



# Department of Health

Mr Woodcock

[request-221848-f82b0168@whatdotheyknow.com](mailto:request-221848-f82b0168@whatdotheyknow.com)

17 October 2014

Dear Mr Woodcock

## **FREEDOM OF INFORMATION ACT (FOIA): REQUEST FOR INTERNAL REVIEW DH CASE REFERENCE IR 877249**

Thank you for your email dated 22 August in which you asked for an Internal Review to be undertaken into the handling of your original request. I am now writing further to my email dated 22 September, informing you that we would be taking longer than our usual turnaround of 20 working days to complete your Internal Review.

### **Chronology:**

#### **Your original request**

You originally wrote to the Department of Health on 28 July. Your exact request was:

*"In the report "The dismantled National Programme for IT in the NHS"*

*(<http://www.publications.parliament.uk/pa/cm201314/cmselect/cm/ubacc/294/294.pdf>)*

*Tim Donohoe, Senior Responsible Owner for Local Service Providers at the Department of Health, is quoted talking with Mr Bacon MP as follows:*

*> Q21 Mr Bacon: When you say the original contract you don't mean the*

*> original contract as in the first contract. Originally they only had*

*> one contract, which was worth about £1 billion.*

*> Tim Donohoe: I am sorry.*

*> Mr Bacon: They ended up with three contracts, worth about £3 billion.*

*> Is it that you are saying is now worth*

*> £3.8 billion?*

*> Tim Donohoe: Yes, that is right*

*Could you please provide a copy of each of the three contracts (as*

*mentioned here) that you made with CSC?"*

### **Our original response**

The Department of Health replied to you on 21 August as follows:

"Thank you for your request of 28 July 2014 under the Freedom of Information Act (2000). Your exact request was:

### **[As above for brevity]**

The three Local Service Provider contracts for the North, Midlands and East regions of England were discussed in the Public Accounts Committee hearing held on 12th June 2013. Subsequently, these contracts have been superseded.

The Department confirms that it holds the information related to your request, however, we consider that this information is exempt under Section 43 of the FOIA, which exempts from the general duty to release information which would, or would be likely to, prejudice the commercial interests of any entity, including the public authority holding the information.

Section 43 is a qualified exemption and, as such, we are required to assess the public interest in withholding this information against that of its release.

We recognise a general public interest in making this information available for the sake of greater transparency and openness. However, the documents that you requested contain confidentiality provisions which preclude disclosure of CSC's confidential Information by the Department.

Commercial organisations entering into contracts with government bodies have a legitimate expectation that material such as financial information and structure of commercial terms (the disclosure of which is likely to be harmful and expose them to predatory behaviour from competitors) will be protected from disclosure. This must be particularly true where, as in this case, contractual assurances of confidentiality have been agreed between the parties.

The disclosure by public bodies of commercially sensitive or confidential information is likely to deter private contractors from contracting with public sector bodies and potentially expose the Department to punitive measures from the contractor for breach of contractual confidentiality obligations.

Therefore, we consider that releasing the information that you have requested would not be in the public interest.

If you have any queries about this email, please contact me. Please remember to quote the reference number above in any future communications.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to:

Head of the Freedom of Information Team  
Department of Health  
Room 520  
Richmond House  
79 Whitehall,

London  
 SW1A 2NS  
 Email: [freedomofinformation@dh.gsi.gov.uk](mailto:freedomofinformation@dh.gsi.gov.uk)

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Department. The ICO can be contacted at:

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

Yours sincerely"

### **Your request for an Internal Review**

You subsequently wrote again to request an Internal Review in the following terms:

*"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 'NPfIT contracts with CSC'.*

*You've mentioned the confidentiality provisions made between you and CSC, but I understand that the existence of confidentiality provisions isn't—in itself—one of the exemptions in the FOI act. The exemption you've used is section 43 (i.e. prejudice of commercial interests). The confidentiality provisions don't override your responsibilities under the FOI Act.*

*Even if CSC were able to ask for punitive measures, you could of course refuse to pay, citing these responsibilities, and then it would be a matter for them to take you to court. I'm not a lawyer, but I don't see how they could win such an action if you were obliged to break the confidentiality provisions because of the FOI Act! Otherwise, this argument has no weight, or perhaps you could explain how?*

*You've also argued that disclosing financial information and the structure of commercial terms would deter other companies from contracting with public sector bodies.*

*However, presumably contractors (or potential contractors) also have an understanding that when they fail, on a massive scale, to do a good job, and that when this wastes, on a massive scale, tax-payers' money—then clearly there will be a desire for financial information to be exposed and examined, and for that company to be exposed as the failure, or the rotten company, that it is (whichever is the case).*

*If a company is, in the future, deterred from contracting with a public sector body because it \*realizes\* that it (a) is a rotten company or (b) is likely to do a bad job—and because it doesn't want to be exposed as that kind of a company—then surely it's a good thing if it's "deterred" from contracting with a public sector body and thus wasting billions of pounds of tax-payer money?*

*In any case, I think the public interest in disclosing the details of why and how billions of pounds of tax-payer money was (potentially) wasted on a "rotten company providing a hopeless system" (as Rt Hon Margaret Hodge described it in the Public Accounts Committee's report) surely outweighs, in this case, the potential disadvantage of deterring future contractors. (Except for the rotten ones like CSC who should be deterred as much as possible I suppose.)"*

### **Our response to your request for an Internal Review**

The Department of Health has undertaken an Internal Review into the handling of your original request (DE00000877249) and our response to withhold all the information under section 43.

