

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 23 March 2009

Public Authority: Department for Culture Media and Sport
Address: 2-4 Cockspur Lane
London
SW1Y 5DH

Summary

The complainant requested the amount of money paid to consultants involved in London's bid to host the 2012 Olympic Games. DCMS refused to provide the information requested under section 40(2) (personal information) of the Act. The Commissioner has investigated and found that section 40(2) is not engaged. The Commissioner also found that DCMS breached the requirements of section 17(1), 17(1)(b), 10(1) and 1(1) (b) of the Act. He requires DCMS to now disclose to the complainant the requested information within 35 calendar days of this notice.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant made the following request for information to the Department for Culture Media and Sport (DCMS) on 8 May 2007:

"I understand that a team of consultants / lobbyists was put together by Andrew Craig. Can you please tell me what was paid in respect of the services provided by each (whether to them personally or other party, eg company belonging to them) in the form of fees, expenses, bonuses and other payments. If you can't identify all the individuals the names I have are –

Andrew Craig

John Boulter
Carlos Garcia

If any of the following provided assistance on the bid, please also give similar details for (nationalities in brackets) –

Goran Takac (Serbia)
Gabor Komyathy (Hungary)
Mahmood El Farnawani (Canadian / Egyptian)
Muttaleb Ahmad (Kuwait)

I appreciate these people weren't employed by DCMS but any payments to them were funded by the department (i.e. the taxpayer). In the spirit of open government they should of course therefore be publicly disclosable."

The subject matter of this email was headed "2012 bid".

3. DCMS responded on 17 August 2007, stating:

"I cannot provide you with the information you requested because it is exempt from disclosure under section 40 (personal information) and 43 (commercial interests) of the Act (and in the case of section 43, the public interest in upholding the exemption outweighs that in disclosing the information to you.)"

In assessing the public interest DCMS explained that:

"we considered the public interest in ensuring public money is used effectively and that departments and others achieve value for money when purchasing goods and services. Against this, we balanced the interest in protecting commercial information about third parties, particularly where the disclosure of the information might undermine individuals' ability to operate commercially in the future. In particular, we noted that the individuals that are the subject of the information you have requested continue to seek contracts from bidding companies in similar roles to those they held in relation to the 2012 bid. Accordingly, the disclosure of the information may affect either their ability to seek such contracts, or the terms of any such contracts in the future..."

We also considered the fact that the information at issue here concerns contracts with a company which was not itself subject to the Act – London 2012 Limited – and that, accordingly, the individuals which are the subject of the information are likely to have a reasonable expectation that specific information about the costs of the services they provided to the company would not be publicly disclosed."

4. The complainant requested an internal review of this decision on 1 September 2007. In doing so the complainant requested that DCMS consider the following points:

- Details of payments made out of public money to individuals for services are routinely provided under FOI.
 - Details such of the type requested have recently been disclosed to him from the Ministry of Defence and HM Treasury.
 - Details of commercial payments are not personal data.
 - Even if there is a possibility that their interests would be harmed by disclosure, this is outweighed by the public interest in knowing how public money is spent.
 - If government knows what it pays for services will become publicly known it will have a strong incentive to negotiate good deals.
5. DCMS completed its internal review and communicated the findings to the complainant on 29 October 2007. The internal review found that it had been incorrect to rely on section 43 to withhold the information as the public interest favours disclosure of the information. However the review upheld the application of section 40 to all the information withheld. DCMS stated that in assessing the fairness of disclosing the information to the complainant it had considered the points raised by the complainant in his letter of 1 September 2007 regarding the spending of public money but had balanced this against the following factors:

“The individuals who are the subject of the information were not contracted to DCMS directly but to London 2012 Limited (the bidding company for the Games). That company was not itself a public authority subject to the Act. The contractors in this case were individual consultants rather than partnerships or companies. Moreover, the individuals at issue were subject to contractual obligations of confidence owed to the company. The relevant contractual clauses included an acknowledgement by the individuals that information could be disclosed by the company to specified people for specified purposes. The purposes specified do not refer to the Act. Taking all these circumstances into account, I found that the individuals were likely to have a reasonable expectation that information about them would not be publicly disclosed in these circumstances.”

The Investigation

Scope of the case

6. On 2 November 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

Chronology

7. The Commissioner began his investigation by writing to DCMS on 15 July 2008. The Commissioner asked DCMS further questions regarding the application of section 40 to the withheld information and requested a copy of the withheld information.

