



**HM Courts
& Tribunals
Service**

IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 58 OF THE FREEDOM OF INFORMATION ACT 2000

Appeal No: EA/2011/0017

BETWEEN:

HOME OFFICE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER APPROVAL

PURSUANT to Rule 37(1) of the Tribunal Procedure (First-tier) (General Regulatory Chamber) Rules 2009, upon reading the parties' agreed statement dated 28 April 2011:

In accordance with the provisions of the above Rule, the Tribunal approves the consent order in this matter attached hereto.

Signed:

Christopher Ryan

Judge

Dated: 17 May 2011

IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

EA/2011/0017

B E T W E E N:-

HOME OFFICE

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER

PURSUANT to Rule 37(1) of the Tribunal Procedure (First – Tier Tribunal) (General Regulatory Chamber) Rules 2009;

AND UPON the Home Office having now disclosed the overwhelming majority of the information sought by the requestor;

AND UPON the Home Office claiming, and the Information Commissioner accepting, that those parts of the Disputed Information in this appeal which are set out in the annex to this Order are properly exempt from disclosure under sections 31(1)(a) and 43 of the Freedom of Information Act 2000, with the public interest in maintaining those exemptions outweighing that in disclosure of that information

BY CONSENT it is ordered that:-

The Tribunal allows the appeal in part and substitutes the following decision notice in place of that issued by the Information Commissioner dated 20 December 2010.

SUBSTITUTED DECISION NOTICE

For the reasons given above, the substituted decision is that the original decision notice dated 20 December 2010 (reference FS50309445) stands subject to the amendments which are set out in the Schedule attached to this order.

Action required

Within 7 days of this Order being made by the Tribunal, the public authority must disclose to the complainant the information required by the original decision notice dated 20 December 2010, as amended by the Substituted Decision Notice.

Dated this 28th day of April 2011

Signed:
On behalf of the
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Ref: AS/EA/2011/0017

Signed:
On behalf of the Home Office
Treasury Solicitors Department
One Kemble Street
London
WC2B 4TS
Ref: Q110023H/B4/KHA

Reference: EA/2011/0017

SCHEDULE TO CONSENT ORDER

Decision Notice FS50309445 dated 20 December 2010 is amended as follows:

Summary

The second paragraph of this section is deleted and replaced with the following:

“The Commissioner’s decision is that the exemptions at section 23(1) and 24(1) are not engaged. He finds that the exemptions at section 31(1)(a) and 43 are engaged in respect of the information set out in the Annex to this Decision Notice. He further finds that the exemption at section 40(2) is engaged in respect of some of the information as its disclosure would breach the Data Protection Act (the “DPA”). The complaint is therefore substantially upheld.”

Section 31(1) – law enforcement

Paragraph 48 is amended so that the first sentence is deleted and replaced with the following:

“However, turning to the likelihood of this prejudice occurring, with two small exceptions relating to the location of particular sites set out in the Annex to this Decision Notice (see paragraph 49A below), the Commissioner does not accept that the content of the information in question reveals anything which would allow criminal activity to be perpetrated or have an impact on identity-related crime.”

Paragraph 49 is amended so that the first and last sentences are deleted and respectively replaced with the following:

- “The Commissioner concludes that the exemption provided by section 31(1)(a) is not engaged in respect of the majority of the information for which it is cited.”
- “As this conclusion has been reached at this stage it has not been necessary to go on to consider the balance of the public interest in respect of the majority of the information for which it is cited by the public authority.”

A new paragraph 49A is inserted which reads:

“As referred to at paragraph 48 above, the Commissioner concludes that the exemption provided by section 31(1)(a) is engaged in respect of two small pieces of information, as set out in the Annex to this Decision Notice. This information consists of address details for sites in the United Kingdom where details of what is done at those sites are also provided. The Commissioner considers that this information is not available elsewhere and could be used by those intent on infiltrating the system for criminal purposes to target those sites that conduct the most sensitive activities under the agreement. Although there is no guarantee of preventing such targeting, the Commissioner considers that in this particular case, the public interest in reducing the possibility of such an attack on these sites tips the balance so that the public interest in maintaining the exemption outweighs the public interest in disclosure.”

Exemptions at section 43(1) and 43(2) (commercial interests)

Paragraph 78 is amended so that the first sentence is deleted and replaced with the following:

“Initially, the public authority provided the Commissioner with a breakdown of the information which had been withheld under these two exemptions; this was a document that appeared to have been prepared solely by the contractor.”

Paragraph 79 is amended so that the last sentence is deleted and replaced with the following:

“In fact, the public authority did not provide the Commissioner with such a breakdown until after the Commissioner’s decision notice was issued and had been appealed; instead relying solely on a response from the contractor which itself appeared to have been provided at a late stage in the investigation.”

Paragraph 81 is amended so that the last sentence is deleted and replaced with the following:

“Therefore, in the absence of any detailed arguments or explanation from the public authority to identify the exemption applied to each piece of withheld information, the Commissioner was unable to accept that either section 43(1) or 43(2) were engaged.”

A new paragraph 81A is inserted which reads:

“As set out at paragraph 79 above, it was only after the Commissioner’s decision notice had been issued and appealed that the public authority provided the breakdown required. At that stage, the public authority sought to rely on the exemption at section 43 to withhold two parts of schedule 24 of the agreement containing the Baseline Financial Model and the Cost Breakdown Template. In light of the representations now made to him, the

Commissioner concludes that the exemption at section 43 is engaged by this information as it contains details of price calculation under the agreement, the disclosure of which could harm the commercial interests of the public authority. The Commissioner also concludes that the disclosure of this information could prejudice the contractor's commercial interests."

A new paragraph 81B is inserted which reads:

"In light of his finding above, the Commissioner has gone on to consider the balance of public interest. The Commissioner acknowledges that there is strong public interest in knowing that a financial model and costs breakdown template exist which allows the public authority to scrutinise the financial aspects of an outsourcing contract and that there is transparency, for example, in the pricing of modifications to the contract under the change control process. This does not, however, require the disclosure of the detailed model itself, and mindful of the public interest in protecting commercial confidentiality and the Tribunal's findings in *DWP v ICO* (EA/2010/0073), the Commissioner has concluded that the public interest is satisfied by the knowledge that it is part of the contract which has been subject both to independent scrutiny and that the financial aspects of the contract are transparent between the parties so that the public authority can take the necessary steps to ensure that the public is receiving value for money. The Commissioner therefore concludes that the public interest is satisfied by the disclosure already made as to the nature of the model used and that the public interest in maintaining the exemption outweighs the public interest in disclosure in respect of the content of the Financial Model and Costs Breakdown Template."

The document entitled "Annex to Decision Notice" that is attached to this Schedule is incorporated into the Decision Notice as an Annex to it.

Reference: FS50309445

ANNEX TO DECISION NOTICE

Document description	FOI exemption cited	Items to be Withheld
Schedule 6, Annex 1	Section 31(1)(a)	paragraphs 2.2 and 3.2 – the address details of the data centres only
Schedule 14	Section 31(1)(a)	paragraph 2 - the address details of the List X accredited sites only
Schedule 24 Annex 1 the 'Baseline Financial Model'	Section 43	All
Schedule 24 Annex 1 the 'Cost Breakdown Template'	Section 43	All