

Andrew Wilson

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Date: 29 August 2023

Dear Mr Wilson

Following on from your recently upheld complaint, we have revisited your request and are able to provide you with the attached information. As you will see, we have redacted (blacked out) the names and email addresses of all 3rd parties (ie. people not employed by the London Borough of Islington) as well as the names and addresses of staff. We consider this information to be exempt from disclosure by virtue of Regulation 12(3) and Regulation 13 of the Environmental Information Regulations, which relate to the disclosure of "personal data" as defined by the Data Protection Act 2018:

**Regulation 12(3) states:**

To the extent that the information requested includes personal data of which the applicant is not the data subject, the personal data shall not be disclosed otherwise than in accordance with regulation 13.

In addition to the information provided to you, I can confirm that further information is held by the council in regards to your request but has been excepted by virtue of Regulation 12 4 (e) which relates to "internal communications", Regulation 12 5 (e) which relates to information which attracts "commercial confidentiality" and Regulation 12 (5) (f): disclosure would adversely affect the interests of the person or organisation who provided the information

**Regulation 12(4)(e)**

Internal communications within a local authority are considered to be "a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction." We are therefore refusing your request referring to our internal documents and this response acts as a refusal notice under regulation 14 of the Environment Information Regulations.

The Exception applied is Regulation 12(4)(e), Internal Communications, which states:  
(4) For the purposes of paragraph (1)(a), a public authority may refuse to disclose information to the extent that—

(e) the request involves the disclosure of internal communications

We consider that non-disclosure is in accordance with the Information Commissioner's published guidance which can be found at:

[Regulation 12\(4\)\(e\) – internal communications | ICO](#)



Regulation 12(4)(e) is a qualified Exception and requires a public interest test to be carried out. The reasons for and against disclosure are listed below.

**Public Interest in favour of disclosure:**

- Promote understanding and participation in public debate of current issues.
- Promote accountability and transparency in decision-making and functions.

**Public Interest in favour of withholding:**

- Inhibition of frank and honest debate.

We have found that, on balance, the public interest lies in favour of upholding the exception.

**Regulation 12(5)(e)**

The Council considers that some of the requested information is exempt from disclosure as it falls within Regulation 12(5)(e) of the Environmental Information Regulations (EIRs), which states that a public authority may refuse to disclose information to the extent that its disclosure would be likely to prejudice the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.

The information requested is exempt from disclosure under Regulation 12(5)(e) of the Environmental Information Regulations (EIRs). Disclosure would prejudice, or would be likely to prejudice the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest. In order to come within the terms of the exception, it must be shown that:

(1) The information in question is “commercial or industrial”; We are satisfied that the information to which the exemption has been applied contains commercial or industrial information.

(2) The information is subject to confidentiality provided by law; (In order to be subject to confidentiality provided by law the information must (a) have the necessary quality of confidence and (b) be imparted in circumstances importing an obligation of confidence); there are several questions to answer to ascertain whether this information is confidential:

There is an inherent duty of confidentiality when information is submitted to councils in procurement exercises/a contract. The Public Contracts Regulations 2006 and their precursor required that where a contractor/bidder obtains information as part of a procurement process we should accede to reasonable requests from the contractor that information passed to ourselves as part of the procurement process is treated as confidential.

In order to ascertain whether the information has the necessary quality of confidence the Information Commissioner considers that it can be helpful to ask a number of questions to ascertain if the information has the necessary quality of confidence. These include:

1. i) Is the information trivial?

It has been determined that this information is not trivial. In this case it includes information which could potentially be used by competitors to their own advantage, and to the disadvantage of the contractor/suppliers/bidders. Elements within the information would disclose a package of information brought together using the skills and experience of the contractor over time, which would be advantageous to other businesses in the area.

2. ii) Is the information already available by other means/has it passed into the public domain?

The information held encompasses aspects that are unique to the contractor/bidder and as such are not available by other means and have not been passed into the public domain.

