



Information Governance Team

Postal Address:
Coventry City Council
PO Box 15
Council House
Coventry
CV1 5RR

www.coventry.gov.uk

E-mail: infogov@coventry.gov.uk

Phone: 024 7697 5408

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Dear Sir/Madam

Freedom of Information Act 2000 (FOIA)
Request ID: FOI334174551

Thank you for your request for information relating to Civil Engineering Support Framework.

You have requested the following information:

1. I requested the completed PQQ and ITT from companies applying to be on the tender list

Your request has been handled in accordance with the Freedom of Information Act 2000 (FOIA).

It is confirmed that the Council does hold information pursuant to your request. In respect of:

1. Copies of the completed Selection Questionnaires (SQ – formerly known as Pre-Qualification Questionnaires) submitted by those shortlisted to tender:

The SQ is disclosable in a redacted format. If disclosed, it would be redacted to omit information which we deem to be exempt from disclosure under the exemption at Section 43(2) (commercially sensitive information) FOIA.

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).

However, on this occasion the Council has chosen not to release the SQ in a redacted form due to the fact that it has applied s14 (vexatious requests), as per the below.

2. Copies of the Invitations to Tender (ITT) submitted by those shortlisted to tender

It is the Council's view that the completed Invitations to Tender are exempt from disclosure in their entirety under section 43(2) (commercially sensitive information);

In relation to both the redacted information in the SQ, and the entirety of the information in the ITT, it is the Council's position that the bidders who were shortlisted to tender 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 bidders who were shortlisted to tenders' 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, pricing, policies, procedures, strategies, best practice protocols and examples of experiences. This information is unique to each bidder and is what gives the provider a competitive advantage, making them able to compete against other suppliers in the market.

The bidders who were shortlisted to tender have invested considerable resources on researching, analysing and developing their strategies and business models. Each bidder who was shortlisted to tender was shortlisted based on their submissions and disclosure may result in their business models being replicated or plagiarised, inevitably impacting upon the success of their business.

Retaining the confidentiality of tenderers submissions of the bidders who were shortlisted to tender 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 contractors in a similar market.

Please note that the Council's comments regarding shortlisted bidders' commercial interests are not speculative and the bidders who were shortlisted to tender concerned have been consulted in accordance with the section 45 of the Code of Practice – Request Handling.

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 bidders who were shortlisted to tender 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 s 43(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 bidders who were shortlisted to tender operate in a competitive market. If prejudicing the commercial interests of the bidders who were shortlisted to tender would distort competition in that market, this in itself would not be in the public interest
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 the entirety of SQs and ITTs can be detrimental to a provider's commercial interest. If another organisation has knowledge of a provider or potential 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 bidders shortlisted to tender 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 bidders shortlisted to tenders' and the Council's commercial interests.

Further and in the alternative the Council is applying a Section 14 Refusal Notice to disclosure of the unredacted material that is disclosable in the Standard Questionnaires due to the burden that complying with your request will impose on the Council, as well as the impact on Council resources that will be utilised when responding to your request.

The Information Commissioner recognises that dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

Refusal Notice – Section 14(1) of the Freedom of Information Act 2000

The right of access to information is not without exception and is subject to a number of exemptions and other provisions under the Act, including s14(1) of the FOIA which provides:

"14. Vexatious and repeated requests

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.”

In ICO Decision Notice FS50493150, the ICO clarified that the term vexatious is not defined in the FOIA.

The Upper Tribunal also considered the issue of vexatious requests in the case of the Information Commissioner v Devon County Council & Dransfield (Upper Tribunal Case No. GIA/3037/2011).

The Tribunal commented that vexatious could be defined as the ‘manifestly unjustified, inappropriate or improper use of a formal procedure’. The Tribunal’s definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.

The Council believe that the current request is vexatious because it will be burdensome to the Council, by virtue of s14(1) of the FOIA. There is no public interest test, so we have not gone on to consider the same.

The Information Commissioner’s Office (ICO) has provided guidance on dealing with vexatious requests and states ‘The Freedom of Information Act was designed to give individuals a greater right of access to official information with the intention of making public bodies more transparent and accountable. Whilst most people exercise this right responsibly, a few may misuse or abuse the Act by submitting requests which are intended to be annoying or disruptive or which have a disproportionate impact on a public authority.’

The ICO further recognises that ‘dealing with unreasonable requests can place a strain on resources and get in the way of delivering mainstream services or answering legitimate requests. Furthermore, these requests can also damage the reputation of the legislation itself.

ICO guidance reminds public authorities that s14(1) is designed to protect public authorities by allowing them to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation or distress. The ICO also states the emphasis on protecting public authorities’ resources from unreasonable requests was acknowledged by the Upper Tribunal when it defined the purpose of s14 as ‘section 14.....is concerned with the nature of the request and has the effect of disapplying the citizen’s right under section 1(1).....the purpose of section 14.....must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA.....’

To assist public authorities the ICO guidance has provided a number of indicators as typical key features of a vexatious request. These are:

- Burden on the authority
- Disproportionate effort
- Abusive or aggressive language
- Personal grudges
- Unreasonable persistence
- Unfounded accusations
- Intransigence

- Frequent or overlapping requests
- Deliberate intention to cause annoyance
- Scattergun approach
- No obvious intent to obtain information
- Futile requests
- Frivolous requests

Having reviewed your request, we have determined that the following two factors are relevant in deeming your request vexatious:

- Burden on the authority
- Disproportionate effort

Although we understand that you may believe there to be serious purpose and value behind your request, we must consider whether the impact on the Council is justified.

To provide you with the information requested which comprises SQ tender information of 19 companies would involve extensive reading, checking and redacting commercially sensitive information from all 19 tender applications which run to approximately 53 pages each. The redaction of the commercially sensitive data contained within the information requested would also take officers several days to complete. Officers would also need to be alert to information that was personal data and information already in the public domain when reading and checking. To determine what information can be discounted, as having already been reviewed, would require the creation of information by way of a spreadsheet in order to perform searches on dates, times and individuals to avoid duplication of efforts. The creation of this document alone would take time and logging before any assessment of the information can begin. Further with the sheer volume of information requested there is a risk that some of it could be missed and/or personal data left unredacted, due to human error. Following a sampling exercise, it is estimated, conservatively, that to process all of the information would take an officer at least 2 working weeks to complete.

In coming to this conclusion, we have considered the Information Commissioner's latest published guidance, 'dealing with vexatious requests (s14)', particularly taking into account the volume of information to be considered for redaction and the resulting burden to the Council in reviewing and preparing the information for possible disclosure.

We are not alleging that you deliberately made your request burdensome or drafted it with the intent of making it otherwise overwhelming or oppressive. The Council cannot reasonably comply with its obligations under s1(1) of the FOIA without incurring significant encumbrance and impact on its day-to-day activities.

Although you may be disappointed by this approach, we would stress that such protection exists within the legislation in order to ensure that applicants use their rights to seek information responsibly and public authorities are not overwhelmed by over burdensome requests.

For the reasons outlined above, we are refusing this request under s14(1) of the FOIA. You have the right to appeal this decision as per the details below.

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 icocasework@ico.org.uk.

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

Yours faithfully

Information Governance