- 8 DCMS eventually responded on 13 November 2008, providing the Commissioner with a detailed explanation regarding its application of section 40 and a copy of the withheld information.
9. The Commissioner wrote again to DCMS on 14 November 2008 asking for some additional further information regarding the content of the withheld information, and the arguments relied on to withhold the information.
10. DCMS responded on 11 December 2008 providing the Commissioner with the required response.
11. The Commissioner wrote again on 6 January 2009 asking for further clarification regarding the withheld information. DCMS responded in full on 27 January 2009.

Findings of Fact

12. DCMS explained that the only information it holds falling within the scope of the request is a spreadsheet. This spreadsheet contains details of the people who worked for London 2012 on the bid for the 2012 Olympics. The information is listed by either name or job title and then payment totals to those names / job titles by month and total. DCMS stated that the only information within the spreadsheet falling within the scope of the request are the lines which refer to Andrew Craig, Carlos Garcia and the job titles Bid Consultants No's 2 and 3.
13. London 2012 Limited was the Bidding Company for the Games and was not a public authority subject to the Act. London 2012 was liquidated and its records transferred to The London Organising Committee of the Olympic Games and Paralympic Games (LOCOG), the successor company formed after London won the right to host the 2012 Games. The majority of London 2012's funding came from DCMS and from the London Development Agency, with a substantial element coming from private sponsorship and fundraising activities.
14. DCMS explained that it was passed a copy of the spreadsheet by London 2012 as one of its funders. DCMS stated it does not hold any other information falling within the scope of the request, and the information held relates only to their services provided in respect of the 2012 bid.
15. The Commissioner is satisfied that this is the only information held by DCMS falling within the scope of the request.

Analysis

Procedural matters: Section 17 'Refusal of request'

16. Section 17(1) provides that a public authority which, in relation to any request for information, is relying on claim that the information is exempt, must within the time for complying with section 1(1) issue a notice which (a) states the fact, (b) specifies the exemption in question and (c) states why the exemption applies.

17. Section 10(1) of the Act sets the time for complying with section 1(1) as no later than twenty working days following the date of receipt of the request.
18. The complainant made his request for information on 8 May 2007; however, DCMS did not issue the complainant with a refusal notice until 17 August 2007. This is outside of the time required by section 10(1) of the Act and is therefore in breach of section 17(1) of the Act. The refusal notice did not cite which sub-section of section 40 DCMS were seeking to rely on which is also a breach of section 17(1) (b).
19. BY failing to confirm the requested information is held within 20 working days DCMS also breached the requirements of 10(1).

Exemption: Section 40 'Personal Data'

20. Section 40(2) (a) provides an exemption for information which is the personal data of any third party. In order to rely on this exemption the Commissioner must first determine if the withheld information is the personal data of any third party.
21. The Data Protection Act 1998 (DPA) defines personal information as:

'...data which relate to a living individual who can be identified

 - a) from those data, or
 - b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'
22. The information being withheld is the details of the payments paid to the named individual consultants and members of their team who are not listed by name. The Commissioner is satisfied that the withheld information constitutes personal data as defined above.
23. The Commissioner notes that DCMS argue that disclosure of the names would be in breach of the first data protection principle as it would be unfair. The first data protection principle states that "Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in DPA Schedule 2 is met."
24. In considering whether disclosure of the withheld information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
 - The individuals' reasonable expectations of what would happen to their personal data;
 - Whether the individuals specifically refused to consent to the disclosure of the requested information; and

- Whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals.
25. DCMS explained that none of the individuals would have expected that the information held about them would be disclosed and DCMS further assert that disclosure of the information would be inconsistent with the purposes for which it was created. DCMS explained that the individuals who are the subject of the information request were not contracted to DCMS but to London 2012 Limited (the bidding company for the Games). DCMS further stated that this company was not in itself a public authority and it is therefore likely that there would have been a reasonable expectation that personal data on the salaries and expenses of consultants employed by London 2012 would not be publicly disclosed. DCMS also explained that the contractors in this case were individual consultants rather than partnerships or companies and were subject to contractual obligations of confidence.
26. The Commissioner's guidance on section 40¹ suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life. Although the guidance acknowledges that there are no hard and fast rules it states that:
- 'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'
27. The Commissioner considers that the payments made to the consultants constitute information about their work life. However, he recognises that a person's income relates to an individual's private life as well as their work life and is more private than, for example, details of actions taken in a professional capacity. However, in the circumstances of this case he does not consider that the payment information is likely to reveal the actual financial circumstances of the individuals. The information relates only to gross payments by way of fees over a limited number of months. The Commissioner also considers that whilst London 2012 Limited itself was not subject to the Act, the individuals may have expected that, given the nature of the project and the level of public funding involved, there would have been a considerable amount of public interest and scrutiny in the bidding process and associated costs. Therefore their expectations, viewed objectively, regarding the information which might be made public would have taken this into account. However, the Commissioner accepts that this does not mean that they would necessarily have expected detailed information about payments to them to be disclosed.
28. In light of this the Commissioner understands that the individuals may have had a reasonable expectation that not all the information would be disclosed, but he

1

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/personal_information.pdf

does not consider that this automatically means that disclosure would be unfair. DCMS argue that any public interest in disclosure is outweighed by the factors in favour of withholding it – namely the other information already available; and the context of the relationship between the individuals and a company not subject to the Act.

29. DCMS also state that they have not had any direct contact with the individuals as they are international consultants and are not resident in the United Kingdom. DCMS state that they have therefore not had the opportunity to object to the disclosure of the information. DCMS explained that it had taken a view that it would be unreasonable for it to try to locate the individuals concerned to ascertain what in their view was fair or unfair to release. The Commissioner acknowledges that the individuals have not consented to the disclosure of the information although he does not consider that this point alone would make disclosure 'unfair'.
30. DCMS did not advance any specific arguments suggesting that disclosure would cause unnecessary damage but have instead focused on the individuals' reasonable expectations as outlined above. The Commissioner recognises that disclosure could cause some damage or distress to the extent that disclosure would involve revealing, to some degree their personal financial and business interests. However, on balance the Commissioner does not consider, in all the circumstances, that the disclosure of the withheld information would be unfair.
31. In reaching a decision as to whether the information can be disclosed the Commissioner has considered if disclosure would be in accordance with Schedule 2, condition 6 of the DPA. This condition contains a three part test which must be satisfied:
- there must be legitimate interest in disclosing the information;
 - the disclosure must be necessary for a legitimate interest of the public; and
 - even whether disclosure is necessary it nevertheless must not cause unwarranted interference (or prejudice) to the rights, freedoms and legitimate interests of the data subject.
32. The Commissioner recognises that there is a legitimate interest in the public knowing how public money is spent and although London 2012 Limited itself was not a public body the bid was funded using public money. As explained above, the majority of the funding for London 2012 was provided by two public authorities, DCMS and the London Development Agency. In response to a Parliamentary Question ² it was revealed that at that time £20 million of public funds had been made available to London 2012: £10 million from DCMS and £10 million from the London Development Agency.
33. The Commissioner also notes that Andrew Craig is internationally known for his work on Olympic bids. Following his appointment, London 2012 released the following statement:

² Hansard 15 June 2005: Column 404W

“London 2012, which is bidding to bring the Olympic Games to London, has appointment Andrew Craig as a consultant to bid.

Andrew will provide strategic support on the bidding strategy and work directly to Chairman, Barbara Cassani. He will also be providing support with the development of the commercial and marketing aspects of the bid.

Andrew, a British Citizen, is President of The Craig Company LLC, a US based sports consulting and media business. He brings impressive Olympic credential to the London 2012 Team.

From 1993 – 1994 he was a member of the original management team at Swiss based ISL Marketing, the International Olympic Committee's (IOC) Sports Marketing Advisors that developed the IOC's highly successful global sponsorship programmes.

More recently he served as a consultant to Vancouver's successful Bid for the 2010 Winter Olympic Games.”

There is a legitimate public interest in understanding the level of public expenditure that was necessary to secure the involvement of such a highly regarded Olympic consultant to enable the public to take a view on the value for money such an appointment represents.

