

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 December 2023

Public Authority: Home Office

Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information from the Home Office relating to a contract to deliver a project. The Home Office stated that it did not hold some of the requested information and it refused to disclose the remaining information ("the withheld information") citing section 43(2) of FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the information is commercially sensitive and the Home Office is entitled to withhold it under section 43(2) of FOIA. The public interest favours maintaining the exemption.
3. The Commissioner does not require the Home Office to take any corrective steps.

Request and response

4. On 16 May 2023 the complainant made the following request for information under FOIA for:
 - Copies of all correspondence in relation to the Home Office's termination of Fujitsu's contract to deliver the Home Office Biometrics Strategic Matcher project.

- A copy of the business case produced to seek approval for the procurement of a replacement contract for the Strategic Matcher project.
5. On 14 June 2023 the Home Office responded and provided some information in relation to the request, namely an explanation as to why it did not hold information within the scope of the first part of the complainant's request. It stated that it held the information requested in the second part of the complainant's request, however this was held as part of a wider Biometric programme and the Home Office considers it to be exempt under section 43(2) of FOIA.
 6. The Home Office provided an internal review on 10 October 2023 in which it upheld its original decision.

Reasons for decision

7. 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.
8. The Home Office explained to the Commissioner that its Biometrics Strategic Matcher project will provide a Biometric Matching Service delivering biometric search, identification and verification capabilities across multiple biometric modalities (fingerprints and face) and for multiple data sets held by the Home Office (immigration, citizenship, law enforcement, etc).
9. The Home Office explained its position regarding the first part of the complainant's request, namely that the previous contract was not 'terminated' - a decision was made, based on all available data, to replace the supplier (Fujitsu's) contract at the end of its initial 5-year term and not to execute the available extension provisions. Information related to that decision is in scope of the second part of the complainant's request (the withheld information) and therefore the disclosure of this information is deemed to be commercially sensitive and confidential to both Fujitsu and the Home Office. The withheld information includes business justifications for the replacement contract and includes a large amount of sensitive information, which the Home Office has provided in confidence to the Commissioner, that should in the Home Office's view be protected. Disclosure of the withheld information would be likely to impact the Home Office's and its Biometric supplier's commercial interests.

10. The Home Office further explained that, as part of the conclusion of the Fujitsu contract, formal contractual agreement was reached around the contract conclusion and expiry which included confidentiality obligations for both parties. It considers that the release of the historical information into the public domain would cause a breach of these confidentiality provisions therefore placing the Home Office at risk of reputational, and financial detriment, as well as detriment to Fujitsu.
11. The Home Office explained to the Commissioner that the procurement process for the replacement of the Strategic Matcher Contract commenced in December 2021 and concluded on the 28 June 2023. The request was dated 16 May 2023. Therefore, the commercial process was still very much 'live' at the time of the receipt of the request, and its successful conclusion could have been placed at risk by the disclosure of the withheld information. This would, in the view of the Home Office, have negatively impacted the delivery of the Biometric programme. Additionally, any suppliers participating in the procurement at that time would be likely to have faced significant commercial losses if the procurement process had been impacted by disclosure of the withheld information, due to the funds and resources invested by the suppliers to prepare their procurement cases to compete for the contract.
12. In addition, if this information was to be disclosed as a result of this information request, it may deter other suppliers from tendering for Home Office contracts, for fear that commercially sensitive information about themselves, may, in the future, also be disclosed, if they became the subject of an information request. The Commissioner is of the view that third party organisations should be aware of this possibility if they choose to tender for business for a public authority however inevitably this would reduce the range of potential suppliers willing to procure for Home Office contracts and therefore likely increase costs to the Home Office making it more difficult to obtain value for money for the taxpayer.
13. Having viewed the withheld information, the Commissioner is satisfied first that the harm the Home Office envisages relates to commercial interests; its own and those of its supplier. Second, the Commissioner accepts that a causal link exists between disclosure and commercial prejudice; as the Home Office detailed at paragraphs 9-11.
14. Finally, the Home Office considers the envisioned prejudice would be likely to happen and the Commissioner accepts this. The Commissioner's decision is therefore that the Home Office was entitled to apply section 43(2) to the withheld information and he will go on to consider the associated public interest test.

Public interest test

15. The Home Office recognises that there is a general public interest in transparency and openness in Government. Disclosure may also provide accountability in terms of the decision-making and spending of public money. There is a public interest in government contracts and procurement – especially in Biometrics which is becoming increasingly prevalent in many aspects of public life - this is why information on the procurement of contracts for the Strategic Matcher Project is published on the Government 'Contracts Finder' website.¹
16. The Home Office informed the Commissioner that the information extracted from the Home Office Biometrics Programme (HOB) Business Case includes justifications for the replacement contract as well as a large amount of commercially sensitive information, the nature of which cannot be detailed in this notice. Disclosure of this information would not be in the public interest as there would be likely to be operational, legal, and financial implications for the Home Office. There would be likely to be commercial damage to the supplier themselves, which may deter future suppliers from working with the Home Office. This would be detrimental to the Home Office's ability to obtain value for money. It is in the wider public interest to spend public money wisely, not to have to pay more than is needed to procure services, due to a reduced 'pool' of suppliers.
17. The Home Office is of the view that, whilst disclosing the requested information may provide greater transparency and could help increase public confidence (and trust) in the Home Office, disclosure must not be allowed to hinder the ability of the Home Office to work with suppliers to deliver the efficiency benefits associated with the wider Home Office Biometric programme of which Strategic Matcher is part. Having conducted the public interest balancing exercise, the Home Office found that it is not in the overall public interest to disclose information which would be likely to prejudice the commercial interests of the Home Office and its supplier base.
18. There is, as acknowledged by the Home Office, a general public interest in public authorities being open and transparent. However there is a wider public interest in the Home Office being able to work with suppliers to achieve maximum efficiency in delivering projects. On

1. ¹ <https://www.gov.uk/contracts-finder>

balance therefore, the Commissioner concurs with the Home Office in finding that the public interest favours maintaining the exemption.

Right of appeal

19. 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

20. 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.
21. 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

Deirdre Collins
Senior Case Officer
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