



## Department of Health & Social Care

Freedom of Information Team  
Department of Health and Social Care  
39 Victoria Street  
London  
SW1H 0EU

[www.gov.uk/dhsc](http://www.gov.uk/dhsc)

Mr Paul Davies  
[request-413161-d5ce9120@whatdotheyknow.com](mailto:request-413161-d5ce9120@whatdotheyknow.com)

3 April 2018

Annex A: DHSC response to initial request dated 10 July 2017  
Annex B: Request for internal review dated 13 July 2017  
Annex C: Further information provided by the DHSC

Dear Mr Davies,

### **FREEDOM OF INFORMATION ACT (FOIA): INTERNAL REVIEW CASE REFERENCE IR 1087868**

You originally wrote to the Department of Health and Social Care (DHSC) on 19 June 2017 requesting information relating to Contingent Labour ONE call off contracts. We responded to you on 10 July (Ref FOI-1087868), stating that the requested information was available on Contracts Finder and withholding it under Section 21 of the FOIA. A copy of our response, including the full text of your request, is at Annex A.

You subsequently emailed DHSC on 13 July, which we have taken as a request for an internal review into the handling of your original request. A copy of your email is at Annex B.

The purpose of an internal review is to assess how your FOI request was handled in the first instance and to determine whether the original decision given to you was correct.

I would like to apologise sincerely for the length of time it has taken to provide you with this response, which I recognise has fallen short of expectations.

We withheld the requested information under Section 21 of the FOIA, as DHSC contracts are routinely published on Contracts Finder. However, providing the link to Contracts Finder's search page did not provide precise directions to the information so that it could be found without difficulty.

The Department attempted to provide further assistance on 13 July, by providing direct links to the contracts on [data.gov.uk](http://data.gov.uk) (Annex C). As you pointed out, these links are generic, blank contracts and not the requested call off contracts for Capita Business Services Limited, Brook Street (UK) Limited and Hays Specialist Recruitment Limited.

## **Conclusion**

After careful consideration, I have concluded that the response you received to your FOI request was non-compliant with the requirements of the FOIA. I believe the original response was not sufficient to provide precise directions to the information so that it could be found without difficulty, and I have therefore overturned the decision. Please accept my apologies and find attached the information that you requested regarding Capita Business Services Limited and Brook Street (UK) Limited. DHSC does not use Hays Specialist Recruitment Limited under the Contingent Labour framework.

Some of the information you requested has been redacted under section 43 of the FOIA (commercially sensitive). Section 43 is a qualified exemption and, as such, I am required to assess the public interest in withholding this information against that of its release. I recognise a general public interest in information being made as freely available as possible.

However, I also take into account the fact that the redacted information is commercially sensitive and has been provided by suppliers on this understanding, and to release it may prejudice their interests, as well as the interests of Government in achieving commercially competitive arrangements in future. Therefore, I consider that releasing this information would not be in the public interest.

Additionally, some of this information has been redacted under Section 40(2) of the FOIA, which provides for the protection of personal information. Section 40 prohibits a public body from disclosing personally identifiable information as doing so would contravene data protection principles.

The review is now complete.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. The ICO can be contacted at:

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

<https://ico.org.uk/concerns>

Yours sincerely

James Shewbridge  
Casework Manager  
[FreedomofInformation@dh.gsi.gov.uk](mailto:FreedomofInformation@dh.gsi.gov.uk)

**Annex A: DH response to initial request dated 10 July 2017**

Dear Mr Davies,

**Freedom of Information Request Reference FOI-1087868**

Thank you for your request dated 19 June 2017, in which you asked the Department of Health (DH):

*"Please can you provide under the Freedom of Information Act a copy of any Call Off Contracts entered into by your organisation with Capita Business Services Limited, Brook Street (UK) Limited and Hays Specialist Recruitment Limited for the provision of services under the Contingent Labour ONE framework (RM960).*

*For the avoidance of doubt, I am interested in any master agreements signed with Capita, Brook Street and Hays and not agreements for the provision of individual contractors.*

*To avoid any concerns about Data Protection, please feel free to redact the Contact Reference, Account Manager and the Key Personnel from section 3.1."*

Your request has been handled under the Freedom of Information Act (FOIA).

I can confirm that the DH holds the information you requested. However, as the information held is in the public domain we will, under Section 21 of the FOIA (information accessible to the applicant by other means), refer you to the published source. The information you have requested is available in the Contracts Finder, at:

[www.contractsfinder.service.gov.uk/Search](http://www.contractsfinder.service.gov.uk/Search)

Contract information posted prior to 26 February 2015 is hosted on a read-only archive of historic contract data located here:

<https://data.gov.uk/data/contracts-finder-archive>

If you are not satisfied with the handling of your request, you have the right to appeal by asking for an internal review. This should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to the address at the top of this letter, or the email address at the end of this letter.

Please remember to quote the reference number above in any future communication.

If you are not content with the outcome of your internal review, you may complain directly to the Information Commissioner (ICO) who may decide to investigate your concerns. Generally, the ICO cannot make a decision unless you have already appealed our original response, and received our internal review response. The ICO will not usually investigate concerns where there has been an undue delay in bringing it to their attention. You should raise your concerns with them within three months of your last meaningful contact with us.

