

**Mr Alex Brown**

By e-mail to: request-41715-1e2c36d9@whatdotheyknow.com

24<sup>th</sup> September 2010

FOIA Reference: 47262

IR Reference: 47284

Dear Mr Brown,

Thank you for your email to the FOI Team, dated 21 July 2010. It was passed to me to arrange an Internal Review, in accordance with the NPIA's Access to Information Policy and the Secretary of State's code of practice issued under Section 45 of the Freedom of Information Act (FOIA).

## **Background**

On 12 July 2010, you made a request for information under FOIA relating to the Mobile Identification at Scene (MIDAS) Procurement.

On 21 July, the NPIA responded to your request, confirming that all the information referred to in the request was held by the agency and enclosing the information that could be disclosed. The remainder of the information that fell within the scope of your request was deemed exempt from the right of access under the Act, and a list of the information redacted and the exemptions applied was included in that response.

On 21 July, you requested an internal review of the redactions made to the information supplied. An email asking for acknowledgement of the original request was received from you on 7 August, followed by a further reminder on 20 August.

The NPIA responded on 2 September, apologising for the delay in expediting your request. You responded, with an email requesting that we also consider the recent ICO decision against the Agency in our deliberations.

The NPIA wrote to you on 10 September to clarify that the required areas for review had been correctly identified and that the summary covered all your concerns.

A response was received from you on 12 September, confirming that the following was an accurate summary of your issues:

- you believed the arguments used were similar to those considered and rejected by the information commissioner in his decision concerning the IDENT1 contract;

- you did not accept the assertion that pricing information for a bespoke contract was likely to disclose useful information to competitors;
- you considered the redactions to have been overly enthusiastic; and
- you requested a review of the method used to redact information by deletion from the original file.

### Investigation

I appointed an internal investigator to determine whether the arguments used in responding to the initial request were valid in light of the IDENT1 decision and if the method used to redact this information had been appropriate.

All correspondence, notes, responses and attachments concerned with the original decision have been reviewed. NPJA FOIA and Commercial teams have been approached for clarification and further information, as have the suppliers Cogent, to ensure that any justifications are supported by sufficient weight of evidence.

The issues raised fell into two major categories: points 1 and 2 were concerned with the justification for redaction of information that may be effected by the Information Commissioner's ruling on release of IDENT1 information; points 3 and 4 were concerned with the way in which the information was redacted in terms of scope, size and the method use.

Following the internal investigation, I am satisfied that the information that has been redacted is not the same as that covered by the IDENT1 ruling. Reference to Section 43(2) exemptions regarding Service Levels was not covered by the previous ruling, as the data in these schedules had been redacted only to protect the publication of Accuracy levels rather than Value for Money issues as cited in the ICO statement.

Additionally, all Pricing information disclosed under the IDENT ruling has already been supplied to the requestor. That which had been redacted provided a further level of detail concerning the suppliers internal pay structures. Arguments from the supplier and evidence from the Commercial team endorsed the view that publication of more detailed internal information may cause the supplier commercial harm. I, therefore, agree with the internal investigation findings that the redactions made to internal supplier pricing information in the MIDAS contract are not the same as those referred to in the ICO IDENT1 decision.

However, concerning issues 3 and 4, I find that the level of redaction throughout the document set does not appear to be in line with the explanations given. All values appear to have been redacted in a number of attachments, giving little indication as to the size and scope of the original entries and, thereby, rendering the supplied information of little use.

I agree with the comments made at point 4, concerning the method of redacting, which may have given a misleading impression concerning the number and scale of redactions across the document set, particularly in reference to the Financial Models.

### Conclusion

Having had the case reviewed the case and having carefully considered the investigator's report (Annex A) and the way this request was handled, I have concluded that the redactions made were justified, and not covered by the ICO IDENT1 decision, but that the methods used to make them significantly reduced the effectiveness of the information supplied. Whilst these methods fall within the letter of the law they fail to live up to the spirit of the Act, which the Agency fully endorses, in being open and accountable to the public.

