



Department
of Health &
Social Care

Redaction Guidance: Transparency Agenda Requirements

March 2018

Background

Certain information must be published on [Contracts Finder](#) when the value is valued over £10,000 for central government bodies and £25,000 for wider public sector bodies.

What	Why	Source
1. Opportunity Notice	Legal Requirement	Public Contracts Regulations 2015, Regulations 106 and 110
2. Contract Award Notice	Legal Requirement	Public Contracts Regulations 2015, Regulations 108 and 112
3. Copy of the Contract	Cabinet Office/CCS Policy	Procurement Policy Note 13/15
4. Performance Information	Cabinet Office/CCS Policy	Procurement Policy Note 13/15



Redaction

Redaction is the separation of disclosable from non-disclosable information by blocking out individual words, sentences or paragraphs or the removal of whole pages or sections prior to the release of the document.

[The National Archives Redaction Toolkit](#)

Attention: Information redacted in line with Section 40 of the FOIA
Email: Information redacted in line with Section 40 of the FOIA
Email: Information redacted in line with Section 40 of the FOIA

- 7) The following persons are Key Personnel for the purposes of the Agreement:
- | Name | Title |
|--|--|
| Information redacted in line with Section 40 of the FOIA | Information redacted in line with Section 40 of the FOIA |
- 8) For the purposes of the Agreement the data security requirements are detailed at Annex 4.
- 9) The Customer may require the Supplier to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check. The Supplier shall ensure that no person who discloses that he/she has a conviction that is relevant to the nature of the Services, relevant to the work of the Customer, or is of a type otherwise advised by the Customer (each such conviction a "Relevant Conviction"), or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check, a Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

Payment

All invoices must be sent, quoting a valid purchase order number (PO Number), to: Information redacted in line with Section 40 of the FOIA Within 10 working days of receipt of your countersigned copy of this letter, we will send you a unique PO Number. You must be in receipt of a valid PO Number before submitting an invoice.

Information that can be withheld under the Public Contract Regulations 2015

Regulation 108 of the PCR 2015 provides details on the publication of information on Contracts Finder. The following are the exemptions that are specified that you should consider when redacting information within contracts:

“...the contracting authority may withhold information from publication where its release—

- (a) would impede law enforcement or would otherwise be **contrary to the public interest**,
- (b) would **prejudice the legitimate commercial interests** of a particular economic operator, whether public or private, or
- (c) might **prejudice fair competition between economic operators**.”



Freedom of Information Act

The Freedom of Information Act (FOIA) gives a right to access recorded information held by public sector organisations. It applies to specific written requests.

Whilst it does not apply specifically to the information we are required to publish on Contracts Finder, it provides a useful framework to assess what should be published and what may be exempted.

This document looks at Sections [41](#) and [43](#) of the [FOIA](#) and discuss the types of exemptions. When choosing to redact information, you should consider:

- the exemptions available under FOIA, using them as a guide
- the [public interest test](#) to decide whether the information should be withheld
- the supplier's view around what information is confidential (obtained during the procurement). This must be reviewed in line with the public interest test

It is likely there is greater scope to redact under Contracts Finder rules than under FOIA.

Be aware, that any individual would have rights to request disclosure of redacted information published on Contracts Finder. We would consider the legal tests in more detail then.



FOIA redaction justifications

Section 41 – protection for information that has been shared as confidential

- If something is confidential where its disclosure would be likely to lead to successful court action against the discloser it is exempt from the FOIA
- Public sector procurement contracts do not count as having been generated by the third party, so they can't be exempted. If it contains things that are considered confidential they can be redacted

Section 43 – protection of commercial interests

- Information that is considered to be a trade secret should be redacted. The information must not be widely known and a rival organisation not easily be able to recreate or discover the information itself
- The public authority must be satisfied that there is more than a hypothetical or remote possibility that a prejudice might arise*

Justifications under the possibility of prejudice could include:

- damage to business reputation or the confidence that customer, bidders or investors may have on it
- A detrimental impact on its commercial revenue or threaten its ability to obtain supplies or secure finance
- Weaken positions in a competitive environment by revealing market-sensitive information or information of potential usefulness to its competitors

For any of these reasons, where practicable empirical evidence should be obtained or a reasonable argument presented to justify the decisions. The assertion that another bidder might use the information to gain an advantage is not enough.



Public interest test

When conducting a public interest test, you should make sure that the following are not taken into account which would impact on the decision about whether or not to publish information:

- Possible embarrassment of government or other officials
- Possible loss of confidence in government or public authority
- Seniority of persons involved
- Risk of applicant misinterpreting or misunderstanding the information e.g. because it is incomplete
- Complexity of the information



Commercial Information

For Commercial/ Cost / Price

Section 43 of the FOIA provides protection of commercial interests. Therefore, in accordance with the act the following areas should be considered:

- “Rates, unit pricing and any pricing/ costs build up information is redacted”

The assumption is to publish, though if there is a valid argument to redact, do.

