

Our Ref: FOI 3758

Date: 09 March 2010

Nindi Kaar

Via email at = **request-26876-51423891** @whatdotheyknow.com

Dear Nindi Kaar

### **Freedom of Information Act 2000 – Request for Information**

Further to my letter of 10 February 2010, please refer to the consideration given below in relation to two exemptions under the provisions of the above mentioned Act that prevent disclosure of the weekly fees payable for the care packages for all Learning Disability clients by a supplier organisation. The Authority believes the FOI exemptions apply and as such refuses this part of your request. The specific exemptions in this case are:-

#### **Commercial Interests - Section 43**

Section 43 is a qualified exemption, that is, it is subject to the public interest test which the authority must be satisfied that the information requested is a trade secret or that its release would prejudice someone's commercial interests. The authority can only refuse to provide the information if it is satisfied that the public interest in withholding the information outweighs the public interest in disclosing it.

In view of the above, we considered the public interest test in releasing the requested data now. Currently the Adults and Communities Directorate is in the middle of a commissioning process on the contracted services for Learning Disabilities. Commercial rates for each of the components of the current care packages with the supplier organisations is under review for the new financial year.

We then considered whether access to the weekly fees payable for the care packages would:-

- further the understanding of, and participation in the delivery of care packages by supplier organisations for all learning disability clients;
- facilitate the accountability and transparency of public authorities for decisions taken by them;
- facilitate accountability and transparency in the spending of public money;
- allow individuals to understand decisions made by public authorities affecting their lives and, in some cases, assist individuals in challenging those decisions.

We concluded that whilst the Directorate is committed to an open and accountable process in this Commissioning programme and in the spending of public money, as well as publishing information about this on our website, the public interest may not favour disclosure today.

Please reply to:

**Adults and Communities**

Level 5

Louisa Ryland House

44 Newhall Street

Birmingham B3 3PL

Telephone : 0121 303 9462

Facsimile : 0121 303 2769

[www.birmingham.gov.uk/adults](http://www.birmingham.gov.uk/adults)

**Peter Hay**, Strategic Director, Adults and Communities

To disclose the weekly fee of a care package in respect of an individual paid to the supplier organisation would enable competitors to calculate the total annual income received by the supplier organisation for that individual or for the numerous care packages relating to more than one individual.

The cost of providing the range of services to support learning disability clients is commercially sensitive. Whilst competitors will not necessarily know the cost of each component of the care package they would be likely to use the total income for each supplier organisation to gain a competitive advantage such as use the commissioning process as an opportunity to strike better deals without first assessing the needs of the individual clients.

There are some supplier organisations that provide similar services and there are others which are of a more specialist nature. The Council believes the requested data concerned engages the commercial interests of the supplier organisations and such disclosure would be likely to prejudice the commercial activities and competitiveness of the supplier organisations.

The public interest, in conclusion, favours a supplier organisation to compete with other organisations offering similar services without suffering the disadvantage of having to release its fees to its rivals.

#### Section 40 – Personal Data.

The above provision of the Act sets out various exemptions from the right to know for information that is personal data protected by the Data Protection Act (“DPA”). Most of these exemptions are absolute, which means there is no additional public interest test.

At the risk of stating the obvious local authorities are working to personalise community care to give people greater choice and control over the funding available to them., We therefore consider that the data on the cost of the care packages is tailored to individual clients on their specific care needs and potentially individuals could be identified from the data if the cost for the supplier for the package was supplied (section 40 (2)).

We have explored alternative ways of addressing your request that would interfere less with the privacy of individuals concerned. We concluded that whilst it is not appropriate to release the data on individual cases and individual suppliers, it would be acceptable to release into the public arena the number of packages with a weekly cost within bandings without breaching personal or commercial confidentiality as shown below:

#### **Nos packages**

Band	Total
£1000-1250	22
£1251-1500	18
£1501-1750	15
£1751-2000	22
£2001-2250	7
£2251-2500	5
£2501-2750	4
£2751-3000	1

£3001-3250	2
£3251-3500	3
£3500-3750	1
£3751-4000	1
£4000-4250	2
£4251-4500	1
Grand Total	104

If you are not satisfied with this decision, you can ask for an internal review.  
Please contact Birmingham City Council's central FOI Team at this address:

Information Governance Team,  
3<sup>rd</sup> Floor, 1 Lancaster Circus, Birmingham B4 7AB  
Tel: 0121 303 4876                      email: xxxxxxxxxxxx@xxxxxxxxxxx.xxx.xx

After that, if you are not satisfied with the Council's review decision you may  
apply to the Information Commissioner for an independent review at this address:

The Information Commissioner  
Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
Tel: 01625 545700                      Web Address: [www.ico.gov.uk](http://www.ico.gov.uk)

Yours sincerely

Philip Wilson  
Data Protection and Freedom of Information Officer

Please reply to:

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**Peter Hay**, Strategic Director, Adults and Communities