After further consideration on review, we now consider that section 43 might not apply to all of the information requested. However, we consider that all of the information is exempt from disclosure under section 14, for the reasons set out below.

As you will see from the table below there are approximately 660 electronic files including: schedules, change control notes, agreements and other documents associated with the three contracts referred to at the hearing of the Public Accounts Committee held in June of last year resulting in the need to examine over 24,800 pages of information as part of a redaction process to apply the relevant exemptions.

We estimate that the total resource to undertake this exercise would be in excess of 1,600 hours and the basis of that estimation is as follows:

Total number of documents	658
Total number of pages	24,852
Estimated average number of pages examined/redacted (per hour)	15
<b>Estimated time for redaction (Hours)</b>	<b>1,657</b>

The information that you have requested would generally fall under the section 12 prohibitive costs exemption, owing to the amount of resource effort necessary in preparing the information for release. However, a public authority is not allowed to refuse a request under the section 12 by counting the costs of its resource for considering exemptions and the public interest test.

We have also considered the ICO's guidance more generally, including that related to section 14 which provides an exemption where the information requested imposes a manifestly unreasonable burden on the public authority regarding the amount of resource required to complete the task.

We consider that owing to the estimates outlined above that exemption under section 14 is appropriate in this case. The attached guidance from the regulator (the ICO) is below for your information:

[http://ico.org.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.pdf](http://ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.pdf)

You may find it helpful to consider the guidance on pages 18/19 in particular, which I have extracted out for your ease of handling:

*“Requests which would impose a grossly oppressive burden but are not covered by the section 12 cost limits*

*67. An authority cannot claim section 12 for the cost and effort associated with considering exemptions or redacting exempt information.*

*68. Nonetheless, it may apply section 14(1) where it can make a case that the amount of time required to review and prepare the information for disclosure would impose a grossly oppressive burden on the organisation.*

*69. However, we consider there to be a high threshold for refusing a request on such grounds. This means that an authority is most likely to have a viable case where:*

- The requester has asked for a substantial volume of information AND*
- The authority has real concerns about potentially exempt information, which it will be able to substantiate if asked to do so by the ICO AND*
- Any potentially exempt information cannot easily be isolated because it is scattered throughout the requested material.*

*70. In the event that a refusal should lead the requester to complain to the ICO, we would expect the authority to provide us with clear evidence to substantiate its claim that the request is grossly oppressive. Any requests which are referred to the Commissioner will be considered on the individual circumstances of each case.*

*71. Where an authority believes that complying with the request will impose a grossly oppressive burden, it is good practice to talk to the requester before claiming section 14(1), to see if they are willing to submit a less burdensome request.”*

The Department considers that the public interest has been met, in part, following the public scrutiny regarding the CSC contracts in hearings of the Public Accounts Committee and in the reports published by the National Audit Office. Further information about these can be found on the following web pages:

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmpubacc/390/390.pdf>  
<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmpubacc/153/153.pdf>  
[http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpubacc/1070/1070.p  
df](http://www.publications.parliament.uk/pa/cm201012/cmselect/cmpubacc/1070/1070.pdf)  
<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubacc/294/294.pdf>

<http://www.nao.org.uk/report/department-of-health-the-national-programme-for-it-in-the-nhs/>  
<http://www.nao.org.uk/report/the-national-programme-for-it-in-the-nhs-progress-since-2006/>  
<http://www.nao.org.uk/report/the-national-programme-for-it-in-the-nhs-an-update-on-the-delivery-of-detailed-care-records-systems/>  
<http://www.nao.org.uk/report/review-of-the-final-benefits-statement-for-programmes-previously-managed-under-the-national-programme-for-it-in-the-nhs/>

<https://www.gov.uk/government/publications/final-benefits-statement-for-programmes-previously-managed-under-the-national-programme-for-it>

The CSC Local Service Provider (LSP) Delivery Programme (NME Programme for IT) is also reported to the Government's Major Projects Authority. Further information about the Major Projects Authority is accessible from:

<https://www.gov.uk/government/publications/major-projects-authority-annual-report-2014>

Further information about the CSC LSP programme in general is available from:

<http://systems.hscic.gov.uk/lsp>

### **Section 16 advice and assistance**

However, the Department would like to offer you advice and assistance in accordance with the provision at section 16 (1) of the FOIA. You could narrow any future request you may wish to submit by asking more precise and specific questions, for example relating to smaller or specific parts of the contract you were interested in, and we would be content to comply with such a request, provided, of course, the request was sufficiently specific to enable the Department to identify and, if appropriate, redact any material without the exercise constituting an excessive burden.

As you will appreciate, I should point out that I cannot guarantee that any subsequent request for information you submit to the Department would not engage any relevant FOIA exemption(s).

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. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Department. The ICO can be contacted at:

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

Yours sincerely

TONY DOOLE  
*Senior Casework Manager*  
*Freedom of Information Team*