

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 April 2019

**Public Authority:** Cabinet Office<sup>1</sup>

**Address:** 70 Whitehall  
London  
SW1A 2AS

### Decision (including any steps ordered)

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1. The complainant requested information in a Vehicle Conversion and Reconditioning Services Framework - RM956 managed by the Crown Commercial Service. The public authority disclosed some of the requested information and withheld data under the fields "CustomerName" and "Customer Invoice Date" on the basis of the exemptions at sections 31(1)(a) and 43(2) FOIA.
  2. The Commissioner's decision is that:
    - The public authority was not entitled to rely on the exemption at section 31(1)(a) FOIA.
    - The public authority was not entitled to rely on the exemption at section 43(2) FOIA as the basis for withholding the data under the field "CustomerName."
    - The public authority was entitled to withhold the data under the field "Customer Invoice Date" relying on the exemption at section 43(2) FOIA.
  3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
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<sup>1</sup> The request for information was submitted to the Crown Commercial Service, an executive agency of the Cabinet Office, the public authority in this case.

- Disclose the data under the field "CustomerName."
4. The public authority 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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5. The complainant submitted a request for information to the public authority on 13 April 2018 in the following terms:

"I would like to make a request under the Freedom of Information Act to the Crown Commercial Service regarding the RM956 - Vehicle Conversion and Reconditioning Services Framework.

Please could I access all the MISO submissions made under this framework in a machine readable format (preferably .csv). As an example, similar information to the data we require is already publicly available for GCloud here: <https://digitalmarketplace.blog.gov.uk/s....>

For the avoidance of doubt, we'd like you to provide the following data fields as a minimum:

CustomerName

SupplierName

EvidencedSpend

Customer Invoice Date

If you have additional data fields that can be sent, please provide them.

Thanks to the open data available on expenditure, we already know how much each supplier received from each individual buyer. We're only seeking to know how much the framework contract was used and by which buyers and which suppliers.

Please note, that because we are simply seeking to determine how much spend went through a contract, rather than the details of suppliers arrangements with buyers, we are confident that this is not an issue of commercial confidentiality."

6. The public authority responded on 11 May 2018. It confirmed that it held the requested information. Some of the information, namely, data

on the SupplierName and EvidencedSpend was released to the complainant. The rest of the requested information was withheld on the basis of the exemptions at sections 31(1)(a) and 43(2) FOIA. Furthermore, relying on sections 23(5) and 24(2) FOIA, the public authority neither confirmed nor denied whether it held "any additional information that would meet the terms of [the] request."

7. On 11 May 2018 the complainant requested an internal review of the decision by the public authority to rely on the exemptions at sections 31(1)(a) and 43(2) FOIA.
8. The public authority wrote back to the complainant on 11 June 2018 with details of the outcome of the internal review. The review upheld the decision to rely on the exemptions at sections 31(1)(a) and 43(2) FOIA.

### **Scope of the case**

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9. The complainant originally contacted the Commissioner on 22 June 2018 in order to complain about the public authority's decision to rely on the exemptions at sections 31(1)(a) and 43(2) FOIA.
10. However, further to correspondence from the Commissioner to the complainant on 3 September 2018 setting out the scope of her investigation, the complainant advised that a representative of Spend Network was going to have discussions with the public authority in relation to the request. Given that, the investigation did not commence until 8 November 2018 after the complainant had advised the Commissioner to proceed with her investigation within the parameters originally set out to the complainant in the letter of 3 September.
11. The scope of the Commissioner's investigation therefore was to determine whether the public authority was entitled to rely on the exemptions at sections 31(1)(a) and 43(2) FOIA.
12. For the avoidance of doubt the complainant does not dispute the application of sections 23(5) and 24(2) to the request.

## Reasons for decision

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### Withheld information

13. The public authority provided a copy of the RM956 framework data under the data fields CustomerName, SupplierName, EvidencedSpend and Customer Invoice Date.
14. The withheld information however consists only of the data under the fields "CustomerName" and "Customer Invoice Date."
15. It is worth noting at this stage that the information released to the complainant by the public authority on 11 May 2018 consists of the total spend by supplier. It is not a breakdown of the total spend by supplier as contained in the copy of the RM956 framework data provided to the Commissioner further to her investigation.
16. The complainant has only disputed the decision to withhold the data under the fields "CustomerName" and "Customer Invoice Date."
17. In the complainant's request for an internal review which was submitted to the public authority on 11 May 2018, he specifically challenged that decision in the following terms:

"In response to my request, you provided data on the following two fields: SupplierName [and] EvidencedSpend. However, you did not provide data on the following two fields: CustomerName [and] Customer Invoice Date.

You cited Section 43 on commercial confidentiality for withholding this information, but as public sector bodies publish details of their own spend every month, I believe those details to be already open and so not covered by concerns over commercial confidentiality. In relation to MISO data, the CCS has released data to us on these four fields in relation to other frameworks. While I appreciate that each case must be judged on its merits, I believe this sets a precedent of releasing this information.

You also cited Section 31 to withhold information that you said could identify names and vehicles, but I fail to see how CustomerName, which would only provide the name of a public sector body and not individual, or CustomerInvoiceDate relate to this exemption."

18. The Commissioner has set out the findings of fact above at this stage in order to be absolutely clear about the information that constitutes the 'withheld information' for the purposes of this notice and, the information the complainant has already accepted further to the

disclosure of data held under the fields "SupplierName" and "EvidencedSpend."

### Application of exemptions

#### *Section 31(1)(a) – Law Enforcement*

19. The Commissioner first considered whether the public authority was entitled to rely on the exemption at section 31(1)(a).

20. Section 31(1)(a) states:

"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice the prevention or detection of crime."

### Complainant's submission

21. The complainant has rejected the application of this exemption simply on the basis that he failed to see how the data under the field CustomerName, which would only provide the name of a public sector body and not an individual, or CustomerInvoiceDate relate to the exemption.

### Public authority's submissions

22. The public authority's submissions are summarised below.

23. The Crown Commercial Service's Vehicle Conversion and Reconditioning Services framework (RM956) provides customers across the whole of the public sector with access to specialist companies to modify vehicles from their original format to ones with capability to carry out specialised functions, as well as reconditioning for specific types of vehicle, such as ambulances.

24. There is clearly a need for very specialised vehicles across a wide range of activities that the public sector is responsible for delivering including in the healthcare, law enforcement, fire service and military sectors.

25. There is also a clear need for some of these vehicles to be reconditioned and/or destroyed after their effective use for these activities has expired, in part to prevent parties with criminal or malicious intent from either using or gaining information on the nature of the vehicles and their specialist capabilities.

26. The identification of individual customers could lead to the identification of specific services purchased by individual public bodies which would be of a sensitive nature. Disclosure of the withheld information might seriously jeopardise the trust that some of these customers with more

sensitive requirements have in purchasing these services through the RM956 framework.

27. The nature of the activities undertaken by some of the customers on this framework are extremely sensitive. Revealing a level of detail that could allow someone to accurately infer the level of modification undertaken (or not undertaken) by vehicles used by law enforcement, the emergency services and security services could be very damaging to those services' ability to undertake their duties successfully and safely.
28. With respect to the balance of the public interest, the public authority is of the view that disclosing the withheld information would increase transparency and public understanding of specific customers' commercial activity.
29. The public authority however considers that there is a significant public interest in safeguarding the safety of people travelling and working in the prevention and detection of crime which is vital to protect the public and assist the conviction of those conducting criminal activity.

#### Commissioner's considerations

##### *Is the exemption engaged?*

30. It would appear that the public authority considers only the data under the field CustomerName exempt on the basis of section 31(1)(a). In any event the Commissioner has considered the application of the exemption to the withheld information in full.
31. It is not entirely clear whether the public authority considers that disclosure of the withheld information would **or** would be likely to result in the alleged prejudice. The Commissioner has in any event considered both levels of prejudice – ie – "would" or "would be likely."
32. In order for a prejudice based exemption, such as section 31(1), to be engaged the Commissioner considers that three criteria must be met:
  - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and

- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie, disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not
33. With regard to the first criterion, the Commissioner accepts that the potential prejudice described by the public authority clearly relates to the interests which the exemption contained at section 31(1)(a) is designed to protect.
  34. With regard to the second criterion, the Commissioner accepts that the threat of specialised vehicles being used by malicious actors is clearly a real one. She also accepts that any information in relation to specialised vehicles even in the broadest sense could in theory be useful to malicious actors. As a result the Commissioner accepts that it is plausible to argue that there is a causal link between disclosure of the withheld information and prejudice occurring. Consequently, the Commissioner accepts that any such resultant prejudice is real and of substance.
  35. However, the Commissioner is not persuaded that disclosure of the withheld information would pose a real and significant risk of malicious actors using specialised vehicles for criminal purposes. For the avoidance of doubt, she is also not persuaded that the likelihood of the alleged prejudice occurring as a result of the disclosure of the withheld information is more probable than not. Clearly the activities undertaken by some of the customers on the framework are sensitive. However, that alone is not sufficient to satisfy the test of the likelihood of prejudice to the interests in section 31(1)(a).
  36. The claim that revealing the withheld information could allow someone to accurately infer the level of modification undertaken (or not undertaken) by vehicles used by law enforcement, the emergency services and security services is not supported by any cogent evidence. Clearly some weight should be given to the view that identification of individual customers could lead to the identification of specific services purchased by individual public bodies. However, this is somewhat undermined by the fact that the public authority has released the names of suppliers which would equally be of value to someone interested in identifying the suppliers' customers including public bodies.

37. The Commissioner has therefore concluded that the exemption at section 31(1)(a) is not engaged. In view of that conclusion the Commissioner has not conducted a public interest test further to the provision in section 2(2)(b) FOIA.

*Section 43(2) – prejudice to commercial interests*

38. The Commissioner next considered whether the public authority was entitled to rely on the exemption at section 43(2).

39. Section 43(2) 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).”

Complainant’s submission

40. The complainant’s submissions further to the application of this exemption were set out earlier in this notice. They are summarised here for ease of reference.
41. As public sector bodies publish details of their own spend every month, those details are already open and so not covered by concerns over commercial confidentiality. In relation to MISO data, the CCS has released data on the four fields (CustomerName, SupplierName, EvidencedSpend and Customer Invoice Date) in relation to other frameworks. While each case must be judged on its merits, this sets a precedent for releasing the withheld information.

Public authority’s submissions

42. The public authority’s submissions further to the application of this exemption are summarised below.
43. The exemption has been applied to the withheld information in full. Disclosure of the withheld information would or would be likely to prejudice the commercial interests of both the suppliers on the framework (both those who had been awarded contracts and those who had not) and the Crown Commercial Service (CCS).
44. When the withheld information is combined with other data and/or knowledge on the specific services or goods that a particular supplier offers, then potentially suppliers’ strategies and pricing could be easily identified by competitors. It is not difficult to infer from transactions from a single service or purchase what the unit price being charged for that service is. The release of such information is detrimental to the individual supplier, but more importantly, to ensuring effective value for



money against the public purse. It is a core principle of commercial competition, where suppliers are asked to bid against each other in order to win work that competing suppliers do not know what their competitors are offering so as not to allow them to artificially inflate prices. Allowing this level of detail to be released, as well as breaking the confidences of suppliers, would damage the ability of public authorities to obtain the best price for services.

45. Disclosing the withheld information can also create a potential prejudice and skewing within the market place with customers. Being part of a framework agreement does not guarantee work for a successful supplier, it only confers an acknowledgement from the CCS that a supplier is equally capable of providing a service to the standard required for fulfilling a contract under the framework. Revealing the base unit prices for goods and services could allow a customer to look to place contracts with the cheapest supplier without having an understanding of how those unit prices were arrived at in terms of the quality of services being offered or other factors relevant to suppliers being successful at being included in the framework. This would result in prejudice to the commercial interests of other suppliers in the framework. It could also potentially lead to the focussing of too much work on too few suppliers which could result in those suppliers being stretched beyond effective capacity. This in turn would lead to a diminution of the CCS' ability to encourage competition under the Public Contracts Regulations 2015 and to their achieving the best value for public funds on behalf of government and the wider public sector.
46. Furthermore, suppliers have and continue to utilise extensive sales and marketing resources to identify potential customers and build their own respective commercial pipelines which in turn feed into the strategic CCS commercial pipeline. Disclosing the withheld information would effectively be handing over the CCS commercial pipeline to competing framework suppliers as well as market competitors which would prejudice the CCS' own commercial interests. It would also discourage suppliers and customers from bidding for and using future CCS opportunities if they knew their commercially sensitive data might be used in such a way. This would significantly weaken the breadth of the market that the public sector could choose from ultimately leading to a loss of choice in the marketplace.
47. Whether the public authority has released data of a similar nature in relation to other framework agreements is irrelevant. Each case needs to be reviewed on its own merits. Other framework agreements are often structured differently. For example, some framework agreements set out a base unit cost that the public sector is willing to pay for a service and successful suppliers are those that can deliver a quality service for that price. In this instance, revealing this level of detail is an

inherent part of the initial bidding process and is therefore not of a commercially sensitive nature. Also, the nature and size of contracts may be a deciding factor as is whether those contracts are awarded as one-off (which may not have a significant future impact on further competitions) or as part of an open framework agreement (which do have a much more acute impact).

48. With respect to the balance of the public interest the public authority acknowledged that there is a general public interest in openness and transparency of government's commercial activities which can encourage increased trust in the work of the government and enables accountability in terms of the use of public funds. It additionally recognised the fact that private sector bodies engaging in commercial activities with the public sector must expect some information about those activities to be disclosed in the public interest.
49. The public authority however argued that there is a significant public interest in ensuring value for money in the purchase of services by the public sector and in maintaining the commercial confidences of potential suppliers. Preserving relationships of trust and confidence and the free flow of information between the CCS, suppliers and customers is paramount. Disclosing the withheld information may jeopardise this relationship which is fundamentally important in maintaining for the most effective delivery of public services.

#### Commissioner's considerations

50. Section 43(2) is a prejudice based exemption. As such the three criteria set out earlier with respect to the application of section 31(1)(a) also have to be met in order to successfully engage the exemption.
51. With regard to the first criterion, the Commissioner accepts that the potential prejudice described by the public authority clearly relates to the interest which the exemption contained at section 43(2) is designed to protect.
52. With regard to the second criterion, the Commissioner accepts that the threat of undermining suppliers' pricing strategies and the ability of public authorities to obtain the best price for goods and services is clearly a real one. She also accepts that additional information in relation to the framework could in theory be useful to competitors. As a result the Commissioner accepts that it is plausible to argue that there is a causal link between disclosure of the withheld information and prejudice occurring. Consequently, the Commissioner accepts that any such resultant prejudice is real and of substance.

53. The Commissioner is however not persuaded that the likelihood of prejudice to the commercial interests of suppliers and the CCS as a result of disclosing the withheld information is more probable than not. She is not satisfied that the public authority has discharged the evidential burden in respect of the higher level of prejudice.
54. The Commissioner does not share the view that disclosing the data under the field CustomerName would pose a real and significant risk of prejudice to the commercial interests of suppliers in the framework and to the CCS. She has reached this conclusion because on the key question of whether disclosing the customer names could reveal the unit price of a single service or purchase, she has concluded this would be unlikely. The public authority has not provided evidence of any specific data it considers could be combined with the customer names to reveal the unit price of a single purchase or service.
55. Furthermore, she is not persuaded that revealing the customer names in the framework agreement would place CCS at a significant disadvantage with competing framework suppliers as well as market competitors. It is reasonable to assume that suppliers would have done their research to identify where there is demand in the public sector for their products. It is therefore unclear to the Commissioner how the majority of the public sector customers in the framework would be unknown to suppliers of goods and services purchased by those public sector bodies. Similarly, market competitors are likely to be aware of most of the suppliers of the goods and services that they require.
56. The Commissioner accepts that disclosing the data under the field Customer Invoice Date would pose a real and significant risk of prejudice to the commercial interests of suppliers in the framework and to the CCS. She has reached this conclusion because on the key question of whether disclosing the customer invoice dates could reveal the unit price of a single service or purchase, she has concluded this would be likely. For example, someone with sufficient knowledge of an industry could combine a customer invoice date together with information relating to the estimated unit price of specific goods and services and work out the unit price of a single purchase to a reasonable degree of accuracy.
57. The Commissioner accepts that revealing the unit price of a single purchase of goods or services would undermine suppliers' pricing strategies and also place the CCS at a competitive disadvantage. This would be likely to prejudice the commercial interests of suppliers in the framework and that of the CCS.
58. The Commissioner has therefore concluded that the exemption at section 43(2) is not engaged in respect of the data under the field

CustomerName. In light of that conclusion the Commissioner has not conducted a public interest test further to the provision in section 2(2)(b) FOIA in respect of the application of the exemption to that information.

59. The Commissioner has however concluded that the exemption at section 43(2) is engaged in respect of the data under the field Customer Invoice Date.

*Balance of the public interest*

60. Therefore, in accordance with the test set out in section 2(2)(b) FOIA, the Commissioner has considered whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the data under the field Customer Invoice Date.
61. The Commissioner shares the public authority's view with respect to the public interest in disclosing the withheld information. She is aware that public authorities publish details of expenditure over £25,000. However, it does not generally include a breakdown to a level that would reveal the unit price for single purchases. She does not share the view that disclosure of data in relation to similar fields for other framework agreements is precedent-setting. The Commissioner has given weight to the public authority's explanation as to why information in relation to some frameworks might be disclosed but not in relation to others.
62. The Commissioner also shares the view that there is a significant public interest in ensuring value for money in the purchase of goods and services by the public sector. Maintaining confidences in respect of suppliers' pricing strategies is vital to ensuring that the CCS is able to ensure value for public money.
63. The Commissioner has therefore concluded that on balance, the public interest in maintaining the exemption outweighs the public interest in disclosing the data under the field Customer Invoice Date.

## Right of appeal

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63. 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.hmcts.gsi.gov.uk  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

64. 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.
65. 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 .....**

**Gerrard Tracey**

**Principal Adviser**

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**SK9 5AF**