



Trade Remedies
Authority

Trade Remedies Authority
North Gate House, 4th Floor
21-23 Valpy Street
Reading
RG1 1AF

29 August 2023

Freedom of Information Act Request

Further to your email of 31 July, I have been asked to conduct an internal review of the Trade Remedies Authority's (TRA) response to your Freedom of Information Act (FOIA) request. Full details of the internal review are detailed below, but in summary, I have concluded that some of the information requested can be disclosed. However, the TRA wishes to continue to rely on section 43 and now section 21 of the FOIA in respect of the remaining data.

Timeline

On 16 June you requested the following information:

"Please may you provide me, in Microsoft Excel or an equivalent electronic format, with a list of invoices that were not paid within 30 days for the last 6 financial years which would feed into the Regulation 113 Notice you are required to publish each year as part of your obligations under The Public Contracts Regulations 2015, with the following information for each invoice (where available):

- *The name of the Supplier*
- *Supplier email address*
- *Supplier company registration number*
- *Supplier postal address*
- *Supplier telephone number*
- *Supplier website*
- *The date of the invoice*
- *The invoice reference*
- *The gross value of the Invoice*
- *The date the invoice should have been paid by*
- *The actual payment date of the invoice*
- *The total amount of interest liability due to late payment of the invoice*
- *The total amount of interest paid to the supplier due to late payment of the invoice.*

For the avoidance of doubt we request the data behind payment performance summaries for Regulation 113 Notices, not the summaries themselves.

We expect that this information to be readily available and easily accessible in the electronic format requested given the necessity of source data which must have been required to prepare and produce the Regulation 113 Notice."

On 13 July the TRA responded confirming that it wished to apply section 43 (commercial interests) of the FOIA and withhold the data. Our response was as follows:

"The Trade Remedies Authority (TRA) was established on 1 June 2021 as an arm's length body of the Department for Business and Trade. The TRA does not process invoice payments, these are administered and paid by UKSBS.

I can confirm that UKSBS was able to share some of the information requested with the TRA, but, due to the way UKSBS records supplier details, it has not been possible to provide everything requested.

Having considered the information that is held, the TRA considers it to be exempt under section 43 of the Freedom of Information Act 2000 and is withholding it. Section 43(2) states "Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interest of any person (including the public authority holding it)."

The TRA has considered that disclosing the requested information could have a negative impact on the commercial interests of the TRA. Section 43 is a qualified exemption and requires the public interest test to be considered.

As a public sector body, the TRA accepts and encourages the need to demonstrate openness, transparency, and accountability so the public can understand how public funds are spent and allows for scrutiny.

However, public bodies need to be able to operate competitively, in a market that allows them to achieve best value by being able to negotiate favourable terms for quality services. Disclosing the requested information could impact the TRA's ability to do this and therefore prejudice its commercial interests. This would lead to the TRA having to pay increased costs for products and services and ultimately not achieving best value.

Having considered the public interest, it is the TRA's view that maintaining the exemption outweighs the public interest in disclosing the requested data."

On 31 July you requested the TRA to reconsider its response.

Review

By way of background, the TRA was established on 1st June 2021, as an arm's-length body (ALB) of the Department for Business and Trade (DBT). UK Shared



Trade Remedies Authority

Business Services (UKSBS) is responsible for the administration of centralised billing and invoice payments for DBT, of which the TRA is on the same ledger. UKSBS has confirmed that TRA statistics are included in DBT's prompt payment data currently published on [DIT prompt payment data - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/data-and-data-sets/dit-prompt-payment-data).

To date, the TRA has not independently published this data. This is because clause 11 of the [Regulation 113 of the PCR2015](#) defines "financial year" as the period in respect of which the accounts of the contracting authority are prepared. As a newly formed ALB, the TRA laid its first Annual Report and Accounts (ARA) before Parliament in July 2023. On this occasion the ARA covered a 22-month period.

Now that the TRA's "financial year" has ended it is our intention to independently publish prompt payment data on a regular basis. Therefore, I can confirm that the information you requested, regarding late payments for the period June 2021 to March 2023, which comes under regulation 113(7)(b) of the Public Sector Contracts Regulations is as follows:

- The total amount of interest liability due to late payment of the invoice = £1,717.64
- The total amount of interest paid to the supplier due to late payment of the invoice = £0. All outstanding invoices, of which there were 82, have been paid.

Section 43(2) (Commercial interests)

In respect of your specific request, I have considered the earlier reliance on section 43(2) (commercial interests). I have reviewed the comments you have made for the disclosure of the information and believe the TRA can release some data. The information is being released because it doesn't fall in scope under section 43(2) of the FOIA. The attached spreadsheet gives details of the supplier name and town, invoice number, invoice date, date paid, days to pay and interest liability.

In relation to the invoice amount, I consider this information to be exempt from disclosure under section 43(2) of the FOIA and it is therefore withheld. Section 43(2) is a prejudice-based exemption. So, the test is whether information is exempt if its disclosure would or would be likely to prejudice the commercial interests of any person, including the public authority holding it. In addressing the commercial interests and the prejudice that would be likely to occur, I consider that disclosure of the invoice amount would place the TRA's competitive position at a disadvantage in achieving best value in the purchase of services and it would give the suppliers' competitors a commercial advantage.

The public interest test

Section 43 of the FOIA is a qualified exemption, which means that I must consider whether the public interest in maintaining the exemption is greater than the public interest in disclosing the requested information. In favour of disclosure, the TRA recognises the need for transparency and accountability when conducting its activities. However, this must be balanced against the public interest in allowing the

TRA to protect its commercial interest to be able to procure services at the lowest price available. If suppliers believe precise invoice amounts would be disclosed this may dissuade them from engaging with the TRA procurement process. The information can also be used by competitors to disadvantage the company concerned in a competitive market.

I have given careful consideration to the factors in favour of and against disclosure and agree that disclosure, effectively to the world at large, could negatively affect the TRA's position to achieve best value and harm the suppliers' commercial interests.

Section 21 (information already reasonably accessible)

I believe the supplier email address, telephone number, postal address, website, and company registration number details are reasonably accessible to you by other means. By using the information provided in the spreadsheet, you will be able to undertake an internet search for the additional details. This information is therefore covered by the exemption under section 21 (information reasonably accessible) of the FOIA.

Conclusion

Having reviewed the handling of your Freedom of Information request I uphold the TRA's decision to apply section 43 to the invoice amount. The supplier name and town, in addition to the remaining invoice information and interest liability should have been disclosed and section 43 was incorrectly applied. This is now attached. The TRA was correct to withhold the remaining supplier details although should have done so under section 21 rather than section 43.

Appeals procedure

This concludes the internal review. If you remain dissatisfied with the handling of your request, 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

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Yours sincerely,

Information Rights

Trade Remedies Authority

E: InformationRights@trade.remедies.gov.uk