

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2023

Public Authority: Department for Transport
Address: Great Minister House
33 Horseferry Road
London
SW1P 4DR

Decision (including any steps ordered)

1. The complainant has requested information about contracts. The above public authority ("the public authority") provided some information and relied on section 43(2) of FOIA (commercial interests) to withhold the remainder.
2. The Commissioner's decision is that parts [1] and [2] of the request were not valid for the purposes of section 8 of FOIA. Part [3] is valid and the Commissioner is satisfied that, on the balance of probabilities, the public authority has provided the information it holds.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 7 February 2023, the complainant wrote to the public authority and requested information in the following terms:
 - "[1] **Why haven't** the contract documents been published on Contracts Finder for this contract?"
 - "[2] **Will DfT take action** to publish the contract documents including any contract amendments as soon as possible?"
 - "[3] Have all other contract documents for all historical covid-related contracts issued by DfT been published?" [emphasis added]

5. The public authority responded on 6 March 2023. It stated that some of the information it held in relation to the contract referred to in part [1] had not been (and would not be) published because it was commercially sensitive. In respect of part [3] of the request, it stated that it had complied with all legal requirements.
6. Following an internal review the public authority wrote to the complainant on 31 March 2023. It stated that it was relying on section 43(2) of FOIA to withhold some information within the scope of elements [1] and [2], which it considered to be commercially sensitive.

Reasons for decision

7. Section 8 of FOIA requires that a request for information must describe the information being sought. Section 84 clarifies that "information" means information "recorded in any form."
8. FOIA does not extend to providing a right to seek explanations or justifications from a public authority nor to allowing a person to dispute a public authority's interpretation or compliance with the law. The information must already be held in recorded form.
9. Part [1] of the request is not valid because it invites the public authority to explain why it has not published particular documents – as highlighted by the words the Commissioner has emboldened. Even if it were valid, in explaining that some of the documents in question are "commercially sensitive", the public authority would have provided the information it held.
10. Part [1] could not objectively be interpreted as a request to receive copies of the unpublished documents – it therefore does not seek recorded information. Whether the documents would engage section 43 of FOIA is not relevant because the request does not seek the documents themselves.
11. Part [2] of the request similarly does not seek recorded information– as highlighted by the words the Commissioner has emboldened: it invites the public authority to take a particular course of action (ie. make the documents available on the contract finder website).
12. Part [2] could also not objectively be interpreted as a request to receive copies of the unpublished documents – it therefore does not seek recorded information.
13. Part [3] of the request is valid as it does seek information about which documents the public authority has or has not published. This is

something that the public authority might hold or be able to compile from records that it does hold.

14. The public authority has explained that it has published all the documents it is required to publish by law. Whether or not that is in fact the case is not for the Commissioner to determine here. The request asked whether **all** contract documents have been published, the implication of the public authority's answer is that **some** of the documents have been published (those it is required to publish), but not **all**. The request did not ask the public authority to identify any individual documents that have, or have not, been published.
15. The Commissioner is therefore of the view that the public authority has provided the information that it holds in respect of this element of the request and has therefore complied with section 1(1) of FOIA.
16. If the complainant wishes to request copies of documents that he believes the public authority ought to have published, it is open to him to make fresh requests for those documents.

Right of appeal

17. 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

18. 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.
19. 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

Roger Cawthorne
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Information Commissioner's Office
Wycliffe House
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Wilmslow
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SK9 5AF