

## **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)**

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1. The complainant requested flight cost related information for aircraft chartered for Rwanda relocations to date, including that which had been scheduled to fly migrants to Rwanda on 14 June 2022. He also requested hotel accommodation costs in Rwanda. The Home Office refused to provide the requested flight related information citing section 43(2) of FOIA, the exemption for commercially sensitive information. It said it did not hold the hotel related information because the Government of Rwanda has responsibility for providing accommodation. From the outset of the Commissioner's investigation (for the reasons set out in the 'Scope' section of this notice) the scope of the investigation focussed only on the Home Office's reliance on section 43(2) of FOIA.
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**

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4. On 16 June 2022, the complainant wrote to the Home Office and requested information in the following terms (the Commissioner has added the numbering for ease of reference):

"Please can you provide me with:

1. The cost of aircraft chartered for Rwanda relocations to date, including that which had been scheduled to depart June 14

2. The cost of hotel rooms in Rwanda to date under the Partnership scheme”
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.<sup>1</sup>
6. For part 2 of the request, the Home Office said that the information was not held and that the responsibility for providing accommodation falls to the Government of Rwanda.
7. The complainant requested an internal review on 20 July 2022 focussing on the Home Office’s reliance on section 43(2) of FOIA.
8. The Home Office provided its internal review outcome, late, on 12 September 2022. For part 1 of the request, the Home Office maintained that section 43(2) of FOIA applied and that the balance of the public interest favoured maintaining this exemption. It also maintained its position in relation to the information for part 2 not being held.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 20 September 2022 to complain about the way his request for information had been handled with the focus on part 1 of his request. He also said he wished to refine his request in relation to part 2.
10. The Commissioner wrote to the complainant on 29 November 2022 explaining that he would need to submit a new request to the Home Office if he wished to amend the original request in any way. Given the complainant’s focus on part 1 of his request and his wish to amend part 2, the Commissioner advised him that the intended scope of his investigation would be to consider the Home Office’s reliance on section 43(2) of FOIA for part 1 of the request.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/972517/CCS207\\_CCS0820091708-001\\_Sovereign\\_Borders\\_Web\\_Accessible.pdf](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/>

11. The complainant confirmed his agreement in writing to the scope of the Commissioner's investigation on 29 November 2022, maintaining his view that it is in the public interest for the information to be disclosed for part 1 of his request.
12. The Commissioner has considered whether the Home Office was entitled to rely on section 43(2) of FOIA for part 1 of the request and whether it correctly balanced the associated public interest test.

## **Reasons for decision**

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### **Section 43 – commercial interests**

13. 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.
14. 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. In other related correspondence, it has also argued that:
  - Release would undermine the competitive procurement process in the aircraft operator market.
  - All pricing information is confidential and commercially sensitive.
  - 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.
15. 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.
16. 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).
  17. Second, the Commissioner accepts that a causal link exists between disclosure and commercial prejudice; those the Home Office detailed at paragraphs 14 and 15.
  18. 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.
  19. 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.
  20. 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.
  21. 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 for part 1 of the request. He will next consider the associated public interest test.
  22. 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.

23. 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.
24. 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.
25. 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.

**Other matters**

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26. The Commissioner has noted that the Home Office failed to provide its internal review outcome within the recommended 20 working days' time limit. He has made a record of this delay.

## Right of appeal

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27. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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**  
**Cheshire**  
**SK9 5AF**