



Ministry of Defence

HEADQUARTERS AIR COMMAND
Air Command Secretariat

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Royal Air Force
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Buckinghamshire
HP14 4UE

E-mail

Our Ref: 2014/08464

12 January 2015

Dear

Thank you for your email of 19 December 2014 requesting the following information:

"Your response would seem to indicate that the FMARS contract did not go out to tender (a process that I believe may be a legal requirement under European legislation)? Would you be able to confirm this?"

I would argue that a contract, as a whole, is the definition of the relationship between two parties. As such, I was hoping for a more substantive portion of the contract to be released. Would it be possible to be provided with a table of contents? Is there a specific section relating to a Service Level Agreement?"

The relationship between MoD & NATS is not identical to the relationship between NATS and its other customers (hence the FMARS contract). Therefore, would it be possible to be provided with the details of the costs associated with the unique aspects of the relationship of these two entities e.g. the costs of recording and storing radar data for the period specified? As far as I'm aware the CAA regulates (limits) the generic fees that NATS charges its other customers. Which precise services does NATS charge for that require confidentiality that prevent you from releasing financial information in the FMARS contract?"

I am treating your correspondence as a request for information under the Freedom of Information Act 2000 (FOIA).

A search for the information has now been completed within the Ministry of Defence, and I can confirm that some of the information in the scope of your request is held. The table of contents from the FMARS contract is enclosed; you will note that there is no section relating to a Service Level Agreement.

However, some of the information you have requested falls entirely within the scope of the absolute exemption provided for at Section 41 (Information provided in confidence) and the qualified exemption provided for at Section 43 (Commercial Interests) of the FOIA. Section 41(1) of Act has been applied to the information you have requested on costs because release would constitute an actionable breach of confidence, and Section 43(2) has been applied to this information because release would prejudice commercial interests. The information you have requested on costs has therefore been withheld. Section 41 is an absolute exemption and there is therefore no requirement to consider the public interest

in making a decision to withhold the information. As explained in the letter to you from Andrew Tranham (ISS IPP Information Rights Compliance Deputy Head) dated 17 December 2014, the financial information requested reflects the outcome of negotiations that were undertaken under a clear obligation of confidence to NATS and its disclosure against the company's wishes would constitute a breach of confidence on which they could take legal action against the Department.

Finally, under Section 16 of the Act (Advice and Assistance), you may find it helpful to note that the United Kingdom En-Route Licence gives the exclusive rights to NATS until 2031, as the only commercial provider of en-route air traffic services (ATS) within UK airspace; this is enshrined in the Transport Act 2000. For this reason the FMARS contract did not "go out to tender" in the usual sense. However, any Government procurement process, whether it is conducted under single source or competitive arrangements, has a tender phase programmed in; all proposals must be submitted as a formal tender and undergo full evaluation, both technically and commercially.

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, 1st Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.gov.uk>.

Yours sincerely,



Air-DRes Sec 3b1