(3) Such confidentiality is provided to protect “a legitimate economic interest”; the contract/bid contains information provided by the contractor/bidder as to when and how it intends to carry out the contract and provide the specified services. Some of this information is proprietary in nature and provides a detailed overview of the way the contractor approaches such contracts. The contractor states that disclosure could provide information on its methods of business which may be of advantage to its direct competitors, thereby negating its ability to develop a commercial advantage when tendering for other contracts. We accept that the legitimate economic interests of the contractor could be adversely affected by the disclosure of this information.

There is an agreement that the confidential information agreed in the contract would be confidential to both parties (in that each party agreed to hold the information in confidence and could not therefore disclose it as each would owe the other a duty of confidence to protect their respective economic interests). Therefore, we are able to consider its own economic interests in addition to those of the contractor. The Council feels that confidentiality is required in order to protect its position as purchaser. Disclosing this information would be likely to affect the ability to negotiate best value and to effectively procure services in the future.

(4) The disclosure of the information would adversely affect such confidentiality.

Detailed information on the methodology/equipment/systems used

by the contractor/bidder could be studied and adopted by competitors of the suppliers of the equipment/service/system.

Disclosure would be likely to disadvantage the contractor's/bidder(s)' ability to tender for other public or private commercial contracts if competitors to the methodology/system/manufacturers of the equipment use this information for their own benefits. Many elements of the information include details on commercially sensitive systems and processes developed by third parties – e.g. they may be the trade secrets of third parties.

To use this exception we are required to undertake a public interest test. The matters which were considered in applying the public interest test are as follows:

Factors in favour of disclosure

It is in the public interest for the Council to be open and transparent.

Factors in favour of withholding

It is not in the public interest for the Council to disclose information that would be likely to cause actual prejudice to the commercial interests of the third party concerned in subsequent negotiations and competitive procurement exercises with other potential partners.

- We consider we owe a duty of care to third parties providing us with sensitive commercial information not to disclose the information to the wider public.
- The Council's relationship with its current and potential service providers would be likely to be affected for fear of disclosure of commercially sensitive information in their contracts.

It is considered that the greater public interest therefore lies in not providing the information at this time. In coming to that conclusion, the public interest in providing the information has been carefully weighed against any prejudice to the public interest that might arise from withholding the information; in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Further information on this exception can be found here:

[Commercial or industrial information \(regulation 12\(5\)\(e\)\) | ICO](#)

### **Regulation 12(5)(f)**

The council considers that any information provided to the Local Authority is made available in good faith, for private discussion and may contain sensitive information.

Such information would therefore be considered as exempt under EIR Regulation 12(5)(f) in line with ICO guidance as the person: was not under, and could not be put under, any obligation to supply the information; supplied it expecting that it would not be disclosed to a third party and has not agreed to the information being supplied.

It is considered in the public's interest to allow the council to continue to engage in private discussions with third parties and residents to steer them towards outcomes that provide the greatest benefit to the borough's residents.

This outweighs the public benefit of making personal information publicly available. Thereby losing the trust and confidence of residents, preventing publicly beneficial future discussions. Public Interest Arguments There is a presumption in favour of disclosure under the regulations; Regulation 12 (2). Secondly, openness in local government increases public trust. There is also the public interest in transparency and accountability. With this in mind, members of the public have a right to information relating to the local environment. There is a further public interest in disclosing environmental information because it supports the right of everyone to live in an adequate environment, and ultimately contributes to a better living space.

In addition to the above, we appreciate that the public has an interest in knowing how decisions are made by the local authority. To this extent, there will be occasions when public authorities should disclose information even though it is confidential, and disclosure would harm someone's legitimate interests. However, it is considered in the public interest to allow the council to continue to engage in private discussions with groups and individuals. The purpose of these discussions is to steer businesses and property owners towards decisions that provide the greatest benefit to the borough's residents.

It is considered that the greater public interest therefore lies in not providing the information at this time. In coming to that conclusion, the public interest in providing the information has been carefully weighed against any prejudice to the public interest that might arise from withholding the information; in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Further information on this exception can be found here:

[eir\\_voluntary\\_supply\\_of\\_information\\_regulation.pdf \(ico.org.uk\)](#)

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