

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 January 2013

**Public Authority:** The Ministry of Defence  
**Address:** Main Building  
Whitehall  
London  
SW1A 2HB

#### **Decision (including any steps ordered)**

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1. The complainant requested information about the winning bid supplied as part of a MOD procurement exercise. The MOD disclosed some information but refused to disclose the remainder citing a number of exemptions including sections 43 (commercial interests) and 41 (information provided in confidence). The Commissioner has only considered the MOD's citing of those exemptions.
2. The Commissioner's decision is that the MOD was incorrect to rely on sections 43(2) and (41) to withhold some of the information in scope of the request.
3. The Commissioner requires the MOD to disclose the information specified in the confidential schedule annexed to this notice, to ensure compliance with the legislation.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### **Background**

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5. The Ministry of Defence (MOD) employs a fleet of over 15,000 vehicles to support its daily business in the UK. This fleet had previously been provided via a 10-year private finance initiative (PFI) contract. In August 2011 the MOD awarded a 4-year contract, called Project Phoenix, to

manage its fleet: the contract was awarded to Babcock International Ltd (Babcock) following a MOD procurement exercise.

6. The procurement exercise was conducted by utilising the Government Procurement Service (GPS) Lease Framework Agreement. All Government Departments are mandated to use that process to obtain 'white fleet' services.
7. The term 'white fleet' refers to the non-combat specific vehicles of armed forces. It is used in the UK with reference to fleet management of the MOD's non-operational vehicles such as minibuses, touring recruitment vehicles and staff cars.
8. The redacted version of the contract that resulted from the competitive bid process was published online on 21 October 2011.

## **Request and response**

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9. The complainant wrote to the MOD on 25 July 2011 and requested information about the procurement project conducted by the MOD for fleet management services for MOD white fleet, including information about the winning bid. The complainant was an unsuccessful competitor in the procurement exercise.
10. In summary, the request was for:
  - (i) full details of the response made by the winning supplier to specific questions in the Invitation to Quote;
  - (ii) with respect to (i), the relative score for each of two suppliers;
  - (iii) financial information about one of the companies who bid;
  - (iv) information illustrating the scoring assessment;
  - (v) information about a request for further information from a supplier in relation to the bid;
  - (vi) information about the past performance of the winning supplier;
  - (vii) information confirming that delays in the bid process were not material or favourable to the winning bid.

11. The complainant wrote to the MOD again on 25 July 2011, with an additional request for information in relation to the same bid. In summary, that request was for:
  - (i) full details of the Minister or signatory responsible for the formal contract award;
  - (ii) confirmation that the MOD's decision did not change during the evaluation process from initial Project Team recommendation to subsequent sign off;
  - (iii) information confirming the date when the MOD was advised that an award could be made for the contract.
12. Full details of both sets of requests are in the annex to this decision notice.
13. The MOD refused the requests, citing the costs exemption (section 12), explaining that it estimated that the cost of complying with the combined requests would exceed the cost limit.
14. The Commissioner considered that matter under reference FS50421660, issuing his decision on 4 January 2012. The scope of his investigation in that case was with regard to the MOD's citing of section 12 of FOIA. His decision was that the MOD was not entitled to refuse to provide the requested information under section 12. He required the MOD to comply with section 1(1) of FOIA (by disclosing the requested information) or issue a refusal notice compliant with section 17.
15. Following that decision, the MOD issued a refusal notice on 8 February 2012. It denied holding some information relevant to the requests but confirmed that it did hold other information within scope. It provided the complainant with some of that information but refused to disclose the remainder citing the following FOIA exemptions:
  - commercial interests (section 43);
  - defence (section 26) of FOIA; and
  - personal information (section 40).
16. In addition the MOD neither confirmed nor denied holding any additional information by virtue of sections 23 (information supplied by or relating to bodies dealing with security matters) and 24 (national security).
17. The Commissioner notes that that response was provided after the publication online of the contract that resulted from the competitive bid process.

18. The MOD upheld its decision in its internal review correspondence of 24 May 2012, additionally citing the exemption in section 41 (information provided in confidence) in relation to the information withheld under section 43.