The ICO can be contacted at:

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

<https://ico.org.uk/concerns>

Yours sincerely,

Charlene Carter

Freedom of Information Officer  
[FreedomOfInformation@dh.gsi.gov.uk](mailto:FreedomOfInformation@dh.gsi.gov.uk)

**Annex B: Request for internal review dated 13 July 2017**

From: Paul Davies [<mailto:request-413161-d5ce9120@whatdotheyknow.com>]

Sent: 13 July 2017 17:14

To: FreedomofInformation

Subject: RE: Internal review of Freedom of Information request - Contingent Labour ONE call off contracts

Dear Harish

Thanks for looking into this, but unfortunately those are not the call off contracts entered into by the Department of Health - these are the generic blank ones. If you click into any of those, you will see that they have no specific details of the Department, when your specific call off contract starts and finishes etc.

Please can you find the specific call off contracts entered into by the Department with the three suppliers. I understand that you would not be able to access Contingent Labour ONE services if you had not signed these so they must be somewhere in the system.

If you are able and willing to find and send these contracts in the next couple of weeks, I am happy for you to treat this as just responding to the original FOI request rather than having to go through your Internal Review process.

Yours sincerely,

Paul Davies

**Annex C: Further information provided by the department of Health**

Dear Mr Davies,

Thank you for your email.

I have discussed your FOI request (1087868) with the team that has policy responsibility for your request.

I understand the direct URL links to the information you requested are as follows:

Capita - <https://data.gov.uk/data/contracts-finder-archive/download/962660/b37bf14a-a3da-4748-a7a6-1b6fb7c82957>

Brook Street - <https://data.gov.uk/data/contracts-finder-archive/download/962660/7c84731f-60de-44ce-b28f-fed100764cd3>

Hays - <https://data.gov.uk/data/contracts-finder-archive/download/962660/62bfc649-bd99-4f5e-9662-1adf42b4b463>

I hope this is helpful for you.

I would be grateful if you could please confirm if you are now happy to withdraw your request for an internal review into the handling of FOI 1087868? Or would you still like to pursue your request for an internal review?

Kind regards,  
Harish

Harish Sehdev  
Deputy Head of Freedom of Information  
Department of Health, Room G18, Richmond House,  
79 Whitehall, SW1A 2NS  
Follow us on Twitter @DHgovuk

-----Original Message-----

From: Paul Davies [<mailto:request-413161-d5ce9120@whatdotheyknow.com>]

Sent: 12 July 2017 12:44

To: FreedomofInformation

Subject: Internal review of Freedom of Information request - Contingent Labour ONE call off contracts

Dear Department of Health,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Department of Health's handling of my FOI request 'Contingent Labour ONE call off contracts'.

I asked for copies of specific call off contracts between the Department and the three suppliers on the Contingent Labour ONE framework agreement, namely Capita Business Services Limited, Brook Street (UK) Limited and Hays Specialist Recruitment Limited. This request was refused by you stating that the information was reasonably accessible to me, and claiming a Section 21 exemption. They stated that contracts information relating to the

Department could be found at [www.contractsfinder.service.gov.uk/Search](http://www.contractsfinder.service.gov.uk/Search) or <https://data.gov.uk/data/contracts-finder-archive>.

As you will no doubt be aware, Contracts Finder is a repository used across the public sector, and contains many thousands of documents. The search facility on Contracts Finder is rudimentary and hence finding three specific contracts on this huge site is virtually impossible. In *Christopher Ames v Information Commissioner and the Cabinet Office* (EA/2007/0110, 24 April 2008), the applicant sought specific information from the Cabinet Office and was advised that this was available on a similar huge web site and hence the CO claimed a s21 exemption. The Information Tribunal found that s21 was not appropriate in such a case, as this did not accord with the aim of the exemption that the information should be reasonably accessible. The Information Commissioner's guidance on s21 states that even if information may be published elsewhere, it is only reasonably accessible if you know that the applicant has already found the information or if you are "able to provide the applicant with precise directions to the information so that it can be found without difficulty" and go on to state that "when applying section 21 in this context, the key point is that the authority must be able to provide directions to the information."

Merely stating that the information is somewhere on Contracts Finder clearly does not satisfy this. Please therefore can you either respond to the FOI request and send me the call off contracts or provide me with the precise URLs to where the contracts can be found on Contracts Finder.

In responding to a similar request made by me, I should like to point out that HM Treasury, whilst also claiming a s21 exemption, was justified in doing so as it gave specific links to [data.gov.uk/data/contracts-finder-archive/contract/xxxxxx](https://data.gov.uk/data/contracts-finder-archive/contract/xxxxxx) for the appropriate contracts. If you are prepared to give me similar specific links to where I can find your contracts, that will suffice; merely stating they are somewhere on Contracts Finder is not sufficient to engage s21.

I should like to point out that the Information Commissioner considers that "a reasonable time for completing an internal review is 20 working days from the date of the request for review". This internal review is very straightforward - you simply need to ascertain whether it is easy to find the information on Contracts Finder and if not instruct your team to find the contracts. I would therefore hope that you would be able to meet the original date for the FOI response of 18/7/17, or at the very latest 20 days from today.

A full history of my FOI request and all correspondence is available on the Internet at this address: [https://www.whatdotheyknow.com/request/contingent\\_labour\\_one\\_call\\_off\\_c\\_11](https://www.whatdotheyknow.com/request/contingent_labour_one_call_off_c_11)

Yours faithfully,

Paul Davies