NPIA Commercial Directorate has agreed to reinstate the Financial Models showing exactly where the figures have been removed. We have requested that the method of redaction used throughout the documentation is changed, in line with the Agency's usual practice, to indicate the location and size of the redaction that has been made at the place where the redaction occurs. I have requested that all such redacted information is supplied to you within 10 working days of this letter being issued.

If you are still dissatisfied following our internal review, you have the right, under section 50 of the Act, to complain directly to the Information Commissioner. The Information Commissioner can be contacted at:

FOI Compliance Team (complaints)  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Yours Sincerely,

Anne Taylor,  
National Police Improvement Agency

## ANNEX A

### MIDAS FOIA - Investigation process and findings summary

#### 1) The requestor believes the arguments we have used are similar to those considered and rejected by the information commissioner in his decision concerning the IDENT1 contract

*Cited as an example "you continue to use a Section 43(2) exemption in regards Service Levels despite this argument specifically being rejected in para 149 of FS50125350"*

ICO Para 149 - "Whilst he understands that a lot of time and money has been invested in drawing-up the contract he does not believe that disclosure of the information within this schedule would have been likely to prejudice either party's commercial interests. He again notes that both parties were aware of their duties under the Act at the tendering stage of the contract and that there should have been a reasonable expectation that the public would want to be shown that it was receiving a 'value for money' system which would remain competitive, be reliable and continue to improve throughout its duration."

Section 43(2) exemption - "Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interest of any person (including the public authority holding it)."

#### To address this issue we have:

- Considered the redactions made to schedule 2 – Services Description
- Consulted the NPJA Commercial Directorate requesting further justification as to the harm in releasing the service details redacted

#### Findings:

- i. The information that has been redacted from Schedule 2.2 is restricted to the Accuracy levels we have asked the MobileID to provide.
- ii. The information redacted from section 2a, 2b, 2c and 2d include percentage figures that have been removed from the text in the Target Service Level column. Each section is followed by this statement which explains under what conditions this accuracy measure applies.
  - "Where:
    - i. Image Quality is NFIQ = 1, 2 or 3
    - ii. All Identification requests contain Fingerprints
    - iii. All matches are in first position
    - iv. Assumes no retries"

The format of the document is misleading and unfortunately suggests that a whole line of data has been redacted

- iii. The information removed from pages 43 and 44 are the figures from the text and the above statement repeated.
- iv. Regarding the use of 43(2), it is accepted that the use of service levels is in the interest to the public and that the service levels within one contract are likely to be specific to that individual contract and as such are unlikely to prejudice a suppliers changes in another contract.
- v. The rational in using this exemption for the accuracy levels is that this will be a central criteria in any contract Cogent go on to tender for, irrespective of how the system will ultimately be used. The NPIA believes that releasing this information would be showing the market the levels of accuracy that Cogent were confident they could attend, which is likely to be a determining factor in any subsequent tenders, as it was with the MobileID tender
- vi. Some of this information was also redacted under exemption 31.

### **Decision**

Information was redacted to protect the publication of Accuracy levels rather than value for money issues as cited in the ICO statement. No further action required.

**2) The requestor does not accept our assertion that pricing information for a bespoke contract is likely to disclose useful information to competitors.**

*Cited "para 152 of FS50125350 sets an expectation of you being able to cite specific rather than general issues of commercial compromise."*

ICO Para152 – "The Commissioner has not, in his view, been provided with sufficient evidence to support the application of section 43(2) to the information which has been withheld. He is not generally convinced that the information is of such detail that its release would reveal the contractor's technical 'know how' to a level which might be of value to its competitors and he therefore finds it difficult to see how other commercial organisations could gain any competitive advantage in relation to the public authority or the contractor from the disclosure of these schedules. He was not offered evidence of any actual on-going negotiations or any specific proposed new systems which would result in the contractor's market position being compromised and he doubts that any other system could be sufficiently comparable to this one to be affected. He has therefore decided that the exemption was not engaged and the information should have been disclosed. "

Section 43(2) exemption – "Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interest of any person (including the public authority holding it)."