### Scope of the case

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19. The complainant contacted the Commissioner on 31 May 2012 to complain about the way his request for information had been handled. He told the Commissioner:

*"The information provided by the MOD amounts to little more than a box of paper with a series of 'black out' redactions through virtually its entire contents."*

20. The complainant provided the Commissioner with examples of the information provided, remarking that:

*"These documents clearly illustrate that the reader cannot possibly make any sense of the content. The material is therefore useless".*

21. Having viewed examples of the information that was provided to the complainant, the Commissioner acknowledges that that information was heavily redacted. The complainant told the Commissioner that he considered that:

*"the number and positioning of these redactions means that none of the information has truly been provided in real terms. It is effectively 'encrypted' and has no merits whatsoever."*

22. The complainant also argued that:

*"... In our opinion, the MOD are being disruptive and are showing clear resistance to us receiving the information we need to establish whether or not the concerns we have regarding how this tender process was managed were correctly applied. We are trying to establish whether or not the final outcome was in the public interest..."*

23. The complainant concluded his correspondence, saying:

*"When the information is provided it will be established whether or not serious deficiencies in the process and decision making for the award of this contract were evident."*

24. The Commissioner's role 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 FOIA.
25. Notwithstanding the complainant's wider concerns about the tendering process, the Commissioner understands that those of his concerns that fall within the Commissioner's remit are in relation to the MOD's citing of the commercial interests exemption, section 43 of FOIA.
26. The MOD has cited the section 43 exemption primarily in relation to part (i) of the first request. The Commissioner acknowledges that the majority of the withheld information relates to part (i) of the first request - the response made by the winning supplier to the questions in the Invitation to Quote (ITQ). However, the MOD has also cited the exemption in relation to a small amount of information relating to part (iii) of the first request and part (i) of the second request.
27. The Commissioner considers the scope of his investigation in this case to be the MOD's citing of section 43. In reaching a decision as to whether or not the MOD correctly withheld the information at issue, the complainant's concerns about the level of redaction in the information provided to him will be addressed.
28. As the MOD has also cited section 41 in respect of the information withheld by virtue of section 43, the Commissioner has also addressed the MOD's citing of that exemption.

*The approach taken by the Commissioner*

29. With due consideration to his role as regulator, the Commissioner makes the following observations about the approach he has adopted in conducting his investigation into the complaint in this case:
  - given the voluminous nature of the withheld information in this case, he has taken a proportionate approach, involving sampling of the withheld information;
  - he is satisfied that the sampling he has undertaken is representative of the withheld information;
  - he has considered the representations made to him by both parties;
  - he has challenged the arguments and evidence provided by the MOD; and
  - he has reached his conclusion based on his assessment of all the circumstances.

30. The Commissioner acknowledges the level of engagement demonstrated by both parties in this case: each provided the Commissioner with comprehensive submissions for him to consider during the course of his investigation.
31. With respect to his consideration of the withheld information, his investigation has been assisted by the summary provided by the MOD setting out the information held in scope of each part of the two requests and by a copy of the withheld information, annotated throughout to show where the MOD considers an exemption applies. In the Commissioner's view it was appropriate and necessary for the MOD to provide that level of detail in this case.

## **Reasons for decision**

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### **Section 43 Commercial interests**

32. Section 43(2) of FOIA sets out an exemption from the right to know if release of the information is likely to prejudice the commercial interests of any person, including those of the public authority holding the information.

#### *Applicable interests*

33. When identifying the applicable interests, the Commissioner must consider whether the prejudice claimed is to the interest stated. The MOD has confirmed that the section 43 exemption was applied because it would be prejudicial to the commercial interests of:
  - the MOD;
  - other Government Departments (OGDs); and
  - Babcock International Ltd (Babcock) and its sub-contractors.
34. The Commissioner has considered each of these three parties in turn.

#### *Nature of the prejudice*

35. The Commissioner's view is that the use of the term 'prejudice' is important to consider in the context of the exemption at section 43. It implies not just that the disclosure of information must have some effect

on the applicable interest, but that this effect must be detrimental or damaging in some way.

36. Secondly, there must be what the *Hogan* Tribunal<sup>1</sup> called a “causal link” between the disclosure and the prejudice claimed. The authority must be able to show how the disclosure of the specific information requested would or would be likely to lead to the prejudice.

