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Our reference: IR 004

Mr Paul Gregg



Date: 16th December 2005

Dear Mr Gregg

Freedom of Information Act 2000

I refer to your letter of 9th November 2005, received by the Department on 18th November, in which you request a review of the decision to withhold the following information:

1. Copy of the contract awarded to BT and any subcontractors; and
2. Penalties and remedies for failure to meet the contracted deadlines.

I have now completed a review of the Department's processes and decision reached in handling your initial request and, taking account of all the circumstances of the case, has decided to release the document with some redactions. The reasons for this decision are set out below.

Having reviewed the content of the contract, I have come to the conclusion that the majority of the contract can be released. However there are several sections of the contract that I consider are exempt under s41(1)(b) of the Freedom of Information (FOI) Act where release of this information would constitute an actionable breach of confidence. As you may be aware s41 is an absolute exemption.

The Department signed a confidentiality clause with BT as part of the contract (see section 21 in the contract) and has an express duty of confidence to keep the sections that had been redacted confidential. The circumstances in which the information was obtained implied that the Department would keep the information confidential. Disclosure of this information by the Department would constitute an actionable breach of confidence. I have listed these sections in Annex A

The decision letter issued to you on the 2nd November stated that the 'release of certain parts of the contract would be likely to prejudice BT's commercial interests and are therefore also exempt under s43 of the Act'. I have reviewed the use of this exemption and have come to the decision that there are grounds for its use in these circumstances.

I have listed these sections in Annex A.

This exemption is subject to the Public Interest Test. I have attached a copy of the Department's Public Interest Test in Annex B.


Finally, I will respond to two specific points you have raised in your letter of 9th November 2005.

1. In the letter you asked for a copy of the contract awarded to BT and any subcontractors. The Department has not awarded any contracts to subcontractors and is not aware of any contracts awarded by BT to any subcontractors.

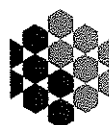
2. You stated in your letter that 'BT has the country's largest recognised monopoly'. I have been in contact with the Office of Communications (Ofcom) who have informed me that BT has 'Significant Market Power (SMP)' but is not a monopoly.

I trust that the information now provided meets your needs. However, I would take this opportunity to remind you of your right of appeal, the details of which you will find in the attached FOI Fact Sheet.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Joe O'Hare', with a stylized flourish extending to the right.

Joe O'Hare



Department of
**Enterprise, Trade
and Investment**

www.detini.gov.uk

Department of Enterprise Trade and Investment

The Freedom of Information Act 2000

FOI Fact Sheet

Note: This leaflet gives an overview of some of the main provisions of the Act and should not be regarded as a legal interpretation.

1. What is the Freedom of Information Act? The Freedom of Information (FOI) Act 2000 gives you the right to request information from public authorities. From the 1st January 2005, you will have access to information on how the Department works, spends public money, and reaches decisions.

2. Information may also be obtained under:

- **The Data Protection Act 1998 (DPA)**- this allows access to information held about you by both public and private organisations, and the ability to make sure it's correct.
- **The Environmental Information Regulations 2004 (EIRs)**- This legislation gives you access to any environmental information held by organisations that perform public functions.

3. How do I get information about DETI under the FOI Act? You can find information on the departments website [<http://www.detini.gov.uk>]. If you can't see what you're looking for you can email foi@detini.gov.uk, or write to:

Information Management Branch
Department of Enterprise, Trade and Investment
Netherleigh Massey Avenue
Belfast BT4 2JP

Please state your name, address, telephone number and specific details of the information you require.

4. How long does it take to get information? Once a written request for information is received, we will respond promptly, and at any rate, within 20 working days. This time can be extended where we are obliged to consider the public interest.

5. Is there a cost? This depends on a number of factors including the volume and complexity of material requested. Responses to enquiries that cost the department less than £600 to process¹ will be provided free of charge, although there may be a small charge for disbursements². The Department has a right to refuse a request if the costs of locating and retrieving the information exceed £600. We will not refuse a request for environmental information on the grounds of cost alone, however we have the right to charge a reasonable amount to cover processing costs. In all cases, we will notify you of any estimated costs before proceeding with the request.

