

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 20 October 2022

**Public Authority:** The Council of Imperial College of Science,  
Technology and Medicine

**Address:** South Kensington Campus  
London  
SW7 2AZ

#### **Decision (including any steps ordered)**

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1. The complainant has requested details of cleaning subcontractors. The above public authority ("the public authority") disclosed the number of roles, but not the number of staff deployed. It relied on section 43 of FOIA (commercial interests) to withhold the latter number.
2. The Commissioner's decision is that the public authority has failed to demonstrate why section 43 applies and is therefore not entitled to rely on this exemption to withhold information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose, to the complainant, the total number of individual staff.
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 of the Act and may be dealt with as a contempt of court.

#### **Request and response**

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5. On 21 July 2021, the complainant wrote to the public authority and requested information about the number of sub-contracted cleaning roles, broken down by various parts of the public authority's estate. The public authority provided the information on 18 August 2021.

6. The complainant then followed up with a further request on the same day, this time for the number of individual staff involved (bearing in mind that one member of staff could work two shifts at separate buildings). The public authority refused to provide this information, relying on section 43 of FOIA in order to do so – a position it upheld at internal review.

## **Reasons for decision**

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7. The Commissioner considers that the public authority has had a reasonable opportunity to set out why the exemption applies. The following analysis sets out why he considers that this information does not engage section 43.
8. The Commissioner is not satisfied that the information that has been withheld would be of material assistance to potential bidders. Firstly, the public authority's initial response is far from clear that the current contract is likely to be re-tendered at all, let alone that this is likely to occur soon. It seems likely that, by the time any contract is put out to tender, the information in question will be out of date.
9. Secondly, knowing the number of staff employed is likely to be of little use to competitors. It is not clear whether the overall value of the contract is in the public domain or not. If it is in the public domain, a competitor will be able to combine that figure with the information on roles, that the public authority has already disclosed, in order to make a reasonable estimate of the current contractor's hourly rate. This information seems likely to be of far more use to a competitor than headcount and the public authority has not explained what additional harm would be caused by disclosure of the headcount.
10. Finally, the Commissioner also notes that the public authority did not indicate whether the current contractor objected to disclosure – or was even consulted about the request.
11. For these reasons, the Commissioner is not convinced that there is reasonable likelihood of prejudice occurring and therefore the exemption is not engaged.

## Right of appeal

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12. 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](mailto:grc@justice.gov.uk)

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

13. 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.
14. 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 .....**

**Roger Cawthorne**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**