



Northamptonshire County Council

By Email
Andrew Rowson
request-456848-9ac2db29@whatdotheyknow.com

Please ask for: Freedom of Information
Tel: 01604 368360
Our Ref: R7878
Your ref:
Date: 3rd April 2018

Dear Mr Rowson,

Information Request: R7878

Thank you for your request for a review of FR7878 dated 1st March 2018. Your request has been dealt with under the Freedom of Information Act 2000 and is detailed below in italics with our response in bold.

Thank you for your recent response to FR7878. I am writing to request an internal review of it. The numbered points below refer to the numbered questions in the original FOI request.

1) *When relying on FOIA exemptions in a refusal notice for some or all of the requested information, an authority cannot simply copy and paste extracts from the legislation without explaining which parts of those exemptions are being applied to which pieces of refused information. It must explain in detail why it is refusing the information, what parts of named exemptions are being applied in every instance and how those exemptions apply to the refused information. Northamptonshire County Council has made no argument whatsoever for refusing me the information it has redacted.*

Both Section S40(2) and S43 of FOIA 2000 are qualified exemptions, which mean they are subject to the public interest test. NCC has not even mentioned the public interest test in its response, let alone provided the arguments for and against revealing each piece of withheld information in the public interest. It has totally failed to comply with S17 of FOIA 2000.

I am therefore asking the authority to review this question and answer it properly. If my request is still denied in whole or in part, I would ask that NCC justifies any redactions by reference to specific exemptions of the Act. I will also expect all non-exempt material to be released.

I remind NCC that any refusal notice should comply with S17 of the Act in every respect.

On the specific question of the public interest, I would point out that the ERP Gold project is already one year behind schedule, partly it appears, because the previous Programme Manager was incorrectly procured. The authority is also currently under a best value inspection with particular emphasis on its corporate governance and financial management systems, of which ERP Gold is one. There would therefore appear to be an even greater public interest in knowing the full facts about the procurement of the latest Programme Manager.

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2) It is not clear which is the advert document referred to. The response to Q5 (contract award notice) refers to the attachment provided for Q2. The "2 ENOTICES" attachment entitled "Contract Award Notice" does feature Caja Ltd and contract No. SA264519 on p23 (the same contract as in the timesheet spreadsheet), but there is no date on the "Contract Award Notice", and a contract award notice is not the same document as an advertisement, which under a DPS arrangement must precede the contract award by at least the stipulated number of days (Public Contracts Regulations 2015, No. 34). Also a DPS must comply with all the conditions set out in S34 of the Public Contracts Regulations 2015. In the heavily redacted Supplier Agreement document provided, paragraph (C) on p2 states:

"The Vendor placed a Contract Notice in the Official Journal of the European Union on 25 November 2016 to establish a Dynamic Purchasing System ("DPS") for the procurement of Temporary Workers."

November 25th 2017 was one day after the agreement date on p47 of the unsigned Supplier Agreement document, and also one day after the LGSS Joint Committee was informed that a successful candidate had been found [through Caja Ltd] and would begin work on November 27th. This suggests that the DPS documentation is a sham, designed to create the impression that NCC/LGSS had followed the proper procurement procedures in respect of advertising and the contract award notice when it had not. The notion that the EU document is a sham is reinforced by the authority acknowledging in its response to Q3 that specific sources were proactively approached, rather than the procurement coming from the Dynamic Purchasing System.

In other words the dates are the wrong way round. The evidence points to the candidate being selected before the DPS was set up. Please clarify whether this is correct, and if not, please identify which of the attachments provided is the advertisement, and please explain the discrepancy in dates.

3) Please confirm that there was only one candidate (Mark Reader) and acknowledge that his services were not procured using the Dynamic Purchasing System.

4) Once again, the response to Q4) is wholly inadequate. The authority has simply pasted a section from S41 of the legislation, without any explanation or any reference to the public interest test. As regards, S40(2) and S43, my comments on Q1 above apply. As for S41, the authority has to go through the proper process of answering the request properly, giving due attention to every aspect of it. The ICO offers guidance on this, which can be found on <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/>

With respect to S41 and the requested references, the authority needs to consider for example whether the nature of the requested information is personal or private, whether a legal person would be able to bring an action for breach of confidence if the authority disclosed those references, and whether such an action would be likely to succeed. Then it has to consider the public interest. The ICO guidance on this includes three instances where the public interest might justify releasing the information. For example where disclosure would:

- a) further public understanding of, and participation in the debate of issues of the day;
- b) enable individuals to understand decisions made by public authorities affecting their lives and, in some cases, assist individuals in challenging those decisions; or
- c) facilitate accountability and transparency in the spending of public money.

These I suggest are particularly relevant given the authority's current circumstances, the procurement of the services of the previous Programme Manager, Agilisys' recommendation that LGSS go to market to find a seasoned programme manager, and the current state of the ERP Gold programme, with four weeks to go before its next go-live date.

5) As with question 1 above, the response to Q5 is wholly inadequate. The attached document beginning with the reference "2 ENOTICES" was (according to the unsigned service agreement) created after the successful candidate had been selected and after the date on the resulting service contract. Please explain this circumstance, or provide a true contract award notice, or acknowledge that none exists, as was the case with the previous Programme Manager.

6) The response to this question makes no sense. Invoices should exist that were submitted by Caja Ltd to Opus LGSS People Solutions Ltd, and/or submitted by Opus LGSS People Solutions Ltd to NCC/LGSS which separately identify the fees charged in respect of the services of the Senior Programme Manager. These invoices, or the part referring to the PM's services should reconcile with the claimed timesheet information provided in the spreadsheet, otherwise there is no transparency. The spreadsheet on its own is no evidence of invoices. Please provide the invoices I requested or, if the request is being denied, please follow the proper procedure, as mentioned above, including full compliance with S17 of FOIA 2000.

7) My last question related to the contracts register. I think I have shown above that the DPS arrangement was a sham in respect of Caja Ltd providing the services of the latest ERP Gold Programme Manager. That being the case, will the authority please explain why there is no reference to this contract in the LGSS Pro contracts register?

Our Response

I have looked into the circumstances of your request and the way in which was handled and I have set out my findings and conclusion below:

Relevant issues

- **A request for information was received on 15th January 2018 which fell within the scope of FOIA 2000; we responded to this on 14th February 2018.**
- **We are required under the scope of this review to determine if our response was given within the mandatory timescale of the Act 2000.**
- **We are required to consider whether NCC responded to all questions asked with "held and recorded information" to the requestor within the time frames.**
- **If we relied on any exemptions we must set this out in the letter in an explanatory manner.**

Conclusion

- **Noted.**
- **I am satisfied that this requirement was met.**
- **I am satisfied that this requirement was met. NCC responded to the points raised.**
- **FOIA 2000 exemptions s.40(2), s.41 and s.43 which were relied upon in our original response and were set out in an explanatory manner in line with our statutory obligation to their application with regard to the information which was requested and fell under either an absolute or qualified exemption criteria.**

If our internal review does not resolve the issue to your complete satisfaction, you have the right to apply to the Information Commissioner for a decision at the following address:

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF

Or, if you have any complaints in respect of your information request please complete the on-line comments form that can be found at www.northamptonshire.gov.uk, along with a full set of guidance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Deacon', with a long horizontal stroke extending to the right.

Simon Deacon
Reviewing Officer
Email-dataprotection@northamptonshire.gcsx.gov.uk