



Information Governance Team

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Dear Sir/Madam.

**Freedom of Information Act 2000 (FOIA)
Request ID: REQ08193**

Thank you for your request for information relating to Wayfinding Infrastructure Tender Evaluation (COV – 10029).

You have requested the following information:

- 1. In line with the Freedom of Information Act, we would request that a full breakdown of your scoring and all cost submissions be issued to us in order that we can take advice on our next course of action.**

You requested that a full breakdown of our scoring and all cost submissions be issued to you, however, it is our view that the information requested is exempt from disclosure under the following exemption in the FOIA:

SECTION 43(2) – COMMERCIAL SENSITIVE INFORMATION

Section 43(2) exempts information from disclosure where disclosure of that information would, or would be likely to, prejudice the commercial interests of any person (an individual, a company, the public authority itself or any other legal entity).

It is the Council's position that the third-party contractor's and its own commercial interests would be prejudiced and/or would be likely to be prejudiced by the disclosure of the requested information.

In determining the above, the Council has adopted a three-stage approach:

A. Third Party Commercial Interests:

- What are the applicable interests concerned?

The successful tenderer and other bidders' ability to participate competitively in a commercial activity are the applicable interests concerned. This will be affected because a tender is a competitive process, whereby commercial organisations are providing highly detailed information on their specific service model, designs, pricing, policies, procedures, strategies, best practice protocols and examples of experiences. This information is unique to each company and is what gives the provider a competitive advantage, making them able to compete against other suppliers in the market.

The successful tenderer and bidders have invested considerable resources on researching, analysing and developing their strategies and business models. The successful tenderer won based on their submissions and disclosure may result in their business models being replicated or plagiarised, inevitably impacting upon the success of their business. This equally applies to other submissions received.

Retaining the confidentiality of tender submissions ensures that there is no collusion. The wider ramifications of disclosure are that once this information is disclosed it is in the public domain indefinitely. Any tenderer on any bid could access or obtain the information for their own benefit or possibly for collusion purposes, depriving the public of best value and defeating the object of the fair competitive process.

- Is there a causal relationship between the potential disclosure and the purported prejudice?

The disclosure of the requested information would cause the prejudice for the reasons as stated above.

- What is the probability of prejudice occurring?

Prejudice would be likely to occur for the reasons as stated above.

Additionally, once the information is disclosed this means that it will be in the public domain and it could not only be used by the requestor but also any other providers in a similar market.

B. The Council's Interests:

- What are the applicable interests concerned?

The Council's ability to participate competitively in a commercial activity are the applicable interests concerned.

The comments made in relation to third parties are repeated.

In addition to the above, disclosure of the requested information may deter future tenderers from competing in public sector opportunities in order to protect their commercial interests. Providers may therefore further elect to adapt their strategy to focus on the private market. This would be detrimental to service provision for the Council and throughout the broader public sector.

- Is there a causal relationship between the potential disclosure and the purported prejudice?

The disclosure of the requested information would cause the prejudice for the reasons as stated above.

- What is the probability of prejudice occurring?

Prejudice would be likely to occur for the reasons as stated above.

Additionally, once the information is disclosed this means that it will be in the public domain and it could not only be used by the requestor but also any other providers in a similar market.

The exemption at s43(2) is qualified, and therefore subject to a public interest test. Even where a qualified exemption is engaged it can only be applied where the public interest in withholding information outweighs that in favour of releasing it. In applying the public interest test the Council have given careful consideration to the arguments for and against disclosure.

Part 1 – Arguments in Favour of Disclosure

1. Promote accountability and transparency for the Council's decisions and in its spending of public money
2. Assist the public to understand and challenge our decisions
3. Inform the public of the activities carried out on their behalf, allowing for more user involvement and collaborative decision making
4. Enable the public to better scrutinise the public monies spent
5. Help to ensure clarity around fairness, equity, value for money and quality of care in the overall tender process

Part 2 – Arguments Against Disclosure

1. There is a public interest in allowing public authorities to withhold information which if disclosed, would reduce providers' ability to compete in a commercial environment, for the reasons given above
2. The successful tenderer and bidders operate in a competitive market. If prejudicing the commercial interests of the successful tenderer in the market would distort competition in that market, this in itself would not be in the public interest. We feel this equally applies to other tenderers who you have requested the information of.
3. There is a public interest in protecting the commercial interests of individual companies and ensuring they are able to compete fairly: "If the commercial secrets of one of the players in the market were revealed then its competitive position would be eroded and the whole market would be less competitive with the result that the public benefit of having an efficient competitive market would be to some extent eroded" (taken from the decision of the (then) Information Tribunal in *Visser v ICO EA/2011/0188* at paragraph 20)
4. Disclosure of information may cause unwarranted reputational damage or loss of confidence in the Council
5. Revealing information such as a pricing mechanism can be detrimental to a provider's commercial interest. If an organisation has knowledge of a provider's business model, it can exploit this for its own commercial interest. This would also have a detrimental impact

on the Council on other contracts and procurements by distorting the market, for the reasons stated above

The Balancing Exercise

Having taken into account the arguments for and against disclosure, the Council has decided that the public interest in this case is best served by maintaining the exemption under section 43(2) FOIA and by not disclosing the information requested.

The Council considers that the possible benefits of disclosure are outweighed by the real risk of causing prejudice to the commercial interests of the tenderers concerned and the Council itself. In this case there is an overriding public interest in ensuring that companies are able to compete fairly and in ensuring there is competition for public sector contracts. It is more probable than not that disclosure would prejudice both the successful tenderer, other bidders, and the Council's commercial interests. Furthermore, the Council is still within the procurement procedure for this contract.

For information, we publish a variety of information such as: [FOI/EIR Disclosure Log](#), [Publication Scheme](#), [Facts about Coventry](#) and [Open Data](#) that you may find of useful if you are looking for information in the future.

If you are unhappy with the handling of your request, you can ask us to review our response. Requests for reviews should be submitted within 40 days of the date of receipt of our response to your original request – email: infogov@coventry.gov.uk

If you are unhappy with the outcome of our review, you can write to the Information Commissioner, who can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF or email casework@ico.org.uk.

Please remember to quote the reference number above in your response.

Yours faithfully

Information Governance