

By email only:

General enquiries: 020 7271 2492

Fax.
Our Ref. FOI/46/13 &
47/13

foi@attorneygeneral.gsi.gov.uk

25 July 2013

Your FOI Requests: FOI/34/13 & 47/13

I am writing in response to the FOI requests which you sent to this office on 8 March 2013.

We have now completed our assessment of your request and have concluded that some of the information which we hold properly falls to be released. That information is attached to this letter. We have concluded that exemptions under the Freedom of Information Act 2000 ("FOIA") apply to the remainder of the information we hold, and that it does not fall to be released. I have provided further details below.

I acknowledge that it has taken some time to respond to your request. As you will see from the explanation below, a number of qualified exemptions are engaged in respect of the information we hold and it has been necessary to assess a considerable volume of information. It has been necessary to consider the public interest considerations for and against disclosure very carefully, and in order to do so it has been necessary to seek and consider the views of a number of third parties.

Your FOI requests

Your e-mails of 8 March 2013 asked the following:

(1)

"In Sir Alex Allan's report into allegations made against certain senior managers at the Serious Fraud Office, he states at section 1.56 that there was an issue about the renewal of the Sungard IT contract. It was renewed, he says, without following the required procedures; he adds that the SFO Director had apologised to the Attorney General...

Please advise what documents the department holds on the following:

- how the breach of procedures was brought to light
- the reasons for the breach
- the reaction of any other departments upon learning of the contract's renewal/extension
- the peer review of the terms of the extension mentioned in Sir Alex's report at section 1.56
- what action was taken after the breach of procedures came to light - was retrospective approval given and why?
- the form and contents of the SFO director's apology to the Attorney General
- any subsequent action taken as a result of the incident
- how much was Sungard paid by the SFO annually? is the contract still active and if not when did it end?

Please provide these documents, by electronic copy if possible."

(2)

"In Sir Alex Allan's report on allegations made against certain SFO managers, published on the SFO's website on March 4, he states at paragraph 1.31:

There has been considerable discussion with the Attorney General's Office about the way the support provided by PA Consulting and Corven should be treated and reported, particularly under the new Government's requirements for reporting and approval of spending on consulting... Whatever the precise definitions, my view is that the distinction between employing consultants as consultants and as interim managers is a fine one, and the two should be considered together, as was eventually done in answer to a Parliamentary Question about spending with consultancy firms....

I have two requests relating to this particular passage of the report:

1. What documents does the department hold relating to the discussions referred to above between the AGO and SFO about the way payments to PA Consulting and Corven were recorded in 2010 and 2011? Please provide these documents.

2. What documents does the department hold relating to the SFO's response to the parliamentary question about consulting spend? (I believe this was by Ian Austin, MP, in or around November 2010). Was the SFO's response to the question initially

incorrect? Was the figure provided challenged? Please provide any documents relating to this, in particular but not limited to any correspondence involving Christian Bailes.

Please also provide the following information relating to the recording of payments to PA and Corven:

3. The SFO's website, under the link "Exceptions to consultancy spend and Civil Service Recruitment for the Serious Fraud Office", a series of payments of under £20,000 to PA and Corven are listed. When was this put on the SFO's website (please estimate if no exact date can be found)? When were approvals for these payments given, and by whom? Does the department hold documents explaining why these exceptional payments needed to be made?"

We wrote to you on 10 April to inform you that we do hold information falling within the terms of your requests, however we stated that we would need more time to consider your request. We explained that various exemptions (including qualified exemptions) apply to the information that you have requested.

Our letter of 8 May explained that the Attorney General's Office had not yet reached a decision on the balance of the public interest and that we would need more time to complete that assessment. We subsequently wrote to you on various occasions to inform you that we were still considering the public interest balance.

Released Information

We have now completed our assessment of the public interest balance having consulted a number of interested parties. Having undertaken that assessment, we have concluded that some of the information that we hold properly falls to be released. That information is attached to this letter. Where we have decided to withhold information we have, where possible, summarised the substance of the information in a narrative account which is also attached.

We have redacted contact details and have redacted the names of staff who are below the rank of Senior Civil Service (or equivalent). This information is exempt under section 40 (personal information) of the Freedom of Information Act (FOIA), as the information constitutes third party personal data which it would not be fair to disclose. We explain the basis for that further below.

In response to the final paragraph of your second request, the AGO does not know when this information was put on the SFO's website. It has anyway now been removed. The 'Basis for exceptions' at the bottom of the list explained why these payments were treated as exceptions to the consultancy expenditure controls. As you will see from documents that are being released, from the introduction of the expenditure controls, they applied to consultancy contracts over £20k. Expenditure on consultancy under £20k which was allowed to continue was not subject to the controls, though it did need to be reported on to the Office of Government Commerce. This is why the explanation

refers to the '£20,000 threshold'. The AGO does not hold documents explaining these decisions.

Finally, please note that the information we have released reflects only the information held on AGO files.

Withheld Information

We have decided that the remainder of the information which we hold does not fall to be disclosed. We explain the reasons for that below.

The Withheld Information is therefore subject to the following exemptions:

- Section 36(2)(b) and (c)
- Section 40
- Section 42

The exemptions under section 36 and 42 and, for certain purposes, section 40 are qualified exemptions (i.e. they are subject to a public interest test). This means that information falls to be withheld under those exemptions if we are satisfied that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The exemption under section 40 is otherwise an absolute exemption (i.e. it is not subject to a public interest test).

I have set out below a brief explanation of why the exemptions above are engaged and why we have concluded that the public interest in maintaining the relevant exemption outweighs the public interest in disclosing the information. In considering whether to release information, we have considered whether we could disclose the information in redacted form. You will see that some of the information which we have disclosed has been redacted, either for public interest reasons or because parts of disclosed information relate to matters other than those about which you have requested disclosure.

