

Freedom of Information Act 2000

Refusal Notice



Ref:LCG/SD/ FOI101002962420

Details of Request:

If you have an MSP in place, Please can you attach a copy of the contract for the management/provision of the supply of agency/temporary staff between Swindon Borough Council and the party/organisation the contract was let to

1)Exemptions relied On:

Section 43(2) Commercial Interests – Information is exempt information if its disclosure under this Act would, or would be likely to prejudice the commercial interest of any person (including the public authority holding it). This is a qualified exemption and subject to the public interest test.

Reasons:

Under the terms of the Freedom of Information Act 2000, the Council has a duty to disclose information on request, but it also has a duty to take into account the views of contractors when considering if information can be released, without putting that organisation at a disadvantage to its competitors or in the market place in which it competes.

The Council has to consider the arguments it puts forward and if we consider the release of the information would or be likely to prejudice its commercial position, then the exemption is engaged. Any contract document, given its nature, will contain sensitive information, commercial and financial breakdowns on how the organisation operates. It will also demonstrate their unique selling points, and how it operates within competitive market places.

We are also mindful of the Council's duty under the Act, to be as open and transparent as possible in it's dealing with commercial organisations so that it can demonstrate that it is obtaining best value, but we also have a duty to the organisations that do business with us not to put them at undue risk by releasing sensitive information.

The Council consider some commercial disadvantage is likely to be suffered if the information contained within the document were to be released. We have therefore undertaken a line by line examination of the part of the tender document that has been requested and redacted (crossed out) the commercially sensitive information from the attached document.

We consider we have struck a reasonable balance, to allow for proper scrutiny of the tendering process to take place, by making parts of the tender document available.

We have been guided in our decision by the ICO Freedom of Information Act Commercial Interests Guidance various Decision Notices and in particular Ballan -V- ICO EA/2015/0021.

Decision on Public Interest test:

We have examined the document in detail and have taken into account the responsibility the Council has to be as open and transparent as possible in our dealings with commercial organisations, whilst protecting their commercially sensitive information; weighed against the public interest and the right to know.

There is a public interest that companies compete fairly and that the successful bidder is not put at a disadvantage and the Council has to consider the possible harm that could be caused to the contractor if the information that has been requested was released into the public domain.

As stated in Ballan -V- ICO EA/2015/0021

There is an important public interest in ensuring that the potential tenderers are not discouraged from tendering for public contracts by a justified fear that their commercially confidential information bearing on their market positions and commercial standing, will be released publicly (and so released to their competitors): If tenderers were discouraged this may adversely affect the quality of tenders for public contracts and so risk the discharge of those contracts by the eventually successful tenderer. This would not be in the public interest.

There is in our opinion no overriding public interest in the information held being released at this time and stage of the contract, so it is considered that the public interest in withholding the commercially sensitive and personal information is not outweighed by the public interest in releasing it.

Signed S. Druett
Sharon Druett
Freedom of Information Officer

Dated 03.08.2016