entered into such an agreement pursuant to the government's Private Finance Initiative. However the building was delivered by way of a contract between Integrated Accommodation Services plc and the sub-contractor therefore the FCO does not hold the bidding document.

Further investigation discovered that it is normal departmental policy for the FCO to hold documents relating to the PFI process on file. As the FCO was not involved with the GCHQ New Accommodation Project, it does not hold any documents relating to it and has not at any point held bid documents relating to this project.

In addition, in reference to the letter obtained by the complainant, the FCO states that it did not receive bid documents from IAS or the sub-contractor relating to this project and is not party to any confidentiality agreements relating to bids associated with it. There is no

agreement between the FCO and any private company that relates to this project. The FCO has stated that it believes that sub-contractor is mistaken in its letter to the complainant and should have referred to a Confidentiality Agreement between themselves and IAS.

The Commissioner is satisfied that the FCO does not hold a copy of the bid document.

¹ The National Audit Office Report by the Comptroller and Auditor General, reference number HC955 Session 2002-2003, dated 16 July 2003. Paragraph 2 of the Executive Summary of this report begins: "In 1997 GCHQ decided on an updated strategy to redevelop its Cheltenham accommodation and, in June 2000, signed a contract under Private Finance Initiative with IAS Limited". The NAO Report describes the mechanics of the contract in some detail and refers to the Foreign Secretary's involvement in the process. It is clear from the report that the FCO played no part in the process. Available from the National Audit Office website at: www.nao.org.uk/publications/nao_reports/02-03/0203955.pdf or in hard copy from The Stationary Office by writing to The Publications Centre, PO Box 29, Norwich NR3 1GN (telephone 0870 600 552).

The Commissioner cannot comment the contractual relationship between IAS and its subcontractor. Consequently the Commissioner is of the opinion that the FCO has complied with section 1(1) of the Act. Section 1(1) states;

- (1) Any person making a request for information to a public authority is entitled-
- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

Action Required

In view of the matters referred to above the Commissioner hereby gives notice that he does not require any remedial steps to be taken by the FCO.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: informationtribunal@dca.gsi.gov.uk
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 26 day of June 2006

Signed:

Phil Boyd
Assistant Commissioner

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