



Ministry of JUSTICE

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Our Reference: FOI/76816/76808

www.justice.gov.uk
12 September 2012

Freedom of Information Request

Dear Mr Pells,

Thank you for your email of 17 June, in which you asked for the following information from the Ministry of Justice (MoJ):

1. “For the period 1st January 2012 to 31st May 2012, how many linguists were quality audited by the Ministry of Justice, or by a competent independent body acting on behalf of the Ministry of Justice, to ensure that the minimum standards stipulated by the contract with ALS were actually fulfilled? Of the number of linguists audited, what proportion were found to be 100 % compliant?”

For the purposes of responding to this question, exclude any quality auditing done for, or on behalf of the following; Applied Language Solutions Ltd, any other company which is part of the parent group Capita and the University of Middlesex. The reason for excluding these bodies is that they cannot be considered as independent.

2. “Please provide the number of linguists on the Register on the following dates; 31st August 2011, 30th September 2011, 31st October 2011, 30th November 2011, 31st December 2011, 31st January 2012, 29th February 2012, 31st March 2012, 30th April 2012, 31st May 2012. For each of these dates, please provide the total number of registered linguists, and how this number is divided between those registered as Tier 1, Tier 2 or Tier 3.”

I am very sorry you have not received an earlier reply. This response covers both requests which you have made.

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

1. Within the terms of the question as asked the answer is none were quality audited by the MoJ.

Outside the terms of the FOIA and on a discretionary basis I can inform you that the Framework Agreement requires Applied Language Solutions to ensure that they provide interpreters of the appropriate quality and all foreign language interpreters must evidence that they have the required qualifications before they can undertake

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assignments under the Framework. As with any commercial contract this remains subject to appropriate contract management and monitoring.

2. I can confirm that the department holds information that you have asked for under 2, but in this case we will not be providing it to you as it is exempt from disclosure.

We are not obliged to provide information relating to commercial interests. In this case, we believe that the information would, or would be likely to, prejudice the commercial interests of any person including the department who holds it (section 43(2) of the Act).

In line with the terms of this exemption in the Freedom of Information Act, we have also considered whether it would be in the public interest for us to provide you with the information, despite the exemption being applicable. In this case, we have concluded that the public interest favours withholding the information.

When assessing whether or not it was in the public interest to disclose the information to you, we took into account the following factors:

Public interest considerations favouring disclosure

- There is a general public interest in the disclosure of this information to ensure that there is transparency in, and accountability for, the management of public funds; that public money is being used effectively and that the Department is providing maximum value for the taxpayer.
- Publication serves the public interest by further information in an area which is already the subject of published statistics.

Public interest considerations favouring withholding the information

- There is a public interest against disclosure due to the impact it would have on the achievement of taxpayers' value for money and on contractors' competitiveness;
- The MoJ has a commercial responsibility to suppliers to hold confidential any information made available through the course of procuring goods and services, for example, pricing/rates offered and accepted or available resources.
- Releasing information of this nature into the public domain may prejudice the commercial activities and interests of both the MoJ and its suppliers were this information made available to competitors. Releasing the information about the numbers of interpreters available to the supplier would prejudice them in any future competition. In addition disclosure would be likely to prejudice the commercial interests of the department by affecting adversely its bargaining position during contractual negotiations which would result in the less effective use of public money.
- Disclosure could also enable the pricing strategy for certain work to be deduced, to the detriment of our service providers and therefore place their competitors at a commercial advantage.

We reached the view that, on balance, the public interest is better served by withholding this information under Section 43(2) of the Act at this time.

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You have the right to appeal our decision if you think it is incorrect. Details can be found in the 'How to Appeal' section attached at the end of this letter.

You can find out more about Section 43 by reading the extract from the Act and some guidance points we consider when applying this exemption, attached at the end of this letter.

You can also find more information by reading the full text of the Act, available at <http://www.legislation.gov.uk/ukpga/2000/36/section/43> and further guidance <http://www.justice.gov.uk/information-access-rights/foi-guidance-for-practitioners/exemptions-guidance>

Disclosure Log

You can also view information that the Ministry of Justice has disclosed in response to previous Freedom of Information requests. Responses are anonymised and published on our on-line disclosure log which can be found on the MoJ website: <http://www.justice.gov.uk/information-access-rights/foi-requests/latest-moj-disclosure-log>

The published information is categorised by subject area and in alphabetical order.

Yours sincerely

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How to Appeal

Internal Review

If you are not satisfied with this response, you have the right to an internal review. The handling of your request will be looked at by someone who was not responsible for the original case, and they will make a decision as to whether we answered your request correctly.

If you would like to request a review, please write or send an email to the Data Access and Compliance Unit within two months of the date of this letter, at the following address:

Data Access and Compliance Unit (10.34),
Information & Communications Directorate,
Ministry of Justice,
102 Petty France,
London
SW1H 9AJ

E-mail: data.access@justice.gsi.gov.uk

Information Commissioner's Office

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the Information Commissioner's Office at the following address:

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

Internet address: https://www.ico.gov.uk/Global/contact_us.aspx

EXPLANATION OF FOIA - SECTION 43 – COMMERCIAL INTERESTS

We have provided below additional information about Section 43 of the Freedom of Information Act. We have included some extracts from the legislation, as well as some of the guidance we use when applying it. We hope you find this information useful.

The legislation

Section 1: Right of Access to information held by public authorities

- (1) Any person making a request for information to a public authority is entitled—
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.

Section 43: Commercial interests.

- (1) Information is exempt information if it constitutes a trade secret.
- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
- (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

Guidance

Section 43(1) exempts information if it constitutes a trade secret. The Freedom of Information Act does not define a trade secret, nor is there a precise definition in English law. However it is generally agreed that:

- it must be information used in a trade or business
- it is information which, if disclosed to a competitor, would be liable to cause real (or significant) harm to the owner of the secret
- the owner must limit the dissemination of the information, or at least, not encourage or permit widespread publication

Section 43(2) exempts information, disclosure of which would be likely to prejudice the commercial interests of any person. Section 43(2) is a prejudice-based exemption, so the test for exemption is whether or not the commercial interests referred to in the section would, or would be likely to, be prejudiced by disclosure.

'Commercial' can be taken to mean relating to an activity in the way of a business, trade or profession. Again, the exemption is (expressly) capable of applying not only to the commercial interests of outside organisations, but also to a public authority's own commercial interests. When it comes to considering a public authority's own interests, a range of circumstances may be relevant, including the authority's position in the market place both as a purchaser and as a supplier. However, the prejudice to the commercial interests of a public authority must be contrasted with prejudice to other interests such as the body's political or other non-commercial reputational interests, which are not protected by this exemption.