

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 May 2024

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 the cost of accommodating asylum seekers. The Home Office refused to provide the requested information citing section 43(2) (commercial interest) of FOIA.
2. The Commissioner's decision is that the Home Office was correct to refuse to disclose the information on the basis of section 43(2) of FOIA. However, he considers that the Home Office failed to issue the complainant with a refusal notice in accordance with its obligation under section 17(1) of FOIA.
3. No steps required.

Request and response

4. On 21 July 2023, the complainant wrote to the Home Office and requested information in the following terms:

"I recently read an article in The Guardian on 21st July 2023, titled 'Cabins slightly larger than a prison cell': life aboard the UK's barge for asylum seekers". The article discusses the Bibby Stockholm barge, which is set to start accommodating asylum seekers. The article mentions that the Home Office has not provided specific figures to support the claim that the barge accommodation will be significantly cheaper than hotel rooms. Therefore, I am requesting the following information:

1. The total cost of operating the Bibby Stockholm barge as an asylum seeker accommodation per month, including all associated costs such as staffing, maintenance, and utilities.

2. The average monthly cost of accommodating an asylum seeker in a hotel, including all associated costs.

I understand that under the Act, I should be entitled to a response within 20 working days. I would be grateful if you could confirm in writing that you have received this request.”

5. The Home Office responded on 14 September 2023 and confirmed that it held the information falling within the scope of the request. However, it refused to provide it citing section 22 of FOIA to withhold information pertaining to part one of the request and section 43(2) to withhold information relating to the second part of the complainant’s request.
6. Following an internal review on 11 November 2023, the Home Office stated that due to the passage of time, information falling within the scope of the first part of the request was publicly available and therefore provided a link for access. The Home Office maintained that at the time of the request, section 22 of FOIA was still engaged. It also upheld its original position in relation to the second part of the complainant’s request.

Scope of the case

7. The complainant contacted the Commissioner on 23 November 2023 to complain about the way their request for information had been handled.
8. The Commissioner wrote to the Home Office on 8 March 2023 inviting the public authority to provide its submission in support of the application of section 43(2) to withhold the information. The Home Office failed to provide a response to the Commissioner within the specified timeframe, and as such the Commissioner an Information Notice against the public authority on 18 April 2024.
9. The Commissioner considers that the scope of his investigation is to determine whether the Home Office was correct to apply section 43(2) of FOIA to withhold the information.

Reasons for decision

Section 43- commercial interest

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 Commissioner has defined the meaning of the term "commercial interests" in his guidance on the application of section 43 as follows:

"A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent."¹
12. Where a public authority considers that the information it holds comprises commercial information, the Commissioner's view is that, in order to engage section 43, the public authority must be able to show how, and why, its disclosure has the potential to prejudice someone's commercial interests.
13. The complainant has argued that the information which they have requested is an average monthly cost of accommodating an asylum seeker in a hotel including associated costs. They argue that the request is for the aggregated data and therefore should not give competitors any unfair advantage nor should it be likely to prejudice the commercial interest of any legal person. They argued that the Home Office had not sufficiently demonstrated how releasing the average costs could lead to harm. They accepted that while certain specific commercial details may be sensitive, the aggregated nature of their request should not fall under such exemptions.
14. The Home Office has explained that the parties whose commercial interest would be prejudiced are Clearsprings Ready Homes and their subcontractors, Mears Property and their subcontractors, Serco and their subcontractors and Corporate Travel Management. It argued that disclosure of the requested information would also disadvantage the Home Office as the market would know where to pitch the pricing when it runs a competitive procurement.
15. It explained that it has been conducting successive bouts of negotiation with its suppliers for the cost of hotels and these negotiations are done

¹ <https://ico.org.uk/for-organisations/foi/freedom-of-information-and-environmental-information-regulations/section-43-commercial-interests/>

with a number of suppliers in a market that is known to share information throughout its networks. It argued that it is difficult to manage information flow that will benefit the Home Office during these negotiations, therefore, if it is compelled to disclose the requested information this would undermine the leverage that it has slowly created.

16. The Home Office has argued that the hotel market is a highly competitive one and the disclosure of any information giving an idea of what it pays for, is of great value to competitors and would lead to its current hotel negotiations being less successful as competitors would be aware of the costs involved.
17. The Home Office has argued that disclosure of the information would put its suppliers at a disadvantage as competitors would get an unfair view of what they charge, which would give them an advantageous position in a competitive situation. It maintains that suppliers would be unwilling to work with the Home Office if it was to publish pricing information.
18. The Home office says that it currently saves between 10 and 20 percent off its annual hotel costs. However, it argued that this would be undermined if they are to disclose how much it pays across the board. It maintains that suppliers and hotels will be unwilling to continue to negotiate when they realise whether their costs are relative to its average cost.
19. The Home Office has also argued that all the suppliers are in favour of withholding the requested information on the basis that the disclosure of such information would prejudice their commercial interests. The Home Office has provided submission from one of the suppliers. The Commissioner has considered the submission but has not reproduced it in this decision notice.

Public interest test

20. Section 43 is a qualified exemption. This means that if the requested information is exempt from disclosure (either because the information is a trade secret or because of prejudice to commercial interests), you must consider whether the public interest in maintaining the exemption outweighs the public interest in its disclosure.
21. The complainant has argued that there is compelling public interest in understanding how public funds are being used and the comparison between different forms of asylum-seeker accommodation is vital for an informed public discourse. The complainant argued that withholding financial information hampers the public's ability to hold the government accountable for its spending decisions. They stated that, this in turn, erodes public trust.

22. The Home Office has stated that the threshold of likelihood that it is relying on in this case is the higher threshold that disclosure would have prejudicial effect on both the Home Office and its suppliers.
23. In relation to the public interest in favour of disclosure, the Home Office recognised that the public has a right to know how public funds are being spent and scrutiny is important. It acknowledges that it has a duty to spend public funds wisely and that maintaining transparency is important for building trust.
24. The Home Office has argued that, while it is in the public interest that it operates in a way that reduces the cost of asylum accommodations, it says that it is not in the public interest that any negotiations should be undermined by competitors learning where their costs lie relative to others. It says that disclosure of the requested information could render a position where suppliers would choose not to bid in its procurements which would affect the Home Office's ability to achieve value for money or meet its statutory objectives. It also argued that the public interest has already been met by the Home Office disclosing the total operating costs.
25. While the Home Office acknowledges that there is public interest in achieving value for taxpayers' money it says that it needs to be able to compete among a pool of suitably qualified suppliers if it is going to meet its statutory objectives and achieve value for money.

Balance of PIT

26. The Commissioner acknowledges that there is a strong public interest surrounding the matters of immigration and how much of the taxpayer's money is being utilised by the government in meeting those obligations. However, he agrees with the Home Office that it is not in the public interest to disclose information if it would prejudice the commercial interest of its suppliers which may deter future suppliers from working with the Home Office. It will be detrimental to the Home Office in its ability to obtain value for money. The Commissioner is of the view that it is in the wider public interest to spend public money wisely, not to have to pay more than is needed to procure services to provide accommodation to asylum seekers.
27. When balancing the public interest, the Commissioner recognises that there is a fine line, but he is of the view that the suppliers' interests should be protected as it is in the public interest for them to be able to continue to offer accommodation at the best price.
28. Therefore, the Commissioner is satisfied that the balance of the public interest in this case rests in the exemption in section 43(2) being maintained.

Reference: IC-272461-J4J6



29. The Commissioner's decision is that the Home Office was correct to withhold the information under section 43(2) of FOIA.

Right of appeal

30. 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

31. 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.
32. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Esi Mensah
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF