

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 July 2023

Public Authority: Home Office
Address: 2 Marsham Street
London
SW1P 4DF

Decision (including any steps ordered)

1. The complainant has requested information from the Home Office in relation to phone sim cards provided to asylum seekers. The Home Office refused to provide the requested information, citing section 43(2) of FOIA – commercial interests.
2. The Commissioner's decision is that the withheld information engages section 43(2) and that the public interest lies in maintaining the exemption.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

4. On 24 February 2023, the complainant wrote to the Home Office and requested information in the following terms:

"1/ What is the cost of the phone sim cards the Home Office providing to asylum seekers.

2/ Is the Home Office paying the contracts for these sim cards.

3/ Is the Home Office paying the phone bills on these sim cards.

4/ What is the monthly cost of these sim cards."

5. The Home Office responded on 13 March 2023. It stated that it is paying the contracts and phone bills for the sim cards, however, the actual commercial amounts are sensitive and confidential and are therefore being withheld under section 43(2) of FOIA – commercial interests.
6. Following an internal review the Home Office wrote to the complainant on 14 April 2023. It stated that it upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 17 April 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of this complaint is to determine if section 43(2) is engaged for the Home Office to withhold the requested information.
9. The Home Office set out in both its original response and the internal review why it considered the information should be withheld under section 43(2). The Commissioner has decided that he has sufficient information to reach a decision in this case, based on the information provided and his own expertise, without seeking further arguments from the Home Office.

Reasons for decision

Section 43(2) – commercial interests

10. Section 43(2) of FOIA states:

“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.”

11. It is a qualified exemption. So in addition to demonstrating that disclosure would or would be likely to prejudice the commercial interests of the public authority and/or a third party, the public authority must consider the public interest test. It must weigh up the public interest arguments in favour of disclosure against the public interest arguments in favour of maintaining the exemption. It then needs to demonstrate that the balance of the public interest test rests in maintaining the exemption.

12. The Home Office has explained that if the information were disclosed, it would prejudice the commercial interests of both the Home Office and the companies with whom the Home Office enters into contracts.
13. The Home Office has also argued that disclosure of information on costs would prejudice the current supplier and would allow any future tendering process to be prejudiced as it would give potential bidders an unfair advantage in the tendering process. It could lead to other competing suppliers using the information to submit strategic bids for any future procurements.
14. The Home Office has also explained that disclosure of the requested information would limit its ability to obtain the best value for money.
15. Having considered the arguments provided by the Home Office, the Commissioner is satisfied that there is a causal link that exists between disclosure and commercial prejudice towards the Home Office and the current supplier. As such, the Commissioner's decision is that the Home Office was entitled to apply section 43(2) to the withheld information, and he will go on to consider the associated public interest test.

Public interest test

Arguments for disclosure

16. The Home Office acknowledges that there will be a public interest in disclosure to ensure that there is full transparency in its use of public funds, and in particular, to maintain the Home Office's accountability to taxpayers.
17. The Home Office also acknowledges that disclosure of the information would enable the public to assess whether or not it is getting the best value for money in terms of its contracts.

Arguments for maintaining the exemption

18. The Home Office has argued that there is a public interest in Government departments being able to secure contracts that represent value for money and anything that would undermine this is not in the public interest.
19. The Home Office has explained that value for money is best obtained where there is a healthy competitive environment, coupled with protection of the Government's commercial relationships with industry.
20. The Home Office has argued that without the above, companies would be discouraged from dealing with the public sector, fearing disclosure of information that might damage them commercially; or, companies

would withhold information where possible, making the choice of the best contractor more uncertain as it would be based on limited and censored data.

21. The Home Office has explained that disclosure of information provided in the course of a contract is likely to damage the relationship between itself and its service provider, as it would put them at a competitive disadvantage.
22. The Home Office has also argued that the service provider's competitors would have access to information that they would not otherwise be able to view because it is required as part of the contract arrangements.
23. The Home Office has argued that it is important that it is able to minimise the cost to the public purse by having the ability to extract minimum value from the marketplace when it tenders for any services. It goes on to state that were this information made public, then other providers would know the details of the pricing policy of the (Home Office's current) supplier in delivering their solution and this is could impinge upon their business operating model by divulging their commercially sensitive pricing.

Commissioner's Decision

24. The Commissioner acknowledges the complainant's concerns that they only want the costs paid by the tax payer each month. However, if this information were to be revealed it is likely that commercially sensitive information could be disclosed.
25. Whilst the Commissioner acknowledges the complainant's concerns, he is also mindful that government bodies should be able to procure necessary products and services efficiently and effectively.
26. The Commissioner has considered the public interest arguments and accepts that disclosure would help to increase openness and transparency. However, given the level of likelihood of commercial harm that would occur should the information be disclosed, the Commissioner finds that the balance of the public interest favours maintaining section 43(2) of FOIA.
27. Having considered the relevant facts, the Commissioner has concluded that, in this case, the public interest favours maintaining the application of section 43(2).

Right of appeal

28. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

29. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Michael Lea
Team Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF