

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 February 2023

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant requested the invoice details relating to a flight chartered to fly migrants to Rwanda on 14 June 2022. The Home Office refused to provide the requested information citing section 43(2) of FOIA, the exemption for commercially sensitive information.
2. The Commissioner's decision is that the Home Office has properly relied on section 43(2) of FOIA and that the public interest favours maintaining the exemption.
3. No steps are required as a result of this notice.

Request and response

4. On 15 June 2022, the complainant wrote to the Home Office and requested information in the following terms:

"disclose [sic] the invoice (or similar) for plane [sic] to fly migrants to Rwanda on 14 June 2022."
5. The Home Office responded on 13 July 2022. It refused to provide the requested information citing section 43(2) of FOIA (the exemption for commercial interests) but provided some detail about the immigration plan for which aims to more easily remove those with no right to be in

the United Kingdom, together with details about return flights including weblinks.¹

6. On 13 July 2022, the complainant requested an internal review.
7. The Home Office provided its internal review outcome on 9 August 2022. It maintained that section 43(2) of FOIA applied and that the balance of the public interest favoured maintaining this exemption.

Scope of the case

8. The complainant contacted the Commissioner on 9 August 2022 to complain about the way his request for information had been handled with a focus on how the Home Office had balanced the public interest.
9. The Commissioner has considered whether the Home Office was entitled to rely on section 43(2) of FOIA and whether it correctly balanced the associated public interest test.

Reasons for decision

Section 43 – commercial interests

10. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
11. The Home Office told the complainant that the requested information is commercially sensitive and that to disclose it would have a detrimental effect on carriers. It also argued that:
 - Release would undermine the competitive procurement process in the aircraft operator market.
 - All pricing information is confidential and commercially sensitive.

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972517/CCS207_CCS0820091708-001_Sovereign_Borders_Web_Accessible.pdf and

<https://homeofficemedia.blog.gov.uk/2021/11/05/returns-and-charter-flight-factsheet-may-2022/>

- All flights are procured by creating competition between all suitable airlines and aircraft that are technically compliant in meeting the specific requirements of the customer. Releasing details of price undermines the integrity and the competitive nature of the procurement exercise.
 - Following the COVID-19 pandemic, the availability of operating aircraft has already considerably reduced. There would be a direct negative impact on customers due to lack of availability and price increase.
 - All third-party aircraft operators and other service providers that are used to operate charter flights include confidentiality clauses within their contract for each flight. Pricing information is considered confidential and therefore if released, this would breach the confidentiality obligations that are in place.
12. In its submissions to the Commissioner, the Home Office also made the following points:
- Companies would be discouraged from dealing with the public sector, fearing disclosure of information that may damage them commercially (such as providing an insight into their pricing structures, invoices and banking details that competitors may use) or Companies would withhold information where possible, making the choice of the best contractor more uncertain as it would be based on limited and censored data. Likewise, when undertaking any competitive tendering process, releasing the value of the current contract (albeit indirectly) would weaken the Home Office's position to re-tender contracts in a competitive environment.
13. The Commissioner is satisfied, first, that the harm the Home Office envisages relates to commercial interests; its own, carriers, the flight broker(s) and key airport stakeholders (private terminals and handling agents).
14. Second, the Commissioner accepts that a causal link exists between disclosure and commercial prejudice; those the Home Office detailed at paragraphs 11 and 12.
15. Finally, the Home Office has said it considers the envisioned prejudice would happen, which is the higher threshold. It said that carriers have openly stated that if costs are disclosed, this would break confidentiality agreements in place and as such they would no longer bid for Home Office work, which would reduce an already limited pool of carriers willing to work with the Home Office for all operations not just flights to Rwanda.

16. The Home Office argued that, ultimately, releasing the costs of flights, where there is a limited selection of airlines bidding for the work will dissuade airlines tendering for this work and lead to a reduction in bidders and as a result an increase in costs due to lack of competition.
17. In support of these arguments, the Home Office provided the Commissioner with submissions from four third-party suppliers involved in operating charter flights in 2022, which he has reviewed and taken into consideration.
18. Having considered all the available evidence before him, the Commissioner's decision is that disclosure of the requested information would result in the harm envisioned by the Home Office. He, therefore, finds that the Home Office was entitled to apply section 43(2) to the withheld information. He will next consider the associated public interest test.
19. The Commissioner considers there is a general public interest in public authorities being open and transparent and in demonstrating value for money. The Home Office also said that disclosure of the requested information would enable the public to understand decisions which may affect them and how the government allocates taxpayers' money.
20. Specifically in respect of the requested invoice, the Home Office said that as well as revealing the price, it also includes other commercially sensitive information including the cancellation fee, and an insight into dates payment was required and account details. This is considered commercially sensitive as release would provide an insight into the pricing and payment structure of the company and release would be detrimental to the competitive environment and re-tendering of future contracts. Disclosure would likely result in competitors charging the Home Office more for these services, which would have a detrimental effect on the ability of the Home Office to operate an effective immigration control and provide value for money to the taxpayer.
21. The Home Office has argued that disclosure is not in the public interest for the reasons already cited in this notice but has added that whilst the flight to Rwanda was cancelled at short notice, the overall Migration and Economic Development Partnership ('MEDP') has not been abandoned. It stated that the MEDP remains a flagship government priority policy endorsed by both the current Prime Minister and Home Secretary. In addition, it explained that regular deportation charter flights are a key priority for the government and has provided supporting evidence in the correspondence from four third-party suppliers that release of the requested information would prejudice the Home Office's ability to tender effectively and operate these flights which is clearly not in the public interest.

22. Additionally, the Home Office said its ability to tender effectively and operate these flights would be prejudiced, which is clearly not in the public interest, and argued that value for money can be best obtained where there is a healthy competitive environment, coupled with the protection of Government's commercial relationships with industry. It explained that were this not the case, there would be a risk that companies would be discouraged from dealing with the public sector, fearing disclosure of information (cost information or other information more generally such as flight operators or airports ie the 'domino effect') that may damage them commercially. The Home Office also argued that this would be likely to discourage them from working with it in future. Those who oppose charter flights would use this information to target flight operators and departure ports, causing them commercial damage. This would lead to other customers opting not to use their services, thereby affecting their future revenue. If affected flight operators and airports opted not to work with the Home Office in future, this would likely result in competitors charging the Home Office more for these services, which would have a detrimental effect on the ability of the Home Office to operate an effective immigration control and provide value for money to the taxpayer.
23. The Commissioner finds that there is a wider public interest in the Home Office being able to compete for, and attract, the best third-party suppliers for such charter flights and so be in a strong financial position. On balance therefore, the Commissioner finds that the public interest favours maintaining the section 43(2) of FOIA exemption.

Right of appeal

24. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

Laura Tomkinson
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF