

Our ref: FOI 738,807
Your ref:

Sarah Joseph
request-320488-bc4051a5@whatdotheyknow.com

Mrs D Davies
OT Directorate Services Team Manager
9th Floor
The Cube
199 Wharfside Street
Birmingham B1 1RN

06 July 2016

Dear Ms Joseph

I am writing to advise you that we do hold information that is relevant to your request 04 June 2016 but regret to inform you of my decision not to disclose this information.

In your request of 04 June 2016 you asked:

I originally asked for -

How many pricing methodologies has Kier Highways Ltd used over the past 5 years when charging Highways England for ad hoc work or when repairing damage to the highway, barriers or signage?

What were the pricing methodologies?

When did they come into effect?

What increases in charges have been agreed year on year?

- There have been annotations made and I am asking what increases in charges have been agreed year on year with Kier Highways Ltd?*
- The specific values agreed and that have occurred. It seems the contacts have been in place for years. For each contract what was agreed and what has occurred, the actual percentages or sums.*

The information you requested is being withheld in reliance on the exemption(s) in section(s) 43 <http://www.legislation.gov.uk/ukpga/2000/36/section/43> of the Freedom of Information Act 2000 because information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

In applying this exemption we have had to balance the public interest in withholding the information against the public interest in disclosure. The key public interest factors for and against disclosure are set out in the table below.

With regard to the number of pricing methodologies Kier Highways has used when charging Highways England for ad hoc work or repairing damage over the last 5 years, this would be governed by the Highways England Managing Agent Contractor and more recently Asset Support Contractor, so principally two. It should be noted that EM Highways Services Limited was taken over by Kier Highways in the last quarter of 2015, for convenience we use the term "Service Provider" instead of Kier / EM Highways.

The pricing methodologies used to charge Highways England is based upon the New Engineering Contract (NEC), adapted by Highways England. As your question is framed as “damage” I assumed you are excluding “deterioration” and are in essence referring to Damage to Crown Property by Third Parties.

The ASCs commenced in 2013 in Area 3 and 2014 in Area 9, the MAC contracts preceded these.

With the MACs, the Service Provider was required to provide such breakdowns and supporting information to justify the cost of repairs, as may be reasonably expected by the third parties insurance company (Highways England). With the ASC the emphasis is again on the Service Provider justifying the costs, though the approach in how the costs were compiled changed from the predominant use of Civil Engineering Contractors Association (CECA) rates under the MAC to *Defined Cost plus Fee* under the ASC. The principle's behind both are or were standard practice and significant information is freely available on the internet.

Price adjustment factors and discounts are set out under the specific contracts, though I believe your question is framed with regard to Damage to Crown Property by third parties. With regard to the latter, as stated above, this is claimed upon either CECA rates or the principle of Defined Costs using Notional Rates. The latter, in essence, are the average costs of a person, plant or equipment captured over a time period to provide an average hourly cost. Given the rolling nature, the costs will vary over time though and this should not be confused with price fluctuation flowing from discount or inflation. As stated, the principles and rationale behind *Defined Cost plus Fee* is freely available on the internet.

If you are unhappy with the way we have handled your request you may ask for an internal review. Our internal review process is available at:
<https://www.gov.uk/government/organisations/highways-england/about/complaints-procedure>

If you require a print copy, please phone the Information Line on 0300 123 5000; or e-mail info@highwaysengland.co.uk. You should contact me if you wish to complain.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

If you have any queries about this letter, please contact me. Please remember to quote reference number 738,807 in any future communications.

Yours sincerely

Mrs D Davies

Email: Ops_dst@highwaysengland.co.uk

Request for Kier rate information:

Sarah Joseph (Ref FOI 738,807):

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FOIA Exemption S.43 (1) & (2) – Commercial Interests

Factors supporting disclosure

- There is a clear public interest in the work of government being closely examined to encourage the discharging of public functions in the most efficient and effective way;
- There is an important public interest in the work of public bodies being transparent and

Factors supporting non-disclosure

- The procurement process must be seen to be fair and that commercial interests of the suppliers of services are not unduly prejudiced by the release of commercially sensitive information. It is important to maintain the confidence of our suppliers in order to achieve

<p>open to scrutiny to increase diligence and to protect the public purse;</p> <ul style="list-style-type: none"> • There is a public interest in disclosing information about public procurements to ensure there is transparency in the spending of public money and that public bodies are getting value for money when entering into contracts; • There is a strong public interest in releasing information which shows the criteria used when assessing options to illustrate that the processes used were fair and appropriate. 	<p>best value for the tax payer;</p> <ul style="list-style-type: none"> • The methodology outlined in the bid may be construed as a “trade secret” in that it is a strategy owned and developed by the consultant. If the methodology was made available to competitors in the market place it would undermine the commercial interests of the consultant when bidding for other contracts by reducing their competitive edge; • To reveal the details of the bid would seriously undermine our ability to negotiate the best value for money for the public purse on future contracts as the rates and methodology are still current; • The consultants object to the release of their bid information on the grounds that it contains commercially sensitive information in terms of a “trade secret” and rates; and such a release would be actionable
<p>Conclusion: there are compelling arguments which support withholding the information which outweigh those supporting release.</p> <p>PIT Members: Philippa Gardner, Mark Worrallo, Victoria Ridehaugh, Ian Claridge, James Downer, Nick Cotton, Dawn Davies</p> <p>Date of PIT: 27 June 2016</p>	