34. DCMS argue that this legitimate interest has already been met by the public disclosure of other information. DCMS point out that in June 2003 a paper was published entitled “A London Olympic bid for 2012” which reported that the “costs of the bid organisation and associated planning costs” would be a maximum of £30m and that they would be shared between the Government and the London Development Agency.
35. Since the publication of the report DCMS state that Ministers have answered numerous Parliamentary Questions about the costs of London 2012 and the bid for the 2012 Games and in addition London 2012 Limited has filed full audited accounts which are publicly available from Companies House.
36. DCMS provided the Commissioner with examples of the responses to the Parliamentary Questions³ and he notes that whilst these responses go some way to providing accountability for the spending of public money they do not provide the level of detail requested. For example:

“Tessa Jowell: As stated in the Command Paper Cm 5867 laid before the House in June 2003, the Mayor and I agreed that DCMS and the London Development Agency (LDA) should contribute to the costs of the bid organisation and associated planning in equal shares to a combined limited of £30 million

³ Hansard 4 March 2005: Column 1407W to 1408W; Hansard 9 March 2005 Column 1814W; Hansard 5 July 2005 Column 281W

Included in this sum is an agreed grant, with a limit of £20 million and financed in equal part from the DCMS and LDA, to the bid company "London 2012", which oversees the majority of the work associated with promoting the London bid. A cost breakdown of what proportion of this money has been spent in London is not readily available.

The further £10 million is a bid support budget jointly funded and managed by DCMS and LDA, Cost committed under this budget to date are as follows:

Item	Amount (£)
Start up costs for London 2012	278,822
Stakeholder accountability (including cost validation and OGC review)	169,578
Masterplanning (including consultancy work)	3,000,000
Sport Events	600,000
Infrastructure (including feasibility study for Aquatics centre and for undergrounding of power lines in Olympic Park area)	1,598,000
Staging period preparation (including economic benefit assessment and consultancy work)	719, 553
Miscellaneous (including assessment work for transport and "kids swim free" scheme)	1,865,040
Total	8,230, 993

37. The Commissioner notes that included in this response is reference to the amount of money allocated in part for "consultancy work". However, he does not consider that the publication of these headline figures alone, meets the legitimate public interest in disclosure of the requested information. It is not only in the public interest to understand how the money allocated for the bidding process was spent but also more specifically the proportions of that money spent on specific items such as the consultants' fees. The proportion of money allocated for consulting (as indicated above) is significant and there is a legitimate public interest in understanding what proportion of this was paid in individual consultants' fees, so that the public can take a more informed view on whether the money was well spent.
38. The Commissioner acknowledges that disclosure might cause some interference (or prejudice) to the rights, freedoms and legitimate interests of the data subjects (the consultants) as the information relates to some aspects of their personal financial and business interests. He also notes that the individuals' contracts had a confidentiality clause which placed a requirement on the bid company to "use reasonable efforts to ensure that such private information is treated confidential, for internal use and on a need to know basis". The contracts did not state that information about consultants would be put into the public domain.
39. Although the Commissioner has acknowledged that disclosure might interfere with the rights and freedoms of the individuals and could cause some damage and distress, he maintains that disclosure would not represent an unwarranted

interference. This is because it is outweighed by the legitimate interests of the public which have been identified. Disclosure would only be of some financial information relating to the named individuals, namely gross monthly amounts received over a limited period.

40. In all the circumstances the Commissioner is satisfied that condition 6 in Schedule 2 of the DPA is met in this case. Disclosure would not breach the data protection principles and therefore the Commissioner finds that section 40(2) is not engaged.

The Decision

41. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act:
- i. The refusal notice was issued late, in breach of the requirements of section 17(1)
 - ii. The refusal notice did not specify sufficiently the exemption applied, in breach of the requirements of section 17(1) (b).
 - iii. By failing to confirm the information was held within 20 working days of the request, and by failing to disclose the information requested within this time frame DCMS breached section 10(1)
 - iv. DCMS breached the requirements of section 1(1) (b) by failing to provide the information by the end of the internal review.
 - v. DCMS incorrectly applied section 40(2) to withhold the information.

Steps Required

42. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Disclose to the complainant the information contained within the spreadsheet which refers to Andrew Craig, Carlos Garcia, Bid Consultant 2 and Bid Consultant 3.

43. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

44. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

45. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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

Dated the 23rd day of March 2009

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Refusal of Request

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 17(2) states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2, the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

Section 17(3) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

Section 17(4) provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

Section 17(5) provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Section 17(6) provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

Section 17(7) provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –
“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –
“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the

exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –
In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.