

3 July 2009

Janine Baker
request-9461-9fc427ad@whatdotheyknow.com
(by email only)

Dear Ms Baker,

FREEDOM OF INFORMATION ACT 2000

I am writing in response to your email of 17 March requesting the following information:

'please can you provide me with copies of all minutes of the Intelligent Customer Function and other similar Management Meetings held by the 'public sector flex', team since 1 January 2007.'

You subsequently sent a further email, on 8 April, requesting the following information:

'any background documents which are referred to in the agenda or minutes or were circulated in preparation for the Intelligent Customer Function and other similar Management Meetings of the public sector Flex team.'

I am very sorry for not replying before now. I know you have also requested an internal review of the handling of your request, in your email dated 3 June. Before we issue a substantive response to the review I would be grateful if you could confirm whether you would like the response to address the decision to withhold the information you have requested under the exemptions cited below, in addition to the fact that we did not respond to your request until today.

Your request for information is being handled under the Freedom of Information Act 2000 ('the Act').

I can confirm that the Cabinet Office does hold information falling within the scope of your request.

We have hold a full set of the Flex Framework Board minutes, as this board represents the primary management meeting for Public Sector Flex. Of the sixteen meetings, there were no minutes for the first meeting (actions being recorded from the second meeting onwards). There are also no minutes for the fifteenth meeting. This meeting was cancelled at short notice, and not rescheduled.



This information is however exempt under section 40(2) (personal data), section 41(1) (information provided in confidence) and section 43(2) (commercial interests) of the Act.

Section 40(2) exempts personal information from disclosure if that information relates to someone other than the applicant, and if disclosure of that information would, amongst other things, contravene one of the data protection principles in schedule 1 of the Data Protection Act 1998. In this case, I believe disclosure would contravene the first data protection principle, which provides that personal data must be processed fairly and lawfully. Section 40(2) is an absolute exemption and the Cabinet Office is not obliged to consider whether the public interest favours disclosing the information.

Section 41(1) exempts information, where disclosure of the information by the public authority holding it would constitute an actionable breach of confidence. I am satisfied that disclosure of the information would constitute an actionable breach of confidence and that the Cabinet Office could not rely on the defence that an overriding public interest justified breaching its duty of confidence. Section 41(1) is an absolute exemption for the purposes of the Act but the Cabinet Office has taken into account the public interest test inherent within the law of confidence in reaching its decision. It is the Cabinet Office's view that the public interest favours maintaining this exemption. The courts have maintained that there is a strong general public interest in protecting confidences and this could only be superseded by an overriding public interest in disclosure of the information withheld, for example if the information revealed iniquity or fraud or disclosure was necessary to protect the public from harm. These are among the conventional public interests that the Courts have accepted as outweighing the public interest in maintaining a confidence. Though other public interests may also outweigh the public interest in maintaining confidences, I do not consider that the general public interest in having information made available is a compelling public interest capable of overriding this.

Section 43(2) exempts information if its disclosure would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it). This exemption is subject to the public interest test and I have therefore considered whether the public interest falls in favour of disclosing the information, or whether it falls in favour of maintaining the exemption and withholding the exemption.

Factors in favour of disclosing the information include the general public interest in openness in Government and that there is transparency in the accountability of public funds. There is also specific public interest in the operation and progress of Government IT projects. On the other hand, factors in favour of maintaining the exemption include the fact that disclosure could make it less likely that companies or individuals would provide the department with commercially sensitive information in the future and consequently undermine the ability of the department to fulfil its role. Disclosure could also prejudice the commercial interests of the department by affecting adversely its bargaining position during contractual negotiations, which would result in the less effective use of public money



Having considered all the circumstances of the case, I believe the balance of public interest falls in favour of maintaining the exemption and withholding the information.

Once again, I apologise for not replying before now.

If you have any queries about this letter, please contact me. Please remember to quote the reference number below in any future communications.

If you are unhappy with the service you have received in relation to your request or wish to request an internal review, you should write to:

Sue Gray
Director
Cabinet Office
70 Whitehall
London
SW1A 2AS

email: foiteam@cabinet-office.x.gsi.gov.uk

You should note that the Cabinet Office will not normally accept an application for internal review if it is received more than two months after the date that the reply was issued.

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,

Michael Pigott

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