

4 December 2009

Richard Greenwood
Request-18220-2abf0b3e@whatdotheyknow.com
(by email only)

Dear Mr Greenwood,

REVIEW OF REQUEST UNDER THE FREEDOM OF INFORMATION ACT 2000

Thank you for your e-mail of 10 November 2009 which has instigated an internal review of the Cabinet Office's handling of your request of 19 September 2009. Your original request asked for information in respect of the Project ISSAC winning Tender.

I have now investigated your original request made under the Freedom of Information Act, and in this response I hope to address all five of the items you asked me to review.

I will answer the first four together, as I believe that they are all related. You asked me to examine:

- why the FOIA request was sent to Fujitsu rather than being processed by the Cabinet Office
- whether it was appropriate to forward a Freedom of Information Act request sent by a member of the public to the Cabinet Office to a third party, and whether this potentially breached Data Protection Legislation
- what steps the Cabinet Office took to consider each and every redaction proposed by Fujitsu, particularly where these relied on their tenuous argument that information was a "trade secret" when they did not state this in Schedule 8
- what has happened to the missing documents - please can you review the Cabinet Office's copy of the tender and identify every document submitted as part of this tender, not just the ones Fujitsu sent over to you

The Cabinet Office response to your request followed the correct process upon receipt of the request. The Ministry of Justice and the Office of Government Commerce both advocate including the views of all interested parties when considering disclosure of information around procurement exercises. It is considered not only good practice, but also polite to inform a supplier when a freedom of information request that involves them has been made. Mrs Pickering wrote to Fujitsu on the same day that she informed relevant parties in the Cabinet Office. She also highlighted, in line with Ministry of Justice guidance, that although it is right and proper to consult involved parties the ultimate decision as to what would and would not be disclosed lay with the Cabinet Office.



At the same time, the Cabinet Office considered the documents within the tender. Both the Cabinet Office and Fujitsu have the same copy of the tender, that being the final response to the Project Isaac invitation to tender from Fujitsu Services UK. The Cabinet Office holds a copy electronically and in hard copy from the time when the tender was submitted.

When Fujitsu responded with their suggestions, each was considered individually, firstly on the nature of the information and secondly against the public interest and our duty to disclose to aid transparency and openness in government. This is the same procedure that we undertake on suggestions from individuals or units within the Cabinet Office. Some of the material that Fujitsu suggested that we withhold was released, and some requests were upheld. The letter from Fujitsu appears to have been included in the FOI response as a courtesy to you, in order to provide some background insight into what was specifically considered by them to be exempt.

I have also identified that the reason that the supplier included highlighted documents in their response was because this is the format requested by the coordinating official.

With regard to section 43 exemption, it is possible there may have been a misunderstanding over our use of this section. Firstly, let me identify the nature of section 43 and "trade secrets". Section 43 has three parts, the first two of which concern this request. 43(1) relates to information that is considered to be a trade secret – particular methodologies, formulas, pricing structures and so on that are unique to the company and are exempt from disclosure. 43(2) relates to information that is commercially sensitive. This information is not a "trade secret", but could nevertheless have a strong negative interest on an individual or organisation's commercial interests (as distinct from financial interests). Fujitsu specifically note in their letter that some information that they wish us to withhold would be exempt under 43(2) rather than 43(1). Secondly, in your reading of Schedule 8 of the Isaac Cabinet Office tender, you note that information that is considered commercially sensitive by the Parties should be listed. What you have not identified is that this document is not an absolute. In each paragraph, the Schedule makes note of this:

1.1) ...information which *might* be *considered* Commercially Sensitive...

2.2) ...Parties have *sought* to identify the Service Provider's Confidential Information...

2.3) ...*Where possible* the Parties have *sought* to identify...

It is also clearly stated in paragraph 2.4 that the Authority (in this case the Cabinet Office) "...remains free and is permitted to use its discretion in assessing whether any such exemption applies." Having investigated the degree of consideration that was given to information which was withheld but not stated in Schedule 8, I have found that there are reasonable explanations for their exclusion at this time.

Your fourth point concerns "missing documents". As I have already explained, the request was processed from a complete set. The set of documents you were sent includes a complete set of 24 schedules from the Fujitsu tender for the Project Isaac Cabinet Office contract, as well as the Contract Controlled Documents (CCDs) and the summary and detailed information documents. The documents whose names begin with "CO_Schedule" are CCDs for the Schedules that include them. Not every Schedule has a CCD attached to it, hence the gaps in numbering for these documents.

However – you are correct in stating that there are more documents although we do not believe they are in the scope of your request. These are the documents from the Framework contract component of the tender which sets the terms for the use of services across the public sector rather than solely within the Cabinet Office. We interpreted your request as for the complete winning tender for the Cabinet Office contract under project ISAAC. CCDs such as those for Schedules 4 and 7 were not created for the Cabinet Office contract until after the tender was awarded, and are not, therefore, within scope. If you would like to receive the Schedules and CCDs associated with the ISAAC Framework Contract then you can of course make a separate request for them.

Your fifth and final point was a request to examine whether some of the redacted/missing information could be reinstated. You referred in particular to:

- Services Catalogue
- Service Architecture Solution
- Milestone information from Schedule 10
- Components of disaster recovery plan from Schedule 13
- Page 1 of Schedule 16
- Transition plan CCD referred to in Schedule 20
- Any other CCDs not originally sent
- Any further information from the CO Proposition Detailed Information document
- Service provider solution information from the CO Proposition Final document
- Redacted information from CO Schedule 10 Detailed Transition Transformation document (mainly in Section B)
- Marketing plan

The redacted information is exempt for the reasons given in the response of 9 November 2009. The 'missing' information is not within the scope of your request, and is not therefore something I have considered as part of this review. I said above, you are of course at liberty to make a separate request for this information.

If you are not content with the outcome of your internal review, you may apply directly to the Information Commissioner for a decision. Generally, the Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by Cabinet Office. The Information Commissioner can be contacted at:

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

Yours sincerely,

Zara Smart

PP. SUE GRAY