

Internal review of response to request under the Freedom of Information (Fol) Act 2000 by David Moss (reference 13728)

**Responding Unit: Identity and Passport Service (IPS)**

**Chronology**

Original Fol request:	6 January 2010
Acknowledgement:	13 January 2010
Public interest test extension:	12 February 2010
Further public interest test extension:	3 March 2010
E-mail from Mr Moss:	4 March 2010
IPS' response:	17 March 2010
Request for internal review:	3 April 2010 (although not received by Information Access Team until 20 April 2010)

**Subject of request**

1. Mr Moss submitted a request under the Freedom of Information Act 2000 ("the Act") for:  
"A copy of the detailed report of the competitive trials developed and run by IBM so that the public can assess for themselves the reliability of the technology."

**The response by the Identity & Passport Service**

2. IPS withheld the report under exemptions contained within sections 43(2) relating to commercial interests, 41(1) relating to information provided in confidence and 31(1)(a) and (e) of the Act relating to the prevention or detection of crime and the operation of the immigration controls respectively.

**Request for an internal review**

3. Mr Moss submitted a letter by e-mail requesting an internal review of IPS' decision to withhold the IBM report. Mr Moss' request in full is at Annex A.

## **Procedural issues**

4. Mr Moss' initial request for information was received on 6 January to which IPS provided its substantive response on 17 March. Section 10(1) of the Act sets out the time for compliance with a request which is 20 working days following the date of receipt. There are however exceptions to compliance with this time limit, one of which is where qualified exemptions are being considered for which the public interest test is being deliberated.
5. IPS wrote to Mr Moss on 12 February and 3 March advising him that qualified exemptions were being still being considered. Notwithstanding IPS having written to Mr Moss in these terms, the Act requires an authority to write to the applicant before the end of the initial 20 working day time limit. By failing to write to Mr Moss by 2 February, there has been a procedural breach of section 10(3) of the Act.
6. In their letter of 3 March, IPS indicated that one of the qualified exemptions they were considering was section 41(1) relating to information provided in confidence. This is in fact an absolute exemption which does not require a public interest test to be undertaken.

## **Consideration of the response**

7. I have considered the original IPS response.
8. As explained in letters from IPS to Mr Moss on 12 February and 3 March, although the Act carries a presumption in favour of disclosure, it provides exemptions which may be used to withhold information in specified circumstances. These exemptions are known as qualified exemptions. When considering these exemptions, the public interest test is used to balance the public interest in disclosure against the public interest in favour of withholding the information.
9. The public interest is not the same as what interests the public. In carrying out a public interest test we consider the greater good or benefit to the community as a whole if the information is released or not. The 'right to know' must be balanced against the need to enable effective government and to serve the best interests of the public.
10. In respect of the exemptions under sections 31(1)(a) and (e), IPS acknowledged that there was a general public interest in knowing how resources will be deployed to protect the country's borders by countering any threats to UK citizens, and the measures in place to aid the prevention and detention of crime. IPS submitted that balanced against this was that disclosure of the information could undermine the National Identity Service's role in verifying the identity of individuals and therefore affect its ability to prevent identity related crime and also affect the integrity of border controls.

11. I concur with the arguments put forward by IPS and conclude that the balance of the public interest test lies in maintaining the exemption and withholding the information.
12. In respect of the exemption under section 43(2), IPS submitted that while there was a general public interest in openness about the way in which public money is spent and the performance results of government systems, there was a need to consider the commercial prejudice, not only to the private contractor but also to the public authority, in respect of future contract negotiations should the information be released.
13. I concur with the arguments advanced by IPS and conclude that the balance of the public interest test lies in maintaining the exemption and withholding the information.
14. In respect of section 41(1), the information in the IBM report was provided prior to IPS' determination of both the successful and unsuccessful contract bidders. Disclosure of the report would likely result in an action against IPS for a breach of confidence under which the information was originally provided.
15. In his letter of 3 April, as well as requesting an internal review of his request, Mr Moss also raises other points. IPS are aware of the issues raised I understand will be dealing with these separately.

**Advice and assistance** (*if applicable*)

16. Not applicable.

**Conclusion**

17. IPS complied with section 1(1)(a) of the Act by informing Mr Moss that they held the information requested. IPS also complied with section 17(1) by advising Mr Moss what exemptions applied to his request and why. IPS failed however to comply with section 10(3) by not writing to Mr Moss before the expiry of the initial 20 working day time limit to advise him that the public interest test was being considered in respect of qualified exemptions.
18. In conclusion, having considered the evidence and the public interest test arguments I concur with the IPS decision to withhold the information having correctly applied the exemptions within the Act.

**Information Access Team**  
**Home Office**  
**17 June 2010**