**To address this issue we have:**

- Compared the pricing information released from within IDENT1 and MIDAS contracts.
- Considered the Information Commissioners comments in light of the information supplied/redacted
- Requested that the supplier provide detail of how the release of pricing information would be detrimental to their business
- Consulted the NPIA Commercial Directorate requesting evidence of suppliers responses to requests for/publication of detailed internal pricing

**Findings:**

- i. The ICO's Decision Notice is referring to pricing information which the NPIA has already disclosed in respect of the MIDAS contract.
- ii. The pricing that we initially redacted and were then instructed to release in the IDENT1 contract was the baseline cost of the service. The equivalent prices have already been released for MIDAS in Schedule 7.1 of the Services agreement that show the price that we are paying for each Service Description, or SD.

- iii. The pricing information that we have kept back in MIDAS is the internal supplier costs that the supplier has used to create the final, total cost and which include details of what the supplier pays his manufacturers, sub-contractors and staff.
- iv. These types of costs were not included in the Ident1 contract, as Open-book accounting was not so prevalent in 2003/4 when this tender exercise was commenced and as such no precedence by the ICO in this area.
- v. The NPPIA has wholly accepted the comments of the ICO in that the contract pricing to the NPPIA, from which Value for Money can be assessed, should be released and this was included in our response. It is our considered opinion that this is fundamentally different to the total cost figures that are referred to above and which we have released.
- vi. We have approached the supplier, Cogent, to determine their view as to the impact of supplying this level of pricing detail. Their response claims that the information details competitive information (rates, overhead, etc.) that would provide their competitors with data that would harm them in future bids. They claim that competitors have priced bids at a price point that is near break even, or even a loss, anticipating that profits will be obtained through change orders, or other scope changes. They believe that as their installations are uniquely based upon their proprietary Programmable Matching Accelerators, COTS software, and personal services to conform systems to user requirements, knowledge of the hardware component pricing, software licensing pricing, and labour rates for professional services would seriously impact, or potentially neutralise, their competitive economic advantage.
- vii. The supplier understands the necessity of releasing information concerning the aggregate bid, and the amount of major cost categories. They have agreed to provide the NPPIA with transparency as to their costing models, and also agreed that in-depth audits be conducted by the NPPIA to ensure adherence to the profit margins provided under the Services and Framework Agreements. Cogent believe that knowledge of their estimates for the amount and type of labour that are required under the contracts, the amount of labour required for customisation of COTS products, and the application of overhead rates and ratios would be very detrimental to their position in future pricing exercises, both with opportunities in the United Kingdom and elsewhere.
- viii. The NPPIA is acting on behalf of the public to ensure ongoing Value for Money in this area using a number of measures including:
  - All pricing for both existing and new pieces of work has to be supplied using the financial model format in 7.4 which shows all of the suppliers internal costs and ensures that we are charged a consistent margin or 15%. These prices must be certified by a Cogent Director at least once every 12 months and whenever we want this carried out in between (to a maximum of 5 times)

- In Schedule 7.2 Value for Money provisions also ensure that the Agency can carry out a Benchmarking event at any time during the contract following the initial 12 months. This will require an independent Bench marker to consider all aspects of the service and report on whether the Service is in whole or in part Good Value. If any aspect fails they will suggest measures to rectify it, which must be implemented within 1 month, and any excessive profits made repaid
  - At the end of the contract the Agency will look at all of the transactions that have taken place and if it transpires that Cogent have earned more than 20% in margin, the NPIA will take half of it back.
- ix. NPIA Commercial Directorate are working to get greater visibility on the internal cost structures within suppliers in order to see where costs can be reduced and whether the price being charged is justified or not. They have supplied us with examples to illustrate where suppliers have refused to show their accounts to provide further evidence in justification of costs, preferring to potentially lose the contract rather than divulge what they consider to be commercially sensitive information which may be disclosed under FOIA.

### Decision

I agree that the redactions made to pricing information are not covered by the ICO decision. All information disclosed under the IDENT ruling has already been supplied here and that which has been redacted provides a further level of detail concerning the suppliers internal pay structures. Arguments from supplier and evidence from the Commercial team endorse the view that publication may cause the supplier commercial harm.