*Nature of the prejudice - MOD*

37. With respect to prejudice to its own commercial interests, the MOD argued that disclosure is likely to damage its reputation for fair dealing with its contractors. It further explained:

*“More widely, the future commercial interests of the MOD would be prejudiced by setting a precedent in publishing information provided by a bidder and which was provided in confidence. There is a risk that potential contractors could be deterred from competing for contracts, sharing their commercially sensitive information with the department and thus reducing the level of competition resulting in damage to the reputation of MOD and confidence in the integrity of its acquisition processes”.*

38. It also argued that the release of a single company’s information “*risks a dilution of the discriminators between bidders*”. By way of explanation, it argued that if a competitor was able to reproduce a previous winning bid, using evidence provided by the winning bidder of its processes, methods and systems, it would make it more difficult for the MOD to distinguish between the quality of bidders’ proposals in the future. It told the Commissioner:

*“Without sufficient regard to its accuracy and validity in the context of the contractor’s own operations and delivery capacity this information may mislead MOD about the contractor’s ability to deliver on the contract”.*

39. The MOD also provided the Commissioner with submissions supporting its view that disclosure would, for example, harm its ability to operate successfully with commercial partners and to achieve future value-for-money contracts. It argued that if disclosure deterred contractors from bidding, this would:

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<sup>1</sup> *Hogan v the ICO and Oxford City Council* (EA/2005/0026, EA/2005/0030)

- significantly impact its ability to conduct effective procurement competitions;
- impact on international relations; and
- make potential partners less willing to share information.

*Nature of the prejudice - OGDs*

40. With respect to the commercial interests of OGDs, the MOD explained that the MOD's procurement exercise took the form of a mini-competition under a Government Procurement Service framework, the use of which is mandated across the public sector by the Cabinet Office Efficiency Reform Group.
41. Accordingly, it argued that the same arguments regarding the prejudice to the MOD equally apply to OGDs.

*Nature of the prejudice – Babcock and its sub-contractors*

42. With respect to the nature of the prejudice to Babcock and its sub-contractors the MOD argued:

*"By revealing detailed commercial information of one company only, the commercial interests of Babcock International and its sub-contractors will be prejudiced, risking damage to their future sales and competitiveness and potentially risking the exploitation of Intellectual Property by third parties. Future competitions for similar requirements will not be evaluated on price alone and the public release about Babcock International's (and their sub-contractors') qualitative approach to meeting a requirement in one competition is likely to indicate its approach in future competitions".*

43. It argued that disclosure would provide competitors with an unfair advantage in those competitions.
44. It also argued that the withheld information is commercially sensitive because it:

*"... represents or includes information which could be relevant to any subsequent bids submitted by Babcock International in response to invitations to tender issued pursuant to the Government Procurement Service (GPS) Lease Framework Agreement which MOD and all Government Departments are mandated to use to obtain 'white fleet' services".*

45. In this respect the Commissioner understands that the framework will remain in its current form until January 2015. The MOD has argued that



other procurement exercises “will be of a very similar nature” and therefore the withheld information would be of advantage to another bidder.

46. In contrast, the complainant argued that:

*“there should be no limitations in providing the information requested; a position that is reinforced by the knowledge that the procurement process is now over and there are therefore no commercial advantages to us or any other organisation in making the information public”.*

#### *Likelihood of prejudice*

47. During the Commissioner’s investigation, the MOD confirmed that it considers that the circumstances of this case support the higher threshold of ‘would prejudice’ as opposed to ‘would be likely to prejudice’ in relation to the application of the exemption to all three parties.

#### *Is the exemption engaged – the MOD?*

48. In determining whether or not the effect of disclosure in this case would be detrimental or damaging in some way to the commercial interests of the MOD itself, the Commissioner has considered the nature and likelihood of harm that would be caused.

49. The Commissioner can see some potential for the disclosure of the information to prejudice the commercial interests of the MOD. However, he finds that its arguments, for example that it would significantly impact its ability to conduct effective procurement competitions and pose a risk that potential contractors would be more guarded with their information, have not been convincingly explained in terms of a causal link between disclosure of the information and prejudice to commercial interests to the extent that there is an identifiable real and significant risk.

50. In assessing whether there is a real and significant risk, the Commissioner considers that those contracting with public authorities must expect a more robust approach to the issue of commercial sensitivity than would apply in the private commercial environment. His view is that, following the implementation of FOIA, companies contracting with public authorities can reasonably expect that their commercial dealings in respect of such contracts will be subject to a high level of public scrutiny.

