

Internal Review Request (received 18 October 2022) - Reference: DFI/2022-0310

Regarding the Section 43 exemption on the annual spend of the contracts, the information I have requested is an average spend for each supplier annually, not an accurate breakdown of the spend down to per module/licence etc.

I believe that the Organisation should release this information, as I think the commercial sensitivity is reduced due to it not being a complete breakdown of the services. If this information is still unable to be released, please conduct an internal review.

If the exemption for the spend remains valid in your opinion, please treat this as a request for an internal review.

Response (issued 04 November 2022)

You wrote to the Department on 18 October 2022 requesting an internal review of the handling of your Freedom of Information Act 2000 (FOI)/Environmental Information Regulations 2004 (EIR) request for information regarding the Department's Teletrac Navman hosting contract, received in the Department on 23 September 2022. You had received a response to your request on 14 October 2022, from Linda MacHugh, reference DFI/2022-0310.

I have examined the information relating to your request and completed my review. I can now inform you that, having reviewed the handling of your request, the Department did/did not fulfil its obligation under the Freedom of Information Act 2000. I would like to take this opportunity to explain my decision.

As you have complained only in relation to the Department's refusal to disclose information about the annual contract value of the new contract the Department has entered into with Teletrac Navman Ltd., I am focusing on this element of the handling of your request when conducting my internal review.

Your request for information was a follow-up to a previous request (DFI/2022-0028), made in January of this year. In the Department's response to that request, you were informed that the Department's previous GPS vehicle tracking, activity logging and driver performance hosting contract, held by Teletrac Navman Ltd., would expire on 31 July 2022.

I would like to highlight that, in the Department's response to your previous request (DFI/2022-0028), you were informed both that a number of annual contract values for DfI's Hosting Contracts were being withheld under the s43(2) exemption. You were also told, in

the case of the then Teletrac Navman contract, that the “contract costs combines hosting, support & maintenance as a single annual cost” and that the Department was unable to disaggregate hosting costs on their own”.

In your request of 23 September 2022, you were seeking the same information for any replacement contract that the Department had agreed. The response provided, by the Department addressed your questions, but withheld the annual contract value under the s43 exemption allowed by the Freedom of Information Act 2000.

In the Department’s response you were informed that:

In this case some of the information you requested includes pricing details relating to a recent competition. Disclosure of this information would prejudice the commercial interests of the companies who tendered, by placing commercial information in the public domain that they would have expected to remain private...

Disclosure would clearly allow the public, in particular economic competitors, to identify commercial rates/costs for carrying out these activities. This would have the effect of creating a competitive advantage for competitors and would clearly have an adverse effect on the commercial position of the Department for Infrastructure in future similar competitions.

It would compromise future competitive tendering for these services, and would prevent the Department achieving the best value for money for the public purse. There is a stronger public interest in protecting the integrity of the market and the commercial interests of both the companies involved and the Department, than the public interest in disclosure.

In your request for an internal review you advised that you were seeking “an average spend for each supplier annually, not an accurate breakdown of the spend down to per module/licence, etc.” and that you felt any “commercial sensitivity is reduced due to it not being a complete breakdown of the services”.

I believe that it is worth stressing that, in relation to the services provided to the Department by Teletrac Navman Ltd., under a contract beginning no earlier than 01 August of this year, there is no possibility of providing an average figure for the annual cost of the contract.

In deciding to withhold the requested information about annual value for the Department’s contract with Teletrac Navman Ltd., the decision was based upon the fact that the Department had published details of its fleet, following disclosure in response to DFI/2022-0234. The Department’s view was that, with the number of Dfl vehicles known, disclosure of

the annual value of its contract with Teletrac Navman Ltd. would make that company's current rate per unit for the contract easy to identify.

In this circumstance, the decision to withhold was based upon the harm that disclosure would cause to the legitimate economic interests of Teletrac Navman Ltd., protecting sensitive commercial information that meets the Common Law's requirements to be deemed confidential, as well as the Department's own, when dealing with future tender competitions.

I have considered the arguments for and against disclosure, conducting another test of the public interest in this case and I am satisfied that, given the information already in the public domain and the timing of your request, it is not in the public interest to place the annual cost of the contract into the public domain.

I hope you find this helpful.