

Alan Dransfield

By email

Your ref		Direct line	(020) 7211 8980
Our ref	IAT/FoIA/111394	Fax	(020) 7211 8992
Date	27 September 2011	Email	brian.malxxx@xxx.xxx.gov.uk

Dear Mr Dransfield

**Your email of 4 September 2011 and the Freedom of Information Act 2000**

Thank you for your email dated 4 September 2011, headed "Freedom of Information request - Balfour Beatty Biod Rigging".

Your email is being dealt with as a request for information under the Freedom of Information Act 2000 ("the FOIA"). Under the FOIA, where a request is made for recorded information, the Office of Fair Trading ("the OFT") has a duty to confirm whether or not it holds the requested information and where held, to supply that information. This is subject to there being reasons for not doing so under one or more of the exemptions provided for in the FOIA.

Your request consists of two parts and I address these in turn below.

***Please provide me with all copies of your investigation into the subject title***

I confirm that the OFT does hold this information.

The case of "Bid rigging in the construction industry", to which Balfour Beatty was found to be a party and ordered to pay a financial penalty of £5.2 million, was investigated by the OFT as a breach of the Chapter I prohibition of the Competition Act 1998 ("CA98"). By virtue of Part 9 of the Enterprise Act 2002 ("EA02"), the OFT is prohibited from disclosing information which it has obtained in the context of a CA98 investigation and which relates to the affairs of an individual or to any business of an undertaking. This is



called "Specified Information" and the OFT is not permitted to disclose it under section 237 of the EA02.

In turn, section 44(1)(a) of the FOIA makes information exempt from disclosure under the FOIA where its disclosure is prohibited by another piece of legislation, in this case section 237 of the EA02.

We therefore consider that Part 9 of the EA02, in conjunction with section 44 of the FOIA, prohibits the OFT from disclosing the information you have requested. This information came into the OFT's possession in the context of an ongoing CA98 investigation and there is nothing in Part 9 of the EA02 which would operate to allow the OFT to disclose this information in the present circumstances.

However, in order to assist, I can point you to the relevant sections of our website which describe the investigation and its outcome – please see <http://www.oft.gov.uk/news-and-updates/press/2009/114-09> and [http://www.oft.gov.uk/OFTwork/competition-act-and-cartels/ca98/decisions/bid\\_rigging\\_construction](http://www.oft.gov.uk/OFTwork/competition-act-and-cartels/ca98/decisions/bid_rigging_construction). In particular, you may find the OFT's decision document "CE4327 Decision", available as a link on the right hand side of the latter page, to be of use as it provides considerable detail of the investigation conducted by the OFT, and the way in which the OFT calculated the financial penalties levied in this case.

***Please advise me where the £5.2 million went***

I confirm that the OFT does hold this information. Any financial penalties levied by the OFT on parties found to have engaged in cartel activity in contravention of the Competition Act 1998, are paid into the central government funds of the Treasury.

### **Appeals Procedure**

If you wish to complain about the way in which your request for information (question 3 above) has been handled, you may seek an internal review by writing to:

The Internal Review Co-ordinator  
Room GS 3  
Office of Fair Trading  
Fleetbank House  
2-6 Salisbury Square  
London  
EC4Y 8JX

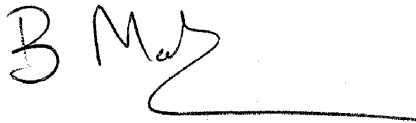
You may alternatively send an e-mail to [xxxxxxxxxxxxxx@xxx.xxx.xx](mailto:xxxxxxxxxxxxxx@xxx.xxx.xx)

The OFT will deal with your complaint within 20 working days of receipt or, if this is not possible, it will advise you of a date by which it expects to have completed a review of your complaint.

If you remain dissatisfied with the OFT's response you have the right to complain to:

The Information Commissioner  
FOI/EIR Complaints Resolution  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SX9 5AF

Yours sincerely

A handwritten signature in black ink, appearing to read 'B Malone', with a long horizontal flourish extending to the right.

Brian Malone  
Principal Case Officer  
Cartels and Criminal Enforcement Group