51. As the MOD has not provided the required level of detail or evidence to support its statement that disclosure would cause prejudice, the Commissioner is unable to conclude that the exemption is engaged.

*Is the exemption engaged – OGDs?*

52. The MOD is also citing section 43(2) in relation to the same information on the basis of prejudice to the commercial interests of other Government Departments (OGDs).
53. During the course of his investigation, the MOD confirmed that the same arguments regarding prejudice to the MOD "*apply equally*" to OGDs.
54. In the Commissioner's view there are many scenarios where companies may be prepared to accept greater public access to information about their business as a cost of doing business with the public sector; the overall value of public sector contracts is a great incentive to tender for them.
55. In the same way that he has been unable to conclude that the exemption is engaged with respect to the MOD, the Commissioner does not find those arguments relating to the harm resulting from disclosure have been explained satisfactorily in terms of establishing a plausible link between disclosure and commercial prejudice to OGDs. He is therefore unable to conclude that the exemption is engaged with respect to OGDs.

*Is the exemption engaged – Babcock and its sub-contractors?*

56. The Commissioner considers it important that, in claiming the exemption on the basis of prejudice to the commercial interests of a third party, the public authority must have evidence that this does in fact represent or reflect the view of the third party.
57. The Commissioner is aware that FOIA was highlighted by the MOD in its tendering documentation. As part of the bid process, the MOD provided third party suppliers with the opportunity to record the types of information the disclosure of which they consider would harm their commercial interests.
58. The Commissioner is aware that subsequently, having received the requests for information at issue in this case, the MOD wrote to Babcock advising them of those requests.
59. The Commissioner has had the opportunity to consider the representations Babcock made to the MOD on the subject of disclosure. He is satisfied that the MOD has consulted with the third party – and by implication its sub-contractors - likely to be affected by any disclosure.

He is also satisfied that the MOD, in claiming the exemption, is reflecting the views of the third party.

60. In the Commissioner's view, a commercial interest relates to a person's ability to participate competitively in a commercial activity, ie the purchase and sale of goods or services. The Commissioner recognises that companies compete by offering something different from their rivals. That difference will often be the price at which goods or services can be delivered, but that difference may also relate to quality or specification.
61. He recognises that information which identifies how a company has developed that unique selling point is more likely to be commercially sensitive. In his view, this argument can extend to factors such as working practices that allow a quality of service to be more efficiently delivered.
62. The Commissioner considers that the prejudice test is not a weak test, and a public authority must be able to point to prejudice which is "real, actual or of substance" and to show some causal link between the potential disclosure of specific withheld information and the prejudice.
63. In order to avoid inadvertent disclosure of the withheld information, the Commissioner has produced a confidential annex to this decision notice. That confidential annex records some of his considerations with respect to his assessment of prejudice to the commercial interests of Babcock and its sub-contractors. That confidential annex will be provided to the MOD only.
64. The Commissioner considers it relevant in this case to take into account that the information at issue relates to a competitive bid. In the Commissioner's view, the level of competition within an industry can affect whether the release of information will harm someone's commercial interests. In this respect, the MOD explained that the same companies are all competing for the same business within the framework and generally within the market for fleet services. It also argued that there is an ongoing competitive environment until at least 2015 when the current framework expires.
65. The MOD argued that other procurement exercises "*will be of a very similar nature*" and therefore the withheld information would be of advantage to another bidder.
66. However, it should also be remembered that information that was commercially sensitive during the tendering process may no longer be sensitive once contracts have been signed.
67. The complainant told the Commissioner:

*"The MOD seems to have forgotten that the contract has already been awarded and is now binding for a period of four years, possibly five".*

68. With respect to prejudice to the commercial interests of Babcock and its sub-contractors, the Commissioner finds the exemption engaged with respect to some of the withheld information. However, given the nature of the information at issue in this case, and having considered the arguments advanced by the MOD, the Commissioner does not find the exemption at section 43(2) engaged with respect to the remainder of the withheld information.

