



Executive Director
Brian Devlin

Land and Environmental Services
Glasgow City Council
Exchange House
231 George Street
Glasgow G1 1RX

Our ref EIR 4241655

Your ref

Ask for **A Galbraith**

Phone Direct **0141 287 9063**

Fax Direct **0141 287 9059**

Date **16 April 2013**

request-152765-448b7690@whatdotheyknow.com

F.A.O. Mr John Smith

Dear Mr Smith

REQUEST UNDER THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

I refer to your e-mail correspondence of 11 March and 17 March 2013, in which you request that the following information be provided to you:

"Under the freedom of Information act could you please provide me:

1. All reports and dealings between Glasgow City Council and Viridor Waste Specialists. (A subsidiary of the Pennon Group)
2. Can you confirm what department and who was responsible for proposing the need to tender for these services.
3. Can you confirm there is a penalty to be paid to Viridor from Glasgow City if the amount of waste does not meet a specified contractual amount? What are these amounts and what is the penalty.

My request relates solely to the Residual Waste Treatment contract."

Glasgow City Council ("the Council") has considered your request to be provided with this information under the Freedom of Information (Scotland) Act 2002 ("FOISA").

In view of the type of information you have requested, the Council considers that your request should more properly be treated as a request for information in terms of the Environmental Information (Scotland) Regulations 2004 ("EIRs").

Information which falls under the ambit of the Environmental Information (Scotland) Regulations 2004 is exempt from disclosure under the Freedom of Information (Scotland) Act 2002 under Section 39(2) of the Act ('Health, Safety and the Environment').

The Council's response is as detailed below.

1. A search of the records of communications between Glasgow City Council and Viridor Waste Management Limited indicate that there have been some 4,885 correspondence exchanges to date which relate to the Residual Waste Management contract.

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These communications relate principally to contractual matters that were discussed between both parties during the tender process.

As such, the Council takes the view that these records are excepted from release under the EIRs because of the exception at Regulation 10(5)(e), the 'confidentiality of commercial or industrial information', where such confidentiality is provided for by law to protect a legitimate economic interest.

Per Regulation 10(4)(e) of the EIRs, the Council is not obliged to release internal communications within these records. Regulation 10(4)(e) provides that a Scottish public authority may refuse to make environmental information available to the extent that the request involves making available internal communications.

The Council also considers that the records of communications from Viridor Waste Management Limited in regard to the residual waste contract with Glasgow City Council are excepted from release under Regulation 10(5)(f) of the EIRs, because disclosure would, or would be likely to, "prejudice substantially the interests of the person who provided the information where that person (i)was not under, and could not have been put under, any legal obligation to supply the information; (ii)did not supply it in circumstances such that it could, apart from these Regulations, be made available; and (iii)has not consented to its disclosure".

In applying the above exceptions, the Council is also required to have regard to the public interest in releasing the requested information. While the Council acknowledges that there is a significant public interest in openness and transparency, the Council is of the view that in this case the public interest in disclosure is outweighed by its ability to protect its legitimate commercial interests and those of its contractors, namely Viridor Waste Management Limited. Accordingly, the Council believes that in this particular case the public interest is best served by withholding the information.

2. Glasgow City Council, Environmental Protection Services proposed the need to tender these services in 2006. The Executive Committee on 20th February 2009 and 19th February 2010 provided authority to commence the procurement of this project.
3. The position adopted is industry standard and in some circumstances a penalty may apply to the Council if the contractual tonnage obligations are not met. The penalty depends upon circumstances, and the financial sum as such cannot be quantified as numerous circumstantial variables may apply. If the waste tonnage falls below the contractual levels and appropriate substitute waste is not secured, then a penalty may be due. However, in other circumstances where the composition of the substitute waste is of greater resource value, then the Council may be due monies. Details of substitute waste are noted below.

For your information, standard substitute waste provisions apply within the contract. If the tonnage falls below the specified contractual amount, the Council can source top up waste to make up the provision. If the Council is not in a position to do this, the contract places an obligation upon the Contractor to source substitute waste to make up the any shortfall. Details can be found at www.widp.co.uk.

Please note that the Council's response to your request is, unless otherwise indicated, copyright © Glasgow City Council 2013. It is supplied to you in terms of the Environmental Information (Scotland) Regulations 2004.

Any further use by you of this information must comply with the terms of the Copyright, Designs and Patents Act 1988 as amended and/or the Copyright and Rights in Databases Regulations 1997. In particular, any commercial use or re-use of the information provided requires the prior written consent of the Council. Requests for such consent should be addressed to the Head of Corporate Communications, Glasgow City Council, City Chambers, George Square, Glasgow G2 1DU. Some or all of the information may be subject to third party copyright, in which case the permission of the third party copyright holder may be required. No claim is made in respect of third party copyright.

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If you are dissatisfied with the way the Council has dealt with your request you are entitled to require the Council to review its decision. Please note that for a review to take place you must lodge a written requirement for a review within 40 working days of the date of this letter. You must include a correspondence address, a description of the original request, and the reason why you are dissatisfied. Your review request should be addressed to the Executive Director of Corporate Services, and sent by mail to Glasgow City Council, City Chambers, George Square, Glasgow G2 1DU or by e-mail to annemarie.odonnell@ced.glasgow.gov.uk.

You will receive notice of the results of the review within 20 working days of receipt of your request. The notice will state the decision reached by the reviewing officer as well as details of how to appeal to the Scottish Information Commissioner if you are still dissatisfied with the Council's response. You must request an internal review by the Council before a complaint can be directed to the Scottish Information Commissioner.

I trust the foregoing will be of some assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Davidson', written in a cursive style.

Robert Davidson
Design Manager
Land and Environmental Services