

## Freedom of Information Act 2000

### Decision notice

**Date:** 4 August 2015

**Organisation:** Remploy Limited (Remploy Ltd)  
**Address:** 18c Meridian East  
Meridian Business Park  
Leicester  
LE19 1WZ

#### Decision (including any steps ordered)

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1. The complainant has requested information on a variety of subjects from Remploy Ltd. At the time of the request, Remploy Ltd was a public authority and so subject to the provisions of the Freedom of Information Act 2000 (the Act). By the time the Commissioner commenced his investigation Remploy Ltd was no longer a public authority.
2. The Commissioner notes that Remploy Ltd did not issue a response to the complainant's request within 20 working days. However, because Remploy Ltd is no longer a public authority under the terms of the Act the Commissioner cannot make a decision on whether Remploy Ltd's use of section 12 of the Act was valid. Nor can he formally make a decision as to its compliance with section 10 of the Act. No steps are required.

#### Request and response

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3. On 11 August 2014, the complainant wrote to Remploy Ltd and requested information in the following terms:

"Communications with the DWP

1. All documents relating to communications between the Minister for Disabled People and Remploy between June 2011 and 31 December 2013 regarding the Sayce Report.
2. All communications between the Minister of the DWP and Remploy between January 2010 and 31 December 2013 concerning the

*possible closure of Remploy factories and/or redundancy of Remploy employees.*

- 3. All communications passing between Remploy and the DWP regarding consultation on the redundancies.*

*Remploy's employment businesses*

*As at August 2012 and August 2013 please provide the following information:–*

- 1. How many employees were employed in the employment businesses?*
- 2. Identify the locations of the employee businesses?*
- 3. How many employees at each location?*
- 4. In what capacity were those employees employed?*
- 5. What vacancies existed?*

*Expressions of interest in the Remploy factories*

- 1. Please set out all proposals or expressions of interest regarding taking over the Remploy factories that were received.*
- 2. Provide copies of all documentation relevant to those expressions of interest.*
- 3. Who decided whether to take such proposals forward and on what basis was that decided.*

*CCTV business*

- 1. Please confirm that Remploy CCTV is part of the same entity as Remploy.*
- 2. How many employees were employed in the CCTV business in April 2012 (or as near to that date as you can provide)? Please provide a break down by role and location.*
- 3. How many employees were employed in the CCTV business in April 2013 (or as near to that date as you are able to provide)? Please provide a break down by role and location.*
- 4. How many employees were employed in the CCTV business in April 2014 (or as near to that date as you are able to provide)? Please provide a break down by role and location.*

5. *For each of the above, please set out how many employees are disabled.*
6. *Please provide job descriptions and person specifications for each of the generic roles offered by Remploy CCTV. (We understand that those roles included are control room managers, manned security staff, alarm monitoring staff).*
7. *Please provide vacancy lists for the period between April 2012 and April 2014.*
8. *During the course of the redundancy process for those employed in the Remploy factories, was bumping any existing CCTV employees considered? If so, please provide details. If not, why not?*
9. *When if at all, were Remploy employees at risk or redundancy informed of vacancies within Remploy CCTV?*
10. *How many, if any, Remploy employees who were at risk of redundancy, were redeployed into Remploy CCTV? Please identify those individuals by name, former role and now role, former location and new location, and the date of any new job taken up.*
11. *What was the funding envelope provided to Remploy CCTV in each of the years 2012, 2013 and 2014?*
12. *How many contracts held by Remploy CCTV in the period 2012 to 2014 are reserved contracts within the meaning of Article 19 of the Public Sector Directive 2004/18/EC or equivalent provisions? Please identify which contracts those are and the number of employees engaged in each.*
13. *During the period 2012 to 2014 did Remploy CCTV undertake a process which led to voluntary redundancies? If so, how many employees left under this process? Please identify those persons by job role and location and whether he/she was disabled.*
14. *During the period 2012 to 2014 did Remploy CCTV undertake a process which led to compulsory redundancies? If so, how many employees left under this process? Please identify those persons by job role, location and whether he/she was disabled.*

### Skeleton Staff

*In addition to the above in respect of the skeleton staff who were kept on at factories following the redundancy of the majority of employees, kindly name those individuals and the factories that they worked at and*

*the date they worked to. Kindly also provide their job titles and set out who selected them to be kept and how this was done."*

4. Remploy Ltd asked for clarification on three of the questions on 20 August 2014, which the complainant provided the following day on 21 August 2014. It provided a full response to the requests on 27 November 2014 as follows:

Communications with the DWP

1. Provided held correspondence.
2. & 3. Confirmed relevant information was held but the requests were refused under section 12 of the Act as to comply with the request would exceed the appropriate limit.

Remploy's employment businesses

1. – 4. Provided the held information.
5. Refused the request under section 12 of the Act.

Expressions of interest in the Remploy factories

1. – 2. Refused the request under section 12 of the Act.
3. Refused the request under section 21 of the Act as the information was reasonably accessible to the applicant.

CCTV business

1. Confirmed Remploy CCTV is the same legal entity as Remploy.
2. 3. and 5. Provided the held information.
4. Confirmed no CCTV employees employed by Remploy Ltd at that date.
6. Provided the held information.
7. Provided the held information.
8. Stated no information was held.
9. Stated employees at risk of redundancy were informed of vacancies in Remploy CCTV.
10. Stated no information was held.
11. Provided the held information.

12. Refused the request under section 12 of the Act.
13. Stated no information was held.
14. Provided the held information.

#### Skeleton Staff

Refused the request under section 12 of the Act.

5. Remploy Ltd conducted a review of the sections where it had refused to disclose information: the response that it gave to the complainant regarding expressions of interest that was refused under section 21, the response to item 12 of the CCTV business section and the response regarding skeleton staff that was refused under section 12. Remploy Ltd issued its internal review on 18 February 2015, in which it upheld the original decision reached in its refusal notice.

#### **Scope of the case**

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6. The complainant contacted the Commissioner on 6 March 2015 to complain about the way his request for information had been handled. Specifically, he wanted the Commissioner to investigate whether Remploy Ltd was entitled to refuse to disclose information under sections 12 and 21 of the Act.
7. Between the complainant making his request and the Commissioner starting his investigation, Remploy Ltd ceased to be a public authority as defined within the Act. The Commissioner explained this to the complainant and confirmed that the Commissioner was unable to issue a decision on whether section 12 and 21 applied.
8. The complainant wishes to maintain his appeal, so instead the scope of the case is restricted to that which the Commissioner is able to rule on, namely whether Remploy Ltd is a public authority for the purposes of the Act.
9. In the recent case of *Fish Legal v Information Commissioner & Others* (GIA/0979/2011 & GIA/0980/2011) ("Fish Legal"), the Upper Tribunal Administrative Appeals Chamber (the "UT") ruled that the Commissioner has jurisdiction to both investigate and decide whether a body is a public authority.
10. The Commissioner therefore has jurisdiction to decide this question. The First Tier Tribunal (the "FTT") may also hear appeals against the Commissioner's decisions and the UT may hear appeals against the decisions of the FTT.

## Reasons for decision

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11. The Act gives members of the public the right to access recorded information held by public authorities and places a duty on public authorities to respond to requests for such information.
12. If a public authority receives a request for information it is usually legally obliged to provide it within 20 working days, unless any of the exemptions contained within the Act apply. If a public authority believes an exemption does apply to the information that has been requested then the public authority must explain why the exemption applies.
13. The definition of 'public authority' is given in section 3(1) of the Act. In particular it states that under the Act a "public authority" means-
  - (a) subject to section 4(4), any body which, any other person who, or the holder of any office which –
    - (i) is listed in Schedule 1, or
    - (ii) is designated by order under section 5, or
  - (b) a publicly-owned company as defined by section 6.
14. Section 5 allows the Secretary of State to designate a public authority by order.
15. Section 6 states that a company is a "publicly-owned company" for the purposes of section 3(1)(b) if it is wholly owned by the Crown or is wholly owned by any public body listed in Schedule 1 (other than a government department or any authority which is listed only in relation to particular information).
16. For this decision, the Commissioner wishes to draw particular attention to the phrase "wholly owned by the Crown". This means that if an organisation is only partially owned by the Crown it cannot be considered a public authority.
17. On 22 July 2014 the then Employment Minister – Esther McVey – announced that Remploy Ltd was to be privatised. A BBC article which confirmed the announcement stated that at the time of writing, Remploy Ltd was owned by the government.<sup>1</sup> This was still the case when the

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<sup>1</sup> <http://www.bbc.co.uk/news/uk-politics-28417882>

complainant made his request on 11 August 2014, so Remploy Ltd was obliged to comply with the request under the terms of the Act.

18. However, in the period following the request Remploy Ltd was privatised. On 7 April 2015 Remploy Ltd issued a statement in which it confirmed that it left government ownership.<sup>2</sup> As such, it is no longer wholly owned by the Crown and so is not a public authority for the purposes of the Act. (Nor does it meet any of the other descriptions at section 3(1).)
19. As Remploy Ltd is not a public authority the Commissioner cannot investigate an appeal against its handling of a request under the Act, nor can he issue a decision about Remploy Ltd's use of sections 12 and 21.

### **Other matters**

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20. Under section 10 of the Act a public authority is obliged to respond to a complainant's request and, subject to exemptions under Part II of the Act, confirm or deny whether relevant information is held within 20 working days. It must also either provide the information or issue a refusal notice within that time. Remploy Ltd received the request on 11 August 2014 but did not provide its full response until 20 November 2014.
21. As Remploy was still a public authority at the time of the request it was still subject to the provisions of the Act. For this request it breached section 10 because it took longer than 20 working days to respond to the complainant's request.
22. However, as Remploy Ltd is no longer a public authority the Commissioner cannot include this breach as a formal part of his decision in this case.

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[http://www.rememploy.co.uk/press/article/69/remploy\\_leaves\\_government\\_ownership\\_and\\_celebrates\\_70th\\_birthday](http://www.rememploy.co.uk/press/article/69/remploy_leaves_government_ownership_and_celebrates_70th_birthday)

## Right of appeal

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23. 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: 0300 123 4504  
Fax: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

24. 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.
25. 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** .....

**Alexander Ganotis**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**