

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 February 2020

Public Authority: Cabinet Office

Address: 70 Whitehall
London
SW1A 2AS

Decision (including any steps ordered)

1. The complainant requested information about a commercial tender. The Cabinet Office had failed to respond to the request at the date of this notice.
2. The Commissioner's decision is that the Cabinet Office failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the Cabinet Office to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. The Cabinet Office must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 2 August 2019, the complainant wrote to the Crown Commercial Service (part of the Cabinet Office) and requested information in the following terms:

- "1. Please can you provide the number of bids received in RM6160 by lot, eg "In Lot 1 there were xxx bids received. In Lot 2 there were xxx bids received. "*
- 2. Please can you provide details of the successful suppliers and their scores in each of the lots on the new RM6160 framework, ie "Lot 1 Supplier name XXXXX Score xx.x. Lot 1 Supplier name YYYY Score yy.y" etc. On previous framework awards you have provided a list of scores of the successful suppliers but on this occasion you only have successful bidders their own score. As you appear to have awarded many more suppliers than you originally intended it is important for the credibility of the procurement that suppliers can see the scores and also who was in the "extra" places over and above the expected number in each of the lots. As the scores are made up from a number of elements (quality, prices for each of the elements, discounted prices for each of the elements, fixed term contract prices for each line) it is clearly impossible to recreate any individual bidder's pricing from their overall score so it should not be commercially sensitive to divulge this (and indeed it has always been released in the past).*
- 3. Please can you provide details of the median prices for each band for each fee type for each lot, both for day 1 and the discounted rate after 12 weeks, ie "Lot 1 Median Price Band 1 Non-Patient Facing xx.xx/hr, Lot 1 Median Price Band 1 DBS xx.xx/hr, Lot 1 Median Price Band 1 Patient Facing xx.xx/hr" etc. Please can you also provide the median fixed term contract rate per band. This will allow bidders to check their own scores have been calculated correctly. On the last iteration of the framework you provided the average (mean) prices to bidders and so there is precedent for supplying this information without it being commercially sensitive."*
6. The Cabinet Office acknowledged the request on 5 August 2019 but had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 1 November 2019 to complain about the failure, by the Cabinet Office, to respond to the request.
8. In line with her usual practice, the Commissioner contacted the Cabinet Office on 15 November 2019 to highlight the outstanding response. She requested that the Cabinet Office respond to the request within 10

working days. The correspondence was neither acknowledged nor responded to.

9. The complainant contacted the Commissioner on 25 February 2020 to request a decision notice considering the Cabinet Office's compliance with the FOIA.
10. The scope of this notice and the following analysis is to consider whether the Cabinet Office has complied with section 10 of the FOIA.

Reasons for decision

11. Section 1(1) of the FOIA states that:

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.*

12. Section 8(1) of the FOIA states:

In this Act any reference to a "request for information" is a reference to such a request which –

- (a) is in writing,*
- (b) states the name of the applicant and an address for correspondence, and*
- (c) describes the information requested.*

13. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.
14. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"
15. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the Cabinet Office has breached section 10 of the FOIA.

Right of appeal

16. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

17. 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.
18. 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

Phillip Angell
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