The total contract value is not redacted as this information is published on Contracts Finder separate from the contract.



Consulting with suppliers

We are obliged to publish contract information and this is made clear in contract and tender documents.

You must refer to tender documentation, in particular any schedule where a supplier has been given the opportunity to identify specific information they deem to be confidential. You must consider this when choosing what to redact.

Remember the assumption is towards disclosure so all redactions must be considered alongside the FOIA and the public interest test.

As a courtesy, you may send a copy of the contract you intend to publish to a supplier with an accompanying note making the intention to publish clear. It is permissible to allow a few days between sending and publication to allow the supplier to point out discrepancies.

In the event of a disagreement, you should ask the supplier to provide counter proposals on redaction with back up rationale as to why information should be redacted.



Our commercial interests

In addition to considering the suppliers when looking to see what information should be redacted, thought should be given around if there is any information that we would need to keep confidential so as not to harm our commercial interests.

This could include negotiating strategies or contract and incentive structures which would harm our ability to negotiate for future procurements.

If any information falls into this category it should be redacted accordingly. Any information included in advertisement notices won't be able to be redacted as the information is already publicly available.



Technical Information

Section 43 of the FOIA provides protection of commercial interests. The following types of information should be considered for redaction:

- Processes
- Methods & methodology
- Systems
- Terminology
- Approach
- Intellectual Property
- Trade secrets
- Commercial figures including: rates, fees and savings

A copy of the redacted version should be sent to the supplier to receive confirmation that they are happy for it to be published on Contracts Finder



Relevant cases

John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)

“the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk”

The Information Commissioner and Camden Primary Care Trust (FS50214920)

A contract for GP medical services at a GP surgery was requested. The price to be paid by the Trust per patient for each of the five years of the contract was withheld.

The Commissioner concluded that this price information should be disclosed as no case had been made out for exemption under section 43(2).

The Commissioner rejected the argument that disclosing the price per patient would put the contractor at a disadvantage against its competitors when bidding for similar contracts in future because:

- the information was not detailed enough to allow the contractor's future prices to be predicted with certainty.
- the contractor's pricing model or mechanism could not be established from the price
- Even if future contracts were similar in nature (though this was doubted), the market was very competitive and prices would thus be different at different times. The contractor's future price could not therefore be predicted.



How to redact in Adobe Acrobat X Pro*

If you have access to Adobe Acrobat X Pro you can use the 'Redaction Tool' to safely and permanently redact any information. Once you've opened the document in Adobe Acrobat X Pro you need to:

- Open the 'Tools' panel
- Click on the 'Protection' tab
- Select 'Mark for Redaction'
(You can use the 'Redaction properties' Tab to automatically apply Overlay text)
- You can either highlight the text or draw a box using the cursor
- Click 'Apply redactions'
- Once checked you can then save the document

The following link has a more in depth guide and guidance on how to Pre populate the overlay text

<http://blogs.adobe.com/acrolaw/2010/12/ricks-acrobat-x-redaction-guide/>

*To check your version of Adobe - Open Adobe and select 'Help' and it will state the version of Adobe you have



What to do if you don't have Adobe

If you don't have access to Adobe Acrobat Pro you can redact the documents in word:

- highlighting the text to redact in black (make sure the text is in black as if it is in any other colour it will still be visible)
- Place a black square over any images or pictures to redact

Once fully redacted (and agreed) you will need to print the documents out and rescan them as a PDF.

- Saving them as a PDF directly from word does not protect the redacted information from being extracted at a later date

Once the scanned documents have been saved as PDF send them back to the supplier(s) to confirm that the terms and conditions will be published. You can include the following wording:

In accordance with the T&Cs and Government policy, the Department intends to publish this contract on contracts finder. We have reviewed the contract and redacted certain sections. A copy of the contract is attached. We intend to publish this contract on [date in about 3 days time].

Once finally agreed publish on contracts finder (or in response to an FOI)

Make sure you keep a copy of the original contract without the redactions.



Additional Resources

Additional guidance from the Information Commissioners Office can be referred to for a full and in-depth view of sections 41 and 43 of the FOIA:

- [Section 41](#)
- [Section 43](#)

The National Archives Redaction Toolkit is available [here](#)

Guidance on the transparency agenda can be accessed [here](#)

The latest transparency PPN (02/17) can be viewed [here](#)

If you require guidance on a case by case basis please contact [REDACTED] or [REDACTED]