*The public interest test*

69. Having established that the section 43 exemption is engaged in respect of some of the withheld information, the Commissioner must go on to consider the public interest test as set out in section 2(2)(b) of FOIA.
70. The Commissioner recognises that public authorities may face some difficult decisions when considering the public interest in disclosing information which it considers would prejudice a third party's commercial interest.
71. Where a public authority is satisfied that the release of the information requested would prejudice someone's commercial interests, it can only refuse to provide the information if it is satisfied that the public interest in withholding the information outweighs the public interest in disclosing it. The presumption is in favour of disclosure and there will be occasions where information is released even though it is a trade secret or is likely to prejudice someone's commercial interest.
72. The test for the disclosure of information under FOIA is whether, in effect, it should be disclosed to the world at large and not merely to the individual requester. A requester's private interests are not in themselves the same as the public interest and what may serve those private interests does not necessarily serve a wider public interest. The Commissioner's role is to consider whether or not it is appropriate for the information to be released to the general public.
73. Generally speaking, the public interest is served where access to the information would:
- further the understanding of, and participation in the debate of issues of the day;
  - facilitate the accountability and transparency of public authorities for decisions taken by them;

- facilitate accountability and transparency in the spending of public money;
- allow individuals to understand decisions made by public authorities affecting their lives and, in some cases, assist individuals in challenging those decisions;
- bring to light information affecting public safety;
- address a reasonable suspicion of wrongdoing.

*Public interest arguments in favour of disclosing the requested information*

74. Arguing in favour of disclosure, the complainant told the MOD:

*"We are trying to establish whether or not the final outcome was in the public interest... As we have stated previously, we believe that the MOD might not have acted in the public interest...The only way we (or others) can establish the facts is to compare and contrast the two bids made. These are the winning bid by Babcock International Limited and the failed bid by us".*

75. Responding to the complainant's concerns, the MOD said:

*"A release of information is judged to be a release to the public in general and not the applicant alone. We have been mindful in this case that where allegations of impropriety have been made and disclosure of information can prove or disprove such allegations, there is a very strong public interest in disclosure of information that might otherwise have not been released".*

76. In correspondence with the complainant, the MOD acknowledged that there is a public interest in the release of information which supports the accountability of the MOD for its use of public money:

*"for example to demonstrate that value for money is being obtained for taxpayers and that effective contractual processes are in place".*

77. It also recognised that greater transparency of decision making processes makes government more accountable. In that respect it told the complainant:

*"release of both high level and detailed information would allow an increased public understanding of how the procurement processes are undertaken in relation to the White Fleet requirement".*

78. The complainant also told the MOD:

*"When the contract is re-tendered in 2015, all suppliers (including Babcock) will have to submit their response to an entirely different tender.... No aspect whatsoever of the winning bid in 2010 can assist us, or other non-successful competitors, in 2015 to the detriment of any new Babcock bid. Neither would there be any detrimental impact for the MOD. In fact, if your views were to be considered well grounded, the commercial position would actually benefit the MOD and therefore in the wider public interest (sic)".*

*Public interest arguments in favour of maintaining the exemption*

79. The Commissioner recognises that the fact that a prejudice-based exemption is engaged means that there is automatically some public interest in maintaining it, and this should be taken into account in the public interest test.
80. Arguing in favour of maintaining the exemption, the MOD told the complainant that it was not in the interests of the public to damage a company's ability to trade successfully and to remain competitive in the commercial sector.
81. Similarly, it argued that it was in the public interest that the MOD should be able to achieve future value-for-money contracts and maintain good relations with commercial suppliers. In this respect, it argued that disclosure in this case risks a dilution of the discriminators between bidders, reducing its ability to make a value-for-money decision and:  
  
*"might result in a reduced ability for MOD to select the best supplier".*
82. It also argued that the negative effects of disclosure could deter potential contractors from competing for contracts and sharing their commercially sensitive information with the department. It argued that reducing the level of competition in this way would not be in the public interest.

*Balance of the public interest*

83. When balancing the opposing public interests in a case, the Commissioner is deciding whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemptions does not outweigh the public interest in disclosure, the information in question must be disclosed.
84. In this instance, the Commissioner notes that the tendering process has been disputed by the complainant - one of the interested parties who

took part in the process. The Commissioner acknowledges that the complainant clearly has concerns regarding the process.

