



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2009-03567

Keyword: Finance

Subject: AGENCY STAFF - HISTORICAL ENQUIRIES TEAM

Request and Answer:

This is further to the PSNI's response to you regarding this request that was forwarded on December 12, 2009. In that response questions 2, 4, 5 and 6 of your request were answered in full. On the same date an extension to the 20 working day time limit was applied in relation to questions 1 and 3 so that a Public Interest Test could be carried out.

Your request for information and the balance of the public interest has now been considered and the decision has been taken not to supply the information you have requested in questions 1 and 3.

Question 1

How much money has Grafton Recruitment been paid during the period 2005 - 2010 for providing temporary agency staff?

Answer

Refused. See below

Question 3

If yes, what is that percentage? (This relates to question 2 which was addressed in our previous 'interim' response. Question 2 asked "Does Grafton Recruitment charge the HET a percentage of the agency staff's salary (for passing on the staff member)? The answer was "yes").

Answer

Refused. See below

Section 17 of the Freedom of Information Act 2000 requires the Police Service of Northern Ireland, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which:

- (a) states that fact,
- (b) specifies the exemption in question and
- (c) states (if not otherwise apparent) why the exemption applies.

The exemption/s, as well as the factors the Department considered when deciding where the public interest lies, are listed below:

Section 43(2) Commercial Interests

Section 41(1) Information Provided in Confidence

It is noted that the total costs for agency staff has already been provided in response to a previous request, F-2009-02978. To provide the information requested in question 1 would in effect reveal Grafton's profit margins.

Harm Test

Pricing models are generally uniform amongst recruitment providers and therefore it would be readily apparent to Grafton's competitors how their pricing model was applied. As Grafton's contractual margins are not in the public domain the release of such information would prejudice Grafton ESP's position in bidding for other contracts.

Given that a tendering process for the contract may be imminent, the timing of the release of the information would prejudice the ability of Grafton ESP to participate in the new process as their competitors will be able to make submissions in the knowledge of how the tender was won on the last occasion.

The pricing information was provided on a confidential basis.

I will explain why each exemption applies separately.

Section 43(2) Commercial Interests

A commercial interest relates to a person's ability to participate competitively in a commercial activity, ie, the purchase and sale of goods or services.

In order to decide whether or not disclosure could prejudice commercial interests it is necessary to identify;

- The interests themselves and how disclosure might prejudice them, and
- Whose interests they are.

Grafton ESP have indicated that details of their profit margins/percentages are market sensitive information, which if released into the public domain would be useful to its competitors in terms of future competitive tender bids, not only for PSNI contracts but also for other Public Sector contracts. They reiterate that pricing models are generally uniform across recruitment providers, therefore increasing the sensitivity of details of the margin/percentage. In other words this information could be used by Grafton's competitors to undercut them in future tender processes, as stated for PSNI and other contracts. This would prejudice Grafton's commercial interests in two ways;

- They would have to adjust any future bids in anticipation of being under-cut by competitors
- They may not be awarded future contracts as a result of being under-cut directly as a result of release of this information.

Section 43 is a qualified exemption so therefore, once engaged, a Public Interest Test must be carried out.

Public Interest Test

For Release

Release of this information would further the understanding of, and participation in the debate surrounding the PSNI and HET's use of temporary staff and the contract with Grafton ESP in particular.

Accountability and transparency in the spending of public money would be facilitated particularly

given the substantial value attached to this contract.

For Retention

Disclosure would make it less likely that companies or individuals would wish to provide the PSNI or other Public Authorities with any commercially sensitive information in the future therefore making procurement processes more difficult and potentially putting off potential bidders. The outcome of this would be likely to increase tender amounts and consequently the cost to public funds.

There is a clear public interest in ensuring the PSNI is able to provide quality investigative policing and support services and value for money in respect of its use of public money. Both of these objectives will be threatened if a presumption is created in favour of the general disclosure of more detailed information than currently published, relating public sector contracts.

The general public interest in the transparency and accountability of the PSNI in respect of its use of public funds is catered for by public accounts and audit systems already in place and by routine release of information on public sector contracts at a higher level.

Section 41(1) Information Provided in Confidence

There are two components to this exemption;

- The information must have been obtained by the public authority from another person.
- Disclosure of the information would give rise to an actionable breach of confidence.

The requested information forms part of the contract under which Grafton ESP provide temporary staff to the PSNI. (Temporary staff are also provided to HET under this same contract).

I refer to [ICO advice](#) that, there may be circumstances where information contained in the contract is obtained by the public authority from the other party as part of the contractual process. I have also referred to the Information Tribunal Decision [EA/2006/0014](#); 11 December 2006 and ICO Decision Notice [FER0079969](#), both of which contain advice that commercial information obtained in the course of a tendering/contractual process may be regarded as obtained under an obligation of confidence.

I have also considered whether the requested information has the necessary quality of confidence. There are two key elements to this:

- The information need not be highly sensitive, nor can it be trivial.
- The information must not be readily available by other means.

I have already commented upon the sensitivity of the requested information and I would again refer to Decision Notice, [FER0079969](#) in which the Commissioner accepted that a similar type of information was not trivial. I have also carried out searches and have established as far as possible that the information is not available by other means. I am satisfied therefore that the elements of the exemption are satisfied, and that the exemption is engaged.

Section 41 is an absolute exemption so therefore no Public Interest Test is required under the Act.

Decision

Although there is a strong interest in understanding the way in which public money is spent it is not clear that disclosure in this case would be of significant benefit to the public. In order for information of this nature to be of great value to the public they would require access to information about the profit margins of other employment agencies that provide temporary staff to other police forces or other public authorities. Even then it is the total cost that would be a more significant factor, and not the profit margins. As stated the total cost has already been provided in this case as per general policies in relation to public sector procurement. Without information about other employment agencies profit margins, the requested information is of no value to the public as a whole; however it would have a particular value within the industry potentially exposing the Grafton ESP to commercial prejudice as identified above. The prejudice to the Grafton ESP's commercial interests and the maintenance of confidentiality are significant factors in favour of maintaining both exemptions.

This should be regarded as a refusal notice in relation to questions 1 and 3 of this request.

If you have any queries regarding your request or the decision please do not hesitate to contact me on 028 9070 0164. When contacting the Freedom of Information Team, please quote the reference number listed at the beginning of this letter.

If you are dissatisfied in any way with the handling of your request, you have the right to request a review. You should do this as soon as possible, or in any case within two months of the date of issue of this letter. In the event that you require a review to be undertaken, you can do so by writing to the Head of Freedom of Information, PSNI Headquarters, 65 Knock Road, Belfast, BT5 6LE or by emailing foi@psni.pnn.police.uk.

If following an internal review, carried out by an independent decision maker, you were to remain dissatisfied in any way with the handling of the request you may make a complaint, under Section 50 of the Freedom of Information Act, to the Information Commissioner's Office and ask that they investigate whether the PSNI has complied with the terms of the Freedom of Information Act. You can write to the Information Commissioner at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. In most circumstances the Information Commissioner will not investigate a complaint unless an internal review procedure has been carried out, however the Commissioner has the option to investigate the matter at his discretion.

Please be advised that PSNI replies under Freedom of Information may be released into the public domain via our website @ www.psnipolice.uk

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.