

B E T W E E N:-

DAVID MOSS

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

-and-

THE HOME OFFICE

Second Respondent

WITNESS STATEMENT OF JACKIE KEANE

I, Jackie Keane, of the United Kingdom Border Agency, 1st Floor Allington Towers, London, SW1E 5EB, **STATE AS FOLLOWS: -**

1. I have been a member of the senior civil service since May 2010. I am currently the Programme Director of the Immigration & Asylum Biometric System (IABS), a position I have held since May 2010.
2. As Programme Director I am responsible for leading and directing the IABS programme team with overall responsibility for delivery of the programme in accordance with its mandate. Importantly, I am also responsible for overseeing the work undertaken by contractors such as IBM and maintaining an effective, working relationship with them.
3. The contents of this witness statement are true to the best of my knowledge, information and belief. Where appropriate I indicate which statements are

made from my own knowledge and which are matters of information and belief. The purpose of this statement is to help the Tribunal to understand the context in which the Home Office has withheld the requested information from disclosure on the basis that it is information subject to an obligation of confidence.

Background to the Biometric Programme

4. The Identity Cards Act 2006 (c. 15) provided for National Identity Cards, a personal identification document and European Union travel document, linked to a database known as the National Identity Register (NIR). The Identity and Passport Service (IPS), which was formerly the UK Passport Service, retained responsibility for issuing passports but was also given ownership of the National Identity Scheme (NIS).
5. In 2007 IPS issued in the Official Journal of the European Union (OJEU) a public notice to companies to join a "Strategic Supplier Group" (SSG) and to ultimately bid for individual programmes delivering the NIS.
6. In 2008 five suppliers signed the NIS SSG Framework Agreement, one of whom was IBM.
7. One element of the NIS included what was then referred to as the National Biometric Identity Service (NBIS) and has now become the Immigration and Asylum Biometric System (IABS).
8. UKBA and IPS Agencies (under the Home Office umbrella) undertook a joint delivery programme that met the needs of both the NIS and UKBA. The UKBA biometric solution was reaching capacity. IBM won the contract for the provision of this system.
9. As a result of the current Government's decision in May 2010 to disband the NIS, the IABS contract was revised in conjunction with IBM in August 2010 to deliver, exclusively, the biometric capability required by UK Border Agency.

NBIS Bid Process

10. As part of the NBIS tender process, IPS had stipulated that bidders needed to demonstrate the ability to fulfil and comply with service level agreements identifying the requirements of the biometric systems.
11. As part of this tender process IBM proposed to IPS, in support of their bid, to undertake an evaluation of biometric specialist suppliers so they could effectively evaluate whom they wished to partner with in their overall bid and prove to IPS that they could meet the facial and fingerprint matching requirements prescribed by the NIS.
12. The method of testing undertaken by IBM was not imposed or required by IPS. However, the value in IBM's approach and methodology was apparent: it provided a pre-contractual stress-test of the biometric capability likely to be provided by the selected vendor. Therefore whilst the testing was independently undertaken by IBM, IPS facilitated this by the provision of anonymised data. IBM decided to build confidence in its solution by undertaking a real test with additional extrapolation rather than just a paper-based exercise.
13. Due to the sensitivity of such testing, a number of stringent controls were established ensuring official Security Accreditation of the test site and secure transfer of data. Security protocols were agreed between IPS and IBM setting out data handling.
14. Authorisation for the testing was obtained from the then IPS Director of Security and Integrity and the then Information Asset Owners. Moreover, the Information Commissioner's Office was consulted and an indication was given that the Commissioner was satisfied with the safeguards and that the exercise was compliant with the DPA, and that data handling risks had been mitigated.

The Biometric Evaluation and the IBM Report

15. IBM provided IPS with a report setting out IBM's approach and the findings arising from their tests ('the IBM Report'). This is the withheld information.