85. The Commissioner considers that it is in the public interest to increase the transparency of the disputed outcome of this process (although this should not be taken to mean that the Commissioner considers that this process was worthy of dispute). However, in the Commissioner's view, for a suspicion of wrongdoing to be considered as a factor in the public interest test, it must amount to more than a mere allegation: there must be a plausible basis for the suspicion, even if it is not actually proven.
86. It is not the role of the Commissioner to assess whether there has been maladministration or other wrongdoing. In dealing with the complaint in this case, he has considered the submissions provided to him in order to assess whether the suspicion of wrongdoing creates a public interest in disclosure, not to decide whether there has been wrongdoing.
87. In the absence of any evidence of wrongdoing the Commissioner gives no weight in this case to that argument with respect to the public interest in disclosure.
88. In balancing the public interest arguments, the Commissioner has considered what purpose disclosure would serve and what the information at issue would add to that already in the public domain. Accordingly he has considered the extent to which relevant information is already in the public domain.
89. In this case, the Commissioner recognises that information from the winning bid, in the form of the final agreed contract, is in the public domain via the government procurement website. He accepts that that information itself contains significant redactions.
90. During the course of the Commissioner's investigation, with reference to the published contract resulting from the tender process, the MOD acknowledged that:

*"the contract clearly contained some but not all of the information in scope of [the request]"*.
91. The Commissioner recognises that the fact that other methods of scrutiny are available does not in itself weaken the public interest in disclosure. However, in the Commissioner's view, the fact that details of the contract resulting from the bid process are in the public domain - albeit in a redacted form - goes some way to satisfying the public interest about the subject to which the withheld information relates. By virtue of the published contract, the public can read about the 'white fleet' service and how it is being provided.



92. In balancing the opposing public interest factors in this case, the Commissioner recognises that there is a public interest inherent in the section 43 exemption. He has also taken into account that, with respect to the likelihood of prejudice, he has found that disclosure would cause prejudice to the commercial interests of Babcock and its subcontractors. In his view, having reached the conclusion that prejudice *would* arise, rather than *would be likely to arise*, this adds weight to the public interest in maintaining the exemption.
93. In all the circumstances of the case, and in the absence of sufficiently persuasive countervailing public interest arguments, the Commissioner considers that it would not be in the public interest to disclose that part of the withheld information that he finds engages the section 43 exemption. With respect to that information the Commissioner has decided that the public interest in disclosure is outweighed by the public interest in maintaining the exemption. It follows that the MOD is entitled to rely on the exemption at section 43(2) as a basis for withholding that information.

#### **Section 41 – information provided in confidence**

94. The MOD is also citing section 41 in respect of the withheld information. As the Commissioner has concluded that the section 43 exemption is not engaged in respect of all the withheld information, he has next considered the section 41 exemption in relation to that information.
95. Section 41 states that:
- "Information is exempt information if-*
- (a) it was obtained by the public authority from any other person (including another public authority), and*
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."*
96. The Commissioner's assessment is recorded in the confidential annex. In summary, the Commissioner does not find the section 41 exemption engaged.
97. For the avoidance of doubt, he has described the information to be disclosed in the confidential annex to this decision notice.



## **Other matters**

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98. The Commissioner understands that, as part of the tendering process, the MOD offers a post-contract award de-brief to those companies whose bids are not successful. The Commissioner welcomes this approach to transparency.
99. The Commissioner understands that the complainant has not taken up the opportunity to de-brief. Although unable to give an expert opinion, the Commissioner considers it likely that a de-brief process, such as the one offered by the MOD, may provide the complainant with an appropriate route to pursue further his interests.

## Right of appeal

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100. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

101. 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.

102. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

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

## Annex

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1. The complainant wrote to the MOD on 25 July 2011 with the following request for information:

***"Information Relating to Project Phoenix SPPT/010 - RM 858.***

***Fleet Management Services for MoD White Fleet***

*Under the provisions set out in The Freedom of Information Act 2000, on this day we provide formal notice that we request the release of information to us that is detailed below and that this information should be provided within the specified time period of twenty days from the date of this letter.*

*In respect of the winning bid for the above referenced contract we request information presented to you in the course of their bid by the successful supplier; namely Babcock International Limited (or its assigns) hereinafter referred to as BIL. The information required is as follows:*

1. *Full details of the response made by BIL to the following questions set out in the ITQ:*

*{SER02} Operational Performance and Management*

*{SER03} Tax Disc Management*

*{SER04} Incident Management*

*{SER05} Fines and Charges*

*{SER08} Maintenance, Inspection and Repair inc Costs*

*{SER09} Security*

*{SER10} Environmental Sustainability*

*{SER11} Vehicle Management System*

*{SER24} European Requirements*

*{SER26} Safety*

*{SER27} Modified Vehicles*

*{SER28} Operational Vehicles*

*{MAN06} Transition and  
Implementation of Services*

*{MAN16} People*

*{MAN19} Invoicing*

*{MAN20} Supplier Management*

*{MAN23} Interface with Ministry of  
Defence*

*{MAN29} Risk*

*{IS01} Capacity and Scalability*

*{IS02} Interfaces*

*{IS03} Security and User Access*

*{IS04} Analysis and Reporting*

*{IS05} Support and IS Training*

*{IS06} Maintenance of IS*

*{IS07} Request and Allocation  
Management*

*{GEN12} Accessing Government  
Frameworks*

*{GEN13} Vehicle Delivery and  
Collection*

*{GEN17} Benefits Delivery*

*{GEN18} IT Security*

*{GEN21} GFX*

*{GEN25} Training*

2. *In respect of the responses provided by BIL to the questions detailed above and subsequently assessed and marked by the MoD Evaluators, we require the information that details the relative score for each answer for BIL and [name redacted].*
3. *In respect of the financial submission under 20110223-Part 2 to Schedule 6 Appendix 4 of the ITQ, we require the information presented to you detailing the financial submission of BIL in the form and style presented to you.*
4. *In respect of the information requested in (3) above, we request information illustrating the relative scoring assessment carried out by the MoD Evaluators between the respective offers made by BIL and [name redacted].*
5. *We request information from you detailing the circumstances surrounding the request for additional information from [name redacted] on Monday 20<sup>th</sup> June 2011 via e-mail from a [name redacted], requesting full details of [redacted] in respect of the SPPT/0010 Phoenix bid.*

*The information we require from you relates to your objectives in requesting this information when bidders were informed in previous correspondence that all internal decisions regarding the successful bidder were complete, suggesting that the information requested could not be relevant to the [redacted] as you had already made your decisions regarding the successful bidder. We therefore need to understand the relevance of this information to you and how, and for what purpose, [redacted] were subsequently used.*

6. *We request information of the past performance of BIL in respect of the current White Fleet contract. This information should include a statement on whether or not BIL performed to the specification of the contract specifically in terms of cost and service level and confirmation from you that the BIL performance on the current contract was not an evaluation factor in respect of the new contract detailed above.*
7. *In respect of your decision to award the contract to BIL, we require information that confirms that delays in the bid process were not material or favourable to the winning bid by BIL. This includes consideration for existing contract extension penalties if applicable and / or concerns regarding transition risk attributed to the short time between contract award and contract start favouring the incumbent supplier."*

2. The complainant wrote to the MOD again on 25 July 2011, with a further request.

***Information Relating to Project Phoenix SPPT/010 - RM 858.***

***Fleet Management Services for MoD White Fleet***

*"Further to our letter sent to you the morning of today's date, we have additional requirements for information under the provisions set out in The Freedom of Information Act 2000 that were not originally specified in our letter. The following request for information is in addition to and not a substitution of that requested in our earlier correspondence.*

*We require information that details:*

1. *Full details, including name, position held and sanctioning authority of the Minister or signatory responsible for the formal contract award. If these details do not relate to a government minister, we require information on who in Parliament is considered responsible for this contract.*
2. *We were advised by you that the Project Phoenix Team recommendation of a preferred bidder following the evaluation process was made before the subsequent request to [redacted]. We seek confirmation that the successful bidder, now known to be Babcock International limited was your preferred bidder, albeit subject to future additional sign-off, prior to your request for [redacted].*

*For the avoidance of doubt, we seek unequivocal clarification that the changes requested [redacted] did not affect the evaluation by the Phoenix Team of [redacted], or if it did, that these were not material to your decision. In other words, we require information that confirms your decision did not change at any point during the evaluation process from initial Project Team recommendation to subsequent sign off.*

3. *Information confirming the date when you were advised by the final signatory of the Authorising Officer that an award could be made for this contract."*