**3) The requestor considers our redactions to have been overly enthusiastic.**

*"In that almost all values have been removed from the document regardless of why they were there, this has also led to the reader being unable to tell which cells were redacted and which simply not used.*

*For any values that you do continue to redact, please consider not redacting the entire value (e.g. £53582 could be redacted as £5xxxx), or replacing it with a range within which they fall to give an idea of the scale of the costs, in a similar way to how salary information for senior staff is disclosed. Even if precise numbers would prejudice commercial interests, the general range would not."*

**To address this issue we have:**

- Considered the number/scale of redactions made
- Considered whether sufficient explanation has been given to justify the redactions made
- Consulted the NPIA Commercial Directorate to determine whether the use of values as suggested would prejudice commercial interest.

**Findings:**

- i. Full values have not been shown for all prices other than those redacted as a result of the pricing restrictions identified at 2
- ii. Explanations for all redactions have been made under Section 3 of the FOI response rather than at the place of the redaction itself. This is permitted under FOI guidance from the ICO. The method of redaction used, i.e. the removal of values/words rather than replacement with a marker, has caused further confusion.
- iii. NPIA Commercial believe that the applicant's suggestion for redacting amounts and replacing figures with Xs to indicate the size of the number would provide enough information for the supplier to consider it commercially harmful and prejudicial to their chances in a future contract.
- iv. The level of redaction does not appear to be in line with the explanations given. All values appear to have been redacted in many attachments giving little indication as to the size and scope of the original entries.
- v. I agree that the comments made at point 4 concerning the method of redacting have given a misleading impression concerning the number and scale of the redactions across the document set, particularly in reference to the Financial Models.

**Decision**

NPIA Commercial Directorate to reinstate the Financial Models showing exactly where the figures have been removed but not the number of digits contained in each number.

**4) The requestor has asked for a review of the method used to redact information by deletion from the original file.**

The requestor believes *"the method you have chosen to redact the information (i.e. deletion from the original file) it is impossible to tell the extent of the redactions, and I would argue that understanding this (e.g. by black boxes or similar) would aid the public in assessing your performance. Please could you review this practice alongside the substantive point."*

**To address this issue we have:**

- Consulted guidance on appropriate methods of redaction
- Determined the method currently in use and the reasoning behind its usage
- Considered the impact of the method used in aiding public understanding

**Findings:**

- i. There is no hard and fast rule as to how exempt information should be removed from a document. There is nothing in the legislation and the ICO has not really issued any guidance on how this should be done. The National Archive (TNA) has developed a redaction toolkit which advises the best methods for redaction but this is aimed more at ensuring redacted information cannot be retrieved rather than indicating how much has been removed.
- ii. Two pieces of ICO guidance that refer to redaction include the following:
  - "In the context of FOIA, redaction is the process of editing the requested information to remove exempt material. It is the removal of exempt information from that which can be disclosed by blocking out or otherwise deleting words, names, phrases, sentences, paragraphs or sections of a document before release".
  - "If sections of the document are exempt, redact (i.e. remove by cutting out) these sections and release the remainder. You should make a note of any redactions with the exemption(s) / exception(s) that apply to each".
- iii. The right of access is to 'information' rather than documents and, in effect, we would be within our rights to extract the non-exempt information from a document and supply this without indicating what has been removed, stating only the exemptions, harm etc. that apply.
- iv. Apart from in the financial models, the redactions of words or figures from the text have been indicated by leaving a gap representative of the size of the information that has been taken out.
- v. The current redaction tool used by the NPPIA FOI Team is Adobe Acrobat Professional. This is available only as a single license on one machine.

- vi. Although there is no obligation under the legislation, codes of practice or guidance to do so, the NPIA believes it is helpful to the applicant to indicate how much information and where it has been removed. This may also provide reassurance to applicants by indicating how little has been removed in some occasions. NPIA FOI Team recommends this approach to all business areas concerned in servicing FOI requests.

**Decision:**

We recommend that the method of redaction is changed to indicate the location and size of the redaction that has been made at the place where the redaction occurs. This can be represented as a physical 'blackout' of the material redacted or an indication of the number of words or letters removed at that site.