

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 September 2021

Public Authority: North East Procurement Organisation (NEPO)

Address: Guildhall, Quayside
Newcastle upon Tyne
NE1 3AF

Decision (including any steps ordered)

1. The complainant requested information relating to procurement. North East Procurement Organisation (NEPO) confirmed that it did not hold the information.
2. The Commissioner's decision is that NEPO has correctly confirmed that it does not hold the requested information and complied with section 1(1) of the FOIA.
3. The Commissioner does not require NEPO to take any steps.

Background

4. NEPO (North East Procurement Organisation) is a Public Buying Organisation. Since 1976, NEPO has worked in partnership with contracting authorities on the strategic procurement of goods and services.
5. NEPO manages around 70 solutions. One of these solutions is branded NEPRO. The organisation that was procured to deliver NEPRO is Bloom. Bloom are a procured supplier to NEPO.
6. The request which is the subject of this decision notice relates to the accreditation of "Ignite". NEPO has explained that NEPRO (delivered by Bloom) involves other suppliers working with Bloom to deliver outcomes for contracting authorities. To deliver these outcomes first the supplier needs to be Accredited – i.e. validated as being suitable to deliver the services under NEPRO.

Request and response

7. On 23 September 2020, the complainant wrote to NEPO and requested the following information:

(In relation to Ignite's inclusion on the NEPO NEPro framework)

"Q1. Please disclose the "Two case studies relevant to each category of accreditation" for Ignite's accreditation;

Q2. Please disclose "One supporting reference for each category of accreditation" for ignite's accreditation."
8. NEPO responded on 21 October 2020. It stated that the requested information was not "...subject to FOI".
9. Following an internal review NEPO wrote to the complainant on 18 November 2020. It stated that it did not hold the requested information.

Scope of the case

10. On 19 November 2020 the complainant contacted the Commissioner to complain about the way their request for information had been handled.

11. The Commissioner confirmed with the complainant that her investigation would consider whether NEPO held the requested information, specifically whether the information is held by a third party on behalf of NEPO.

Reasons for decision

Section 1 – duty to provide information held

12. Section 1(1) of the FOIA sets out the duty of public authorities to confirm or deny whether requested information is held.
13. In its internal review response NEPO stated that it did not hold the requested information, explained that it had not been provided with copies of the information and confirmed that the information was held by Bloom Procurement Services Ltd (BLOOM). The council confirmed that BLOOM is a private limited company that provides a service to NEPO and that it is not in itself subject to FOIA.
14. Section 3(2) of the FOIA confirms that information "held by a public authority" includes information "held by another person on behalf of an authority". For the purposes of the FOIA, a "person" can be a private limited company. Therefore, information that a contractor holds on behalf of a public authority is also in scope of a FOIA request, even if the authority never physically holds it in its own hard copy or electronic files.
15. The question of whether certain information is held by a third party on behalf of a public authority can often be determined by looking at any contract that exists between the parties.
16. NEPO confirmed that it consulted with BLOOM during its handling of the request and BLOOM has confirmed that none of the clauses in the Framework Agreement concerning provision of information and records, management information and monitoring require it to share the requested information with NEPO nor is there any suggestion that it is held on NEPO's behalf.
17. NEPO confirmed that, on the suggestion of the Commissioner, it also considered the ICO guidance on "outsourcing"¹. However, it confirmed

¹ <https://ico.org.uk/media/1043530/outsourcing-and-freedom-of-information.pdf>

that, as the request relates not to an outsourced provision but to a *"...sole supply neutral vendor model, delivering a service to contracting authorities"*, it considers that this is not relevant to the present request.

18. Having considered NEPO's submissions and referred to its correspondence with BLOOM, the Commissioner is satisfied that the requested information is not held by BLOOM on behalf of NEPO. She has, therefore, concluded that NEPO has correctly confirmed that it does not hold the requested information and complied with section 1(1).

Right of appeal

19. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Ben Tomes
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