

CORPORATE SERVICES

Gill Young

**Date** 26 May 2009

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**Our Ref** JI/FOI Appeal(Young)

**Your Ref**

Dear Ms Young

**REQUESTS FOR REVIEW OF HANDLING OF FREEDOM OF INFORMATION  
REQUEST NOS. 4507, 4508, 4510, 4515 AND 4517**

I refer to your e-mails of 28 April seeking reviews of the handling of various Freedom of Information requests.

As indicated in the initial responses to you, the winning bid documentation is to be sent to you when the tendering process has concluded. It was expected that that would be 27 April but I am advised that the Council has withdrawn two of the 5 Lot contracts from tender and these are going to be re-tendered. As soon as the tender process in respect of Lots 1-4 is complete you will be sent copies of the winning bid documentation and the same will be the case in respect of Lot 5 once that tender has been concluded.

As regards the documentation in relation to the unsuccessful bids I consider that the information is exempt in terms of Section 33(1)(b) of the Freedom of Information (Scotland) Act 2002 in that its disclosure would, or would be likely to, prejudice substantially the commercial interests of the unsuccessful tenderers and of the Council.

In considering this matter I have taken into account the guidance on Scottish Public Sector Procurement and Freedom of Information issued by the Scottish Procurement Directorate in December 2004. The market in which the tendering process is taking place is a new and resistant market where the Council is receiving some criticism about tendering. If the Council were to disclose the information on unsuccessful tenders this would be likely to have a detrimental effect on its ability to obtain tenders for other contracts in the same sector. Additionally, as the Council is on the point of going back out to tender for the two services which were not awarded, it is likely that any competitive advantage to the Council would be lost by the disclosure of the information which you seek, particularly since the same bidders who were unsuccessful are involved.

**JIM INCH**

DIRECTOR OF CORPORATE SERVICES

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INVESTOR IN PEOPLE

The provision of the information which you seek would be likely to substantially prejudice the commercial interests of the unsuccessful tenders, given that it would include methodology, pricing, etc. which is unique to each organisation.

Turning to the question of the public interest test, I have weighed up the arguments for and against disclosure, but my conclusion is that those arguments against disclosure outweigh those for disclosure in the present case.

If you are not satisfied with this response you may ask the Scottish Information Commissioner within six months to conduct a review of this decision. You can contact him at Scottish Information Commissioner, Kinburn Castle, Doubledykes Road, St Andrews, Fife, KY16 9DS. Thereafter you have the right to appeal the decision of the Scottish Information Commissioner on a point of law to the Court of Session.

Yours sincerely



JIM INCH

Director of Corporate Services