Section 36(2)(b)(i) and (ii) – Free and frank exchange of views and advice

These exemptions apply where disclosure of the information would or would be likely to inhibit the free and frank provision of advice (36(2)(b)(i) or exchange of views (36(2)(b)(ii)). In this case, some of the information we hold comprises communications among officials in the AGO, and communications between officials in the AGO and officials in the SFO and other departments. Those communications were for the purpose of exchanging views on the SFO's breach of the ICT moratorium, or about its consultancy expenditure, and subsequent developments, and advice to the Attorney about how he should respond to these issues, including in answering Mr Ian Austin MP's Parliamentary Question, and in meetings the Attorney had with SFO officials. As such, they are subject to the exemptions under section 36(2)(b)(i) or (ii).

There is an important public interest in officials being able to exchange views and provide advice to Ministers and to other officials in a free and frank manner. In particular, this is important to ensure that decisions are made in the light of properly considered advice which takes account of all of the relevant issues. This is all the more important in relation to a case concerning a matter of significant public concern as is the case here. Disclosure of such communications would be likely to inhibit the ability of officials to exchange views and provide advice on such matters in future. That would in turn have a detrimental effect on decision-making and policy development. That is not in the public interest.

There is also an important public interest in ensuring that the public understand how the government approaches such matters and in promoting transparency in relation to the operation of government departments.

On balance, we have concluded that the enhanced public interest in this case favours the disclosure of a substantial proportion of such information. However in relation to some of the information, we have concluded that the balance of public interest favours withholding the relevant information, on the grounds that it adds insufficient of substance to the narrative of events or to public understanding of the conduct of business to outweigh the public interest in safeguarding the free exchange of communications between officials in support of their advisory functions.

Section 36(2)(c) – Prejudice to the effective conduct of public affairs

This exemption applies where disclosure of the relevant information would or would be likely otherwise to prejudice the effective conduct of public affairs. Some of the information we hold comprises emails between officials of AGO and SFO and other departments in order to gather information to respond to correspondence and brief Ministers, checking the accuracy of data and drafting responses.

There is an important public interest in officials being able to provide full and frank briefing which ensures that Ministers and other relevant officials are kept fully informed of all of the relevant facts. In some cases, such briefing may include sensitive or confidential information. Disclosure of such briefing would inhibit the ability of officials to provide such briefing which would in turn be likely to prejudice the effective conduct of public affairs. That would not be in the public interest.

There is also an important public interest in ensuring that government operates in a transparent and accountable manner.

On balance, we have concluded that the enhanced public interest in this case favours the disclosure of a substantial proportion of such information. However in relation to some of the information, including in particular drafts where the final version has been made public, we have concluded that the balance of public interest favours withholding

the relevant information, on the grounds that it adds insufficient of substance to the narrative of events or to public understanding of the conduct of business to outweigh the public interest in safeguarding the ability of Ministers and officials to receive full and considered briefing and to prepare their public communications as effectively as possible.

Section 40 – Personal Data

Some of the information we hold comprises personal data. We have decided to withhold some of the personal data which we hold. In broad terms we have withheld two categories of data:

- a) Contact details;
- b) The names of individuals who are junior civil servants (or the equivalent);

We have decided that we should withhold the information above in reliance on the exemption under section 40(2) FOIA.

Section 40(2) FOIA provides that information is exempt if the information is the personal data of a person other than the requester and disclosure of the information would breach any of the data protection principles (by virtue of section 40(3) FOIA). We consider that disclosure of this withheld information would breach the First Data Protection principle. That principle requires that data must be processed fairly and lawfully.

In deciding whether disclosure would in all the circumstances be fair and lawful we have necessarily sought and considered the views of those affected. In the light of those consultations and the other factors listed below, we have concluded that we should withhold some of the personal data that we hold on the basis that disclosure of that data would not in all the circumstances be fair. In reaching this conclusion, we have taken account of a range of factors including: the legitimate public interest in knowing about the data, the extent to which disclosure adds to the sum of public understanding of events, the individuals' reasonable expectations of what would happen to their personal data; the seniority of the persons in question (more senior officials should expect their positions to carry a greater level of accountability); and whether disclosure would cause any unnecessary or unjustified damage not warranted by the public interest;

Section 43

Much of the information we hold in relation to the Cabinet Office's consideration of the SFO's request for a retrospective exception for the extension its Sungard contract, the terms of the retrospective approval that was in fact given, and the subsequent peer review, originates from the Cabinet Office. We have therefore consulted Cabinet Office about whether this information should be released.

The Cabinet Office view is that information on the peer review and retrospective action is exempt from release by virtue of under section 43 (2) (commercial interests). Section 43(2) protects information which would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

Section 43 is a qualified exemption and we have considered whether the balance of the public interest favours the release of this material. There is a definite public interest in understanding the United Kingdom's conduct of economic, industrial and commercial policy. There is a general public interest in disclosure of information and a recognition that openness in government may increase public trust in and engagement with the government.

Against these points, we have weighed the public's interest in the sound management of delivery partners by the Government. Disclosure of commercially sensitive information will weaken the government's position in these negotiations, as well as that of the delivery partner and make it harder for both parties to secure a sound financial and contractual basis for the future delivery of programmes. This would not be in the public interest. Taking into account all the circumstances of the case, we have determined that the balance of the public interest favours withholding this particular part of the request for information.

We also consider that the section 43(2) exemption applies to some of the other information we hold that is within the scope of your requests, and that the balance of the public interest does not require it to be released. You will see that we have, however, included a summary of key information from invoices, etc, for relevant consultancy expenditure sent to the AGO by the SFO.

Complaints

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to: Rowena Collins Rice at the above address.

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Yours sincerely,