

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 August 2024

Public Authority: Cabinet Office
Address: 1 Horse Guards Road
London
SW1A 2HG

Decision (including any steps ordered)

1. The complainant has requested information concerning the DOS5/6 RM1043.7 Framework and single supplier procurement process. The Cabinet Office ("CO") provided links to the GOV.UK website where DOS framework information could be located. Its final position is that it does not hold the specific information the complainant has requested.
2. The Commissioner's decision is that the CO has complied with its obligations under section 1(1) of FOIA. On a balance of probabilities, the CO does not hold information falling within the scope of the request and has therefore complied with section 1(1)(a) of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. On 10 October 2023, the complainant wrote to the CO and requested information in the following terms via WhatDoTheyKnow¹:
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¹ [DOS5/6 RM1043.7 framework - Single Supplier Documentation - a Freedom of Information request to Crown Commercial Service - WhatDoTheyKnow](#)

"DOS5/6 RM1043.7 framework is a single supplier procurement process.

I would request clear documentation or meeting minutes which clearly articulate the Single Supplier Procurement process for the RM1043.7 framework.

You can also run a search for the Single Supplier keyword on all the resources."

5. The CO responded on 7 November 2023. It stated that:

"following a search of our paper and electronic records, we have established that the information you requested is held by the Cabinet Office, including the Crown Commercial Service.

DOS 5 was awarded to 3,340 suppliers. The DOS terms and conditions (specifically Framework Schedule 7 (Call-Off Award Procedure); pages 55 to 60 in Digital Outcomes and Specialists 5 Core Terms and Framework Schedules) clearly states that a further competition process is followed. Additional information on Framework Schedule 7 can be found at the following link:

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fmedia%2F5fe339e9d3bf7f0897f24690%2FDOS5-core-terms-framework-schedules.odt&wdOrigin=BROWSELINK>

At the award stage, a call-off contract may be issued to a single supplier. Additional information on this may be found in the above document and in the guidance for DOS 5 hosted on gov.uk available at the following link:

<https://www.gov.uk/guidance/digital-outcomes-and-specialists-buyers-guide#award-a-contract-and-give-feedback-to-unsuccessful-supplier>

6. On 17 November 2023, the complainant requested an internal review as they queried the statement that "At the award stage, a call-off contract may be issued to a single supplier."
7. Following an internal review the CO wrote to the complainant on 20 December 2023. It stated that:

"the original response was factually correct in regards to your original FOI request.

The use of 'may be issued' was used in the original FOI response as the customer has a number of options available to them at the award stage. The customer may decide to award the contract to a

single supplier, they may decide to pause the process or they may decide to stop the procurement process. The award of a contract to a single supplier following a further competition is a standard procurement practice.”

Scope of the case

8. The complainant contacted the Commissioner on 6 January 2024 to complain about the way their request for information had been handled. They believed that the CO had failed to confirm whether a buyer can choose more than one supplier for the DOS framework and was concealing information.
9. The Commissioner considers that the scope of his investigation is to determine if any further information in scope of the request is held.

Reasons for decision

10. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
11. The right of access to information relates only to information which is held in a recorded form at the time a request is received. There is no obligation to create or obtain information, generate answers to questions nor to provide statements, opinions, and explanations, unless these are already held in a recorded form. Nor does the legislation require a public authority to amend or verify the accuracy of the information it holds.
12. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
13. From the information provided, the Commissioner can see that the CO has responded to the complainant's request and provided links to the GOV.UK website where all information on the DOS procurement process (detailed guidance for buyers) is located.
14. Other than state their view that the CO has confirmed that it holds the information but not clarified whether the DOS procurement framework

allows a buyer to award the contract to more than one supplier, and therefore is concealing information, the complainant has not provided any evidence or reasoning that would indicate that this is the case.

15. In its submissions to the Commissioner, the CO stated that it now wished to amend its position, stating that "in the course of considering the complaint, it has become clear that no information is held in scope of the request."
16. The CO explained to the Commissioner that DOS 5 (ID RM1043.7) was a procurement agreement introduced on 20 January 2021 and concluded on 14 June 2023 which was replaced by DOS 6.²
17. Both Crown Commercial Service commercial agreements were multiple supplier agreements which would be awarded to the most suitable and appropriate single supplier who have demonstrated their ability to deliver the necessary requirements following a tender exercise. It would not be split between multiple suppliers. The CO said:

"The reason why no information is held is because the request is predicated on the mistaken assumption that the procurements for DOS 5 and for DOS 6 followed a 'single supplier procurement process'. However, as the Cabinet Office noted in response to the requester (although perhaps not clearly enough) it was not a single supplier process. DOS 5 was awarded to 3,340 suppliers and DOS 6 to 3,624. As we noted further in response to the complainant, a customer/buyer may award a contract to a single supplier because the customer has a number of options available at the award stage.

On the basis that the DOS 5 and DOS 6 procurements did not follow a single supplier procurement process, it follows that the Cabinet Office does not hold information in scope of the request."

18. The CO further confirmed that it had directed the complainant to information on the DOS5 procurement process which explained the decision-making processes following a tender/competition exercise. However, the CO acknowledged that this information should have been clearly articulated as having been provided under section 6 of FOIA and the duty to provide reasonable advice and assistance. Failing to do so may have given rise to a misunderstanding.

² <https://www.crowncommercial.gov.uk/agreements/RM1043.8>

19. The Commissioner recognises that the complainant believes the CO holds further information within the scope of this request. However, he accepts the CO's explanation that it does not hold any information other than what has already been provided.
20. Section 1 of FOIA is a matter of fact on whether information is held or not held on the balance of probabilities. It is not an opinion on whether information should have been held.
21. Having considered the explanations provided by the CO, the Commissioner accepts CO's position that, on the balance of probabilities, it does not hold the specific information requested. As such, the Commissioner is satisfied that CO has complied with section 1(1) of FOIA.

Other matters

22. The Commissioner reminds the CO that when it responds to future requests, it carefully considers what information has been requested to determine whether it holds information within scope of the applicant's request.
23. In this case, the CO's failure to distinguish between information relevant to the request and information it provided by way of help and assistance has only caused confusion.

Right of appeal

24. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
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