16. The IBM Report, in generic terms, provides a relative assessment of the performance of the different suppliers (including, for example, Sagem (now Morpho), who ultimately secured the sub-contract) against the NIS's service levels and the UKBA data set. It includes:
 - The engineering activity needed to set up the trial.
 - On the basis that the trial was a 'rapid test' of a new configuration, some known engineering compromises that were made in order to process the data.
 - Details of the setting up of the trials and discussion of the results.
17. The report gave an assessment and ranking of the suppliers' performance under certain conditions; with specific data; and known constraints etc. The results are highly contextual.
18. IPS, UKBA and others provided with the IBM Report in the Home Office treated the Report as the property of IBM, knew it to be their property and that it was provided subject to an understanding of confidentiality. This is discussed further below.
19. It is correct to say that the IBM Report contributed to the selection of IBM as the preferred supplier; however, the report was not the determining factor. The overall decision was made on a balance of factors to decide which of the two offers was the most economically attractive and reliable tender with reference to the requirements.

The Procurement Process

20. The NIS Framework and NBIS Procurement Process went through the then recommended Government procurement assurance process such as OGC Gateway reviews¹.

¹ The Office of Government Commerce (OGC) is an independent office of HM Treasury, established to help Government deliver best value from its spending. The OGC works with central Government departments and other public sector organisations. OGC provides policy standards and guidance on best practice in procurement, projects and estate management, and monitors and challenges Departments' performance against these standards, grounded in an evidence base of information and assurance. It promotes and fosters collaborative procurement across the public sector to deliver better value for money and better public services; and it provides innovative ways to develop Government's commercial and procurement capability, including leadership of the Government Procurement Service.

21. In addition, there was a separate Procurement Advisory Group comprised of procurement specialists from inside and outside the Home Office who reviewed the commercial suitability of the Framework terms.

Expectation of confidentiality

22. As set-out above, IPS was aware that IBM were undertaking the testing exercise described in paragraph 11 above in order, first, to determine who they would select as a preferred biometric sub-contractor if they themselves were successful in their bid; and second, to provide data to IPS to demonstrate that IBM could meet the requirements including the service levels stipulated.
23. It was an exercise undertaken by IBM and wholly developed, run and owned by IBM. IPS did not have engagement with the 3rd party suppliers and it was known by IPS that the data within the report remained the property of IBM.
24. The Home Office recognised at the time, and maintains the view, that it is not open to the Home Office to waive those expectations of confidence and disclose the IBM Report. Not least, within both the NIS SSG Framework Agreement and the NBIS Service Agreement there are confidentiality provisions which although recognising IPS' obligations under the Freedom of Information Act otherwise confirm an obligation of confidence in respect of the provider. Relevant clauses reproduced in Exhibit JK1/p1-28 to this statement.
25. The NIS SSG Framework Agreement and the NBIS Service Agreement have been published and are available on the IPS website (<http://www.homeoffice.gov.uk/publications/agencies-public-bodies/ips/foi-disclosure-log/ssg-framework/?view=Standard&pubID=855470>).
26. It is vitally important to the success of public procurement exercises that suppliers are as open as possible about their capabilities, including the capabilities of potential sub-contractors. If suppliers believe that they must hold back information, for example because of concerns regarding the commercial harm flowing from later disclosure, then incomplete information will be available to the public authority and procurement processes will be less effective.

27. If IBM had felt unable to disclose the IBM Report to IPS for fear of disclosure of its contents under FOIA that would, in my view, have limited the ability of IPS properly to assess the capabilities of IBM (and other bidders) and would have made it less certain whether they could have met the terms of the Service Level agreements.
28. Similarly, if disclosure was ordered in respect of the IBM Report there is a real risk in my view that contractors are likely to be more reticent to provide sensitive but vital commercial information as part of procurement processes for fear of future disclosure.
29. Finally, it is important for the Tribunal to note that much of this has been explained in detail to the requester, Mr Moss, in a round-table meeting arranged at his convenience on 23 February 2010, in response to multiple requests by him for information relating to NIS. IPS have sought where possible to comply with Mr Moss' requests and sought to meet with him to provide those details they could without breaching the integrity of the procurement process and the confidentiality obligations described in paragraph 24. The note of the meeting is attached at Exhibit JK1/p29-33.

The contents of this statement are true and accurate to the best of my belief and knowledge.

Signed:

Jackie Keane

Dated:

20/7/2011.