



Lisa Evans [request-35268-
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Date 7 July 2010
Our Ref 1614/10
Your Ref

www.hmrc.gov.uk

Freedom of Information Act 2000 Internal Review

Dear Ms Evans,

I refer to your email of 26 May 2010 asking for a review of HMRC's reply to your earlier request dated 16 May 2010.

Your request

In your original request you asked:-

"I would like to request the performance targets for Capgemini IT services. I would like the targets that are key performance indicators to be labelled as such.

I expect there to be around 500 performance targets and 200 key performance indicators, according to section 12 of the following document:

<http://www.whatdotheyknow.com/request/31518/response/82808/attach/html/5/PAC%20Report%20on%20ASPIRE%20competition.pdf.html>".

Our response

HMRC replied on 24 May 2010 that the information was exempt under s.43 (2) FOIA.

Information is available in large print, audio tape and Braille formats.
Type Talk service prefix number – 18001



INVESTOR IN PEOPLE



Request for internal review

In your request for a review dated you stated:-

"I would like to clarify that I do not request "contract pricing and funding information" but simply a list of performance indicators and their associated targets.

If there is information about "contract pricing and funding information" contained within the performance indicators and their associated targets, then I am happy for that information to be redacted.

I would like to point out that on applying the s.43 (2) exemption, HMRC should have provided evidence that Capgemini consider the release of the information would be prejudicial to their commercial interests. The ICOs guidance clearly states:

"The public authority must not speculate as to whether there is any commercial detriment and the reasons why without any evidence or input from the third party."

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/commercialdetrimentof3rdparties.pdf

I would like either:

**confirmation that HMRC have been in touch with Capgemini specifically with respect to this request;*

or

**a relevant excerpt from the contract between HMRC and Capgemini which makes clear the information being sought would be commercially detrimental if released.*

I would like to add that transparency is in the public interest and has the potential to save the public money; if Capgemini's competitors knew the details of the contract they would be better positioned to seek ways to offer a better and cheaper service in the future - release of the information would promote competition and promote the operation of a free market."

Internal review

The right in section 1 of the Freedom of Information Act (FOIA) is to recorded information held by a public authority at the date it received the request. Where the public authority holds the information it is obliged to release it, subject to a number of exemptions, within the statutory deadline.

I note that your request is dated 16 May 2010 and that a full reply was sent to you on 24 May 2010 within the statutory deadline. I note that you have been told about your rights to a review by HMRC and to complain, if dissatisfied, to the Information Commissioner.

I have considered the points you raised as part of my review and can comment as follows:

HMRC did not interpret your request as being solely for "contract pricing and funding information". We collaborated with Capgemini on the disclosure of performance targets for IT services within the Aspire contract and were advised that they are important considerations in risk and pricing.

HMRC is unable, as you have now suggested, to provide you with a redacted copy of the active Performance Indicators (PIs) and Key Performance Indicators (KPIs) schedule as disclosure of performance indicators and their associated targets; as these are classified as market sensitive information which if published would potentially be useful to Capgemini's competitors and weaken their position in a competitive environment. Likewise disclosure

could prejudice HMRC's commercial interest as a contracting authority and jeopardise our ability to deliver best value.

The detailed mechanisms; thresholds and values in the Aspire contract are unique to Capgemini and directly related to their pricing structure. Therefore the performance targets are commercially sensitive both in themselves and as part of the whole contractual package. As they are important factors in risk and pricing they are considered to be exempt from publication under s.43 (2) FOIA, as disclosure would prejudice the commercial interest of both HMRC and Capgemini.

Having reviewed the information and your request, I uphold the decision in our reply dated 24 May 2010, on balance the public purse is better positioned by ensuring that contract pricing and funding information remains commercial in confidence and that this commercial upper hand outweighs any public interest request in terms of how HMRC intends to buy IT services in the future. It is also judged that the commercial risk of disclosing contextual detail about the authority, its business objectives and plans is too great and far outweighs the benefit or public interest of disclosing or placing in the public domain this information.

Conclusion

I confirm that this now completes the HMRC internal review process. If you are not satisfied with the outcome of this review, you may apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely

Margaret Earing

For and on behalf of
HMRC Information Management Services