

24 September 2009

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Our Ref: 436020R

Dear Mr Gore

Thank you for your e-mail of 28 August 2009 in which you requested an internal review of your related Freedom of Information requests submitted to the Department on 4 June and 3 July 2009 (our ref: DE436020). In addition, we received a further related e-mail request from you on the 4 August 2009.

We are replying to both your internal review request and most recent request of 4 August, in this letter.

Your original request asked for the Department's policy about discrimination by its staff or contractors against organisations on the grounds of size, political persuasion, charitable status, etc.

We replied to you on 24 June 2009 to explain that there was no specific policy that related to all the discriminatory grounds you quoted but that there was Departmental policy on the procurement of goods and services, including compliance with the EU public procurement directive and other regulatory requirements. The Civil Service Code, the Civil Service core values and procurement guidance were further explained and how contractor complaints are handled in the Department.

In a follow up request of 3 July you asked the Department to confirm that you had understood our initial response correctly. You deduced from our reply that the Department of Health had no policy to prevent its staff or contracted staff from discriminating against an organisation for personal reasons/preferences (e.g. promoting a business whilst deliberately ignoring a charity offering the same service).

We replied to you on the 31 July 2009 to explain how the tendering process works within the Department and how we follow the European Public Sector Procurement Directives.

In your request for an internal review you state, "Whilst I did have two responses, they have not addressed the question asked".

The Department has now carried out its internal review and has concluded that the two responses you received fully addressed the questions that you submitted. We answered your questions point-by-point and provided links to relevant websites for more detailed information.

In your further request of 4 August you consider that we have misunderstood your request for policy which would prevent staff from exercising personal prejudice or discrimination against particular types of, or specific organisations. You ask us to explain specifically what, if any, policies the Department has that would prevent such discrimination.

In response to this further request we would like to offer the following advice and information and re-emphasise some of the points we made in earlier replies.

The Department is subject to compliance with the EU Procurement Directives, as referred to in our response of 24 June 2009. The main principles of the Directives include equal treatment and non-discrimination, proportionality, mutual recognition, free movement of goods and freedom to provide services as well as freedom of establishment. These principles apply to not only larger tenders but to all public procurements undertaken by public authorities.

Further information is available at:

www.ogc.gov.uk/procurement_policy_and_practice/procurement_policy_and_application_of_eu_rules.asp

In addition, the Government Procurement Code of Good Practice sets out core values and behaviours for all members of central civil government's supply chain. The code identifies the following good practice for Government departments:

'Being objective, even-handed and transparent when making decisions and making sure that each competition is run without favouring any one supplier. Making sure of genuine competition by selecting the appropriate number of tenderers taking account of the legal requirement, and seeking to reduce unnecessary costs (to the customer and potential suppliers) by restricting competitions to a reasonable size.'

This code can be located at:

www.ogc.gov.uk/documents/codeofcusprac.pdf

A deskguide detailing our procurement processes is available on the Department of Health's website at:

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsProcurement/DH_093148

A summary of the Department's policy for tendering processes is available on its website at:

www.dh.gov.uk/en/Procurementandproposals/Procurement/Procurementpolicy/DH_4066090

Finally, all our staff are expected to perform their duties in line with the Civil Service Code. This code sets out the standards of behaviour that staff within the Department must adhere to. The code refers to a number of core values, which are:

- integrity - putting the obligations of public service above own personal interests;
- honesty - being truthful and open;
- objectivity - basing advice and decisions on rigorous analysis of the evidence; and
- impartiality - acting solely according to the merits of the case and serving equally well Governments of different political persuasions.

The code clearly states that staff must remain impartial and 'carry out responsibilities in a way that is fair, just and equitable and reflects the Civil Service commitment to equality and diversity' and 'must not act in a way that unjustifiably favours or discriminates against particular individuals or interests'.

If there are known breaches to the code, there are Human Resources procedures in place in order to investigate any breach. The code is available on the Civil Service website at:

www.civilservice.gov.uk/about/work/cscode/

To conclude, we would urge any prospective supplier who feels that they have been disadvantaged by our procurement process to contact us with the specific details to allow us to investigate the issue.

The internal review which you requested is now complete. We hope that you are content with the outcome and with the additional information we have provided in this response.

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely

Lynwen Paddy
Librarian,
Freedom of Information Team