



Isle of Man
Government

Reilys Ellan Vannin

Department of Health and Social Care

Rheynn Slaynt as Kiarail y Theay

###

Interim Chief Officer: Stuart Quayle
Freedom of Information Team
First Floor Belgravia House
Circular Road
Douglas
Isle of Man
IM1 1AE

Our ref: 3058945

10 May 2023

Dear ###

We write further to your request which was received 12 April 2023 and which states:

"I wish to request DHSC to release the Expol/Riela Terms of Reference and the Contract of Engagement referred to in the Expol Report regarding alleged "concocted documents" produced by HMAG/DHSC to the EET in the Ranson v DHSC case. Furthermore, please also disclose all communications made between DHSC/HMAG officials and Expol leading up to their appointment to the extent that any such communications are not subject to legal privilege. The purpose is to fully understand the basis of appointment and the scope of the "independent investigation" including any limitations. In particular, I am keen to learn whether references are made to Magson or Malone given that Expol failed to interview or cross check the available evidence from either key protagonist."

Our response to your request is as follows:

As per our communication dated 9 May 2023 informing you that the Department of Health and Social Care (the 'Department') is considering application of a qualified exemption under the Freedom of Information Act 2015 and that the Department would provide disclosure on or before the 19 May 2023. Please find attached correspondence documents, the Terms of Reference and Statement of Work (contract in respect of services) as disclosure to your request for information held by the Department. Please note that some redactions have been applied and the reason for these, in accordance with the Freedom of Information Act 2015, are detailed below and marked accordingly on the documents.

Section 25(2) – Absolutely Exempt Personal Information

While our aim is to provide information whenever possible, in this instance we are unable to provide some of the information you have requested because it is absolutely exempt under section 25 of the Act (absolutely exempt personal information). The reasons why that exemption applies are that the Department is satisfied that the information amounts to personal data of which you are not the data subject and that disclosure of the information would contravene one of the data protection principles as set out at Article 5 of the General Data Protection Regulation as it applies in the Isle of

Man pursuant to the Data Protection (Application of GDPR) Order 2018, namely that the Department can only disclose the information where it would be fair, lawful and meet one of the conditions for lawful processing in Article 6 and in this case, none of those conditions have been met.

Article 4(1) of the Data Protection (Application of GDPR) Order 2018 defines personal data as any information relating to an identified or identifiable natural person (data subject); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

It is noted that information about an employee's actions or decisions in carrying out their job is their personal data. However, given the need for accountability and transparency, and in this particular case, I have determined that there will be an expectation of disclosure of limited personal data, therefore names of Isle of Man Government Officers of the grade Higher Executive Officer and above are disclosed.

Section 30(2)(b) – Commercial Interests

This qualified exemption is prejudice based meaning that the Department must establish the likelihood of prejudice or harm being caused as a consequence of disclosure. If the Department are satisfied that the disclosure of information would, or would be likely, to cause prejudice or harm then the Department must carry out a public interest test to establish that the public interest in withholding the information is equal to or greater than the public interest in disclosing the information.

Reasoning explained:

The documentation contains information relating to standard and specific terms for cost of services provided by the companies involved.

In consideration of engaging the Section 30(2)(b) Commercial interests exemption, the following prejudice was established:

- rates charged are commercially sensitive information
- disclosure would prejudice the commercial interests of directors and employees
- it would directly affect their ability to participate competitively in a commercial activity, namely the ongoing sale of services for the purposes of revenue generation within a competitive environment

Having identified that prejudice would apply, the Department must consider the public interest in disclosure. The public interest must be something that is of serious concern and benefit to the public at large.

Section 30(2)(b) Commercial interests – Public Interest Test	
Factors in favour of disclosure	Factors in favour of maintaining the exemption
Legitimate public interest in financial management	The need to protect the commercial interests of the private sector, which plays an important role in the general health of the economy
Accountability for the spending of public funds	Trust and relationships would be damaged by disclosure and reduce the likelihood of information being made available in the future
The need to hold public authorities to account for their stewardship of public resources	Potential reduction of supply to Government if suppliers believe their confidential information will be released harming their commercial interests
Ensuring that public money is being used effectively and the Department is receiving value for money when purchasing services	The value to the public of knowing the charging rates of a supplier when the overall costs have been disclosed in total previously (£68,143.75)
Business can respond better to public sector opportunities	The preference of the parties whose information is subject to this decision
Showing the process of how the supplier arrived at the cost	

Having considered the balance of public interest in disclosing information relating to standard and specific terms for cost of services, I am satisfied that it is in the public interest to uphold the application of Section 30(2)(b) Commercial interests as the factors in favour of maintaining the exemption outweigh the factors in favour of disclosing the information.

Please quote the reference number 3058945 in any future communications.

Your right to request a review

If you are unhappy with this response to your freedom of information request, you may ask us to carry out an internal review of the response, by completing a complaint form and submitting it electronically or by delivery/post.

An electronic version of our complaint form can be found by going to our website at <https://services.gov.im/freedom-of-information/Review> if you would like a paper version of our complaint form to be sent to you by post, please contact me and I will be happy to arrange for this. Your review request should explain why you are dissatisfied with this response, and should be made as soon as practicable. We will respond as soon as the review has been concluded.

If you are not satisfied with the result of the review, you then have the right to appeal to the Information Commissioner for a decision on;

1. Whether we have responded to your request for information in accordance with Part 2 of the Freedom of Information Act 2015; or
2. Whether we are justified in refusing to give you the information requested.

In response to an application for review, the Information Commissioner may, at any time, attempt to resolve a matter by negotiation, conciliation, mediation or another form of alternative dispute resolution and will have regard to any outcome of this in making any subsequent decision. More detailed information on your right to a review can be found on the Information Commissioner's website at www.inforights.im further information about freedom of information requests can be found at www.gov.im/foi

Should you have any queries concerning this letter, please do not hesitate to contact me. I will now close your request as of this date.

###