6. What happens if the information I want is not available? The Department cannot provide information that does not exist, but we have a duty to assist you. We will contact you with what relevant information we do hold, or may suggest another public authority that might help.

7. Can I have any information at all? The FOI Act allows you access to almost all information that a public body holds. But some information cannot be revealed to the public, like information about national security, law enforcement or personal information about others.

8. What if I am refused information? We will tell you if information is being withheld and why. If you are unhappy with our decision you have the right to request an internal review. This request should be in writing to:

Mr Joe O'Hare
Department of Enterprise, Trade and Investment
Netherleigh
Massey Avenue
Belfast
BT4 2JP

Or by email to: foi@detini.gov.uk

If you are not satisfied with the internal review you may appeal to the Information Commissioner (see details below). The Information Commissioner will expect that an internal review will have been carried out prior to appeal.

9. How do I find out more? More information is available from office of the Information Commissioner at:

Website: www.informationcommissioner.gov.uk
Phone: 01625 545 700
Email: ico.gsi.gov.uk
Post: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF
Fax 01625 524 510

¹ Includes the cost of finding, sorting or editing the material

² Disbursements may include costs of photocopying, printing, postage etc

IR 004 – Request for information on BT Broadband Contract.

LIST OF REDACTED SECTIONS/WORDS
REDACTED INFORMATION **EXEMPTION**

Page 1: Table of Contents Sections 4 and Schedule 6	s41(1)(b) & s43 (2)
Between pages 3 and 6: Definitions and Interpretation A definition	s41(1)(b) & s43 (2)
Page 9: Section 4 Heading and contents of Section 4	s41(1)(b) & s43 (2)
Page 13: Section 8.1 Currency amount on the first line	s41(1)(b) & s43 (2)
Page 15: Section 14.2 Percentage figure on (1) fourth and (2) sixth line	s41(1)(b) & s43 (2)
Page 22: Section 25.1 25.1: second line percentage amount.	s41(1)(b) & s43 (2)
Page 22: Section 25.3 Reference to information in Section 4 & Schedule 6	s41(1)(b) & s43 (2)
Page 22: Section 25.5 Reference to information in Section 4 & Schedule 6	s41(1)(b) & s43 (2)
Page 24: Section 30.1 Last Sentence	s41(1)(b) & s43 (2)
Pages 37-38: Schedule 4 Purpose and Application: Contents from second paragraph of 1	s41(1)(b) & s43 (2)
Page 40: Schedule 5 Service Area and Payment Area: Contents from 3 rd paragraph of 3.	s41(1)(b) & s43 (2)
Pages 41 – 42: Schedule 5 Contents (Headings remain)	s41(1)(b) & s43 (2)
Pages 44 - 46: Schedule 6 Contents of Schedule	s41(1)(b) & s43 (2)

Page 48: Schedule 7, Section 2
percentage figures on (1) last line of second paragraph,
(2) line 8 of paragraph 3 and (3) line 8 of paragraph 4. s41(1)(b) & s43 (2)

Page 58: Schedule 9, Section 5
percentage figure at the end of the sentence s41(1)(b) & s43 (2)

PUBLIC INTEREST TEST

Exemption	Basis for Exemption being applied	Arguments
s43(2)	Disclosure would, or would likely to, prejudice the commercial interests of any person.	Disclosure of this information would potentially damage the commercial interests of BT by giving competitors an insight into the company's and/or the Group's strategies and operational plans. The continued privacy of such information is necessary for the purpose of maintaining BT's competitive position.

Public Interest Arguments

In favour of disclosure

The general presumption under the Act in favour of the release of public records.

It would show that there is transparency in the accountability of public funds.

It would show that public money is being used effectively, and that the Department is getting value for money from this contract.

Against disclosure

There is a risk that disclosure would be likely to prejudice the commercial interests of BT by affecting adversely its bargaining position during contractual negotiations.

The Department entered into an agreement with BT that information of a confidential nature would not be released without the prior consent of both parties. A duty of confidence exists and to release this information would be a breach of this duty.

In applying s43, (s41 is absolute) the Department has had to balance the public interest in withholding the information against the public interest in disclosing the information. The Department has carefully considered the public interest in releasing the information against that of withholding it and in this case consider that the public interest in not disclosing the information requested outweighs the public interest in releasing it.