



Breckland Council

Elizabeth House
Walpole Loke
Dereham
Norfolk
NR19 1EE

Date: 19/10/21

Our reference: BFOI-010814

Your reference:

Mr Whittaker
19 Coriander Drive
Thetford
Norfolk
IP24 2XZ

Dear Mr Whittaker

Ref: BFOI-010814

INTERNAL REVIEW REQUEST RECEIVED 9 September 2021

I am writing to request an internal review of Breckland District Council's handling of my FOI request 'Grounds Maintenance Contract for Thetford'. A full history of my FOI request and all correspondence is available on the Internet at this address: <https://www.whatdotheyknow.com/request/g...> . I would ask you to re-assess your use of the Section 43(2) exemption, and ensure it applies to all of the requested information that you decided to withhold. Specifically:

1/ No explanation has been given as to how releasing further parts of the contract would prejudice either BDC or Serco's commercial interests. If you wish to maintain your reliance on this exemption, please provide further details of the harm you anticipate would be caused.

2/ You will see in my original request that I asked for a copy of the whole contract. It appears you may have provided only the sections I said I was particularly interested in, rather than the whole contract minus the parts you deem to be commercially sensitive under Section 43(2). I find it hard to believe that s43(2) would apply to the whole of the rest of the contract, and it is just a coincidence that those sections are the only ones that can be released. Moreover, even if some other sections contained some sensitive content, I can't imagine that divulging e.g. the headings (or a table of contents) would cause any commercial harm. Thus these (and any other parts that would not cause significant harm) should be supplied too. For each

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other part that is withheld under s43(2), I would expect a justification in terms of the specific harm that could be caused by releasing that part.

3/ In particular, I note that you have not supplied any maps or descriptions of the specific grassed areas to be cut and their types, nor the locations of bins to be emptied. These are presumably included either as part of the contract or as schedules / appendices to it. Please either release this information or explain why an exemption applies. (Note that you have previously provided me with a copy of "Litter and Dog Bins Running Total.xlsx" giving details of bin locations. So if that was the information provided to the contractor, then there is no need to supply it again, but please confirm if that is the case.)

4/ In the extracts you have supplied, the section numbers appear to have been changed. (In most, the numbering starts at section 1, subsection 1.1, then 1.1.1 etc.) Could you please supply a copy with the correct numbers in place. Since automatic numbers can behave strangely when copying and pasting between Word Documents, I would suggest converting the whole contract document to a PDF file, and then redacting the exempted content from there.

5/ The "Bees Policy" you mention would appear to have a material impact on the grass cutting requirements specified in the contract, to the point of it being effectively an amendment/revision of the contract. I believe that details of what you have instructed the contractor regarding this policy would therefore be caught by my original request. Please therefore consider releasing this information.

INTERNAL REVIEW RESPONSE

I write in response to your internal review of the initial response sent to you, which I have attached for reference. The purpose of an internal review is to consider whether your request was handled correctly. I have reviewed the original response sent to you and have addressed each of your concerns under separate headings.

The Council initially responded under the Freedom of Information Act 2000 (FOI). I consider that it is more appropriate to have been dealt with under the Environmental Information Regulations 2004 (EIR). The reason for this is because the contract and schedules for grounds maintenance relate to the environment.

Regulation 2(1) of the EIR provides the following definition of environmental information:

"...any information in written, visual, aural, electronic or any other material form on-

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

(d) reports on the implementation of environmental legislation;
(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of elements of the environment referred to in (b) and (c);

Points 1 & 2

I have considered your request for the contract the Council has with Serco. The initial response to refuse was in my opinion correct, however, rather than using Section 43(2) of the FOI, the refusal should have been issued under Confidentiality of commercial or industrial information (regulation 12(5)(e)) EIR.

Regulation 12(5)(e) states:

12.—(5) For the purposes of paragraph (1)

(a), a public authority may refuse to disclose information to the extent that its disclosure would adversely affect—

(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest

I can confirm that the Council holds the contract requested. Please take this as a new refusal notice.

The contract you are requesting relates to a commercial agreement between three District Councils (King's Lynn West Norfolk District Council, North Norfolk District Council and Breckland Council) and Serco. A full unredacted contract contains commercial information which is exempt from disclosure as it would prejudice both Breckland Council's and the other two District Councils and Serco's interests relating to commercial matters.

Disclosure would make it less likely that companies or individuals would provide the department with information in the future or where disclosure would make it more difficult for individuals to be able to conduct commercial transactions, or have future dealings with public bodies, without fear of suffering commercially as a result, these are factors that weigh in favour of non-disclosure. This is also relevant to other areas which the Council is responsible for.

I have considered the commercial interests of third parties and the benefit to the public for the release of this information. I have also considered the impact that this may also have on our future business relationships. In considering this case and the details required, I have considered that the public interest in favour of disclosing such information is outweighed by the obligation to protect the commercial interests of the Council and third parties. I have therefore decided to withhold the information.

There is a contractual obligation of confidence clause all parties are bound by.

Public interest in disclosing the environmental information

- I consider the Council acknowledges that there is a public interest in openness and transparency.
- Disclosing the requested information would enable the public to understand the contract awarded to Serco, particularly as this involves three local authorities.

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- As a largely publicly funded organisation, it must exercise tight control of expenditure and resources.
- It is in the public interest that all Council contracts and other expenditures are appropriately managed.

Public interest in maintaining the exception

- The Council consider that disclosure of the remaining parts of the contract within the report could prejudice the Council's ability to carry out commercial activities.
- Such prejudice would be contrary to the public's interest as this could affect commercial matters between parties.
- Disclosure would sour our current partnership relations.
- Disclosure would highly likely impact on any future projects the Council would consider in years to come.
- Disclosure would breach a confidentiality agreement in place putting the Council in a vulnerable position legally.
- Disclosure of confidential contractual terms and information would likely result in a prejudicial position for the purposes of future negotiations and tenders undertaken by Serco.

Regulation 9 – Advice and Assistance

I consider that the Council has complied with Regulation 9 to assist by providing you relevant information to your request- Grass cutting Standard and Specification, Use of Chemicals, Litter picking and Bin emptying information from the contract, rather than the whole.

I consider the Council set out its position in how it considered your request in our initial response, providing assistance to supply relevant information held to the more specific aspects of your request.

I have enclosed within this response the Contract Section Headings.

Additional Information - Reporting an Issue

Noting the original request, you state that some "concern expressed over the maintenance of public areas on our estate by the Council's contractors. We would like to know the details of what should be being done, so we see if there are any issues that need to be raised".

If you or the others of CAWRA wish to report an issue regarding several services provided by the Council including Grounds Maintenance, you can do so via our website
<https://www.breckland.gov.uk/article/2964/Report>

3. Maps & Appendixes

I can confirm that the Council holds contract appendixes confirming the Grounds Maintenance areas and the litter and dog bins in Thetford. These are attached.

I can confirm that the Council does not hold maps, and therefore cannot supply this information.

4. Number Sequencing

I have attached a PDF of the earlier document submitted with the correct number sequence.

5. Bees

In response to point 5. I can confirm that the Council does not have a formal Bees Policy. This was started as an initiative rather than being a formal Council policy/ contractual amendment or revision. The Council works with our contractor to identify areas in which we could benefit from a reduced cutting schedule and therefore encourage insects and wildlife to the area. The identified areas are listed on the attached "bill of quantities".

The areas listed as GRASS_WILDLIFE_WILDFLOWER are the areas where the contractor have been requested to manage these areas to promote wildlife and biodiversity.

Conclusion

The Council should have responded to you under EIR, rather than FOI.

The Council responded within 20 working days of your original request. I note you said that you submitted an internal review request 27 July, I can confirm that I have checked our systems and have no record of this.

I consider the full Grounds Maintenance contract you have requested exempt under EIR.

I have enclosed Grounds Maintenance areas and the litter and dog bins in Thetford.

I have enclosed areas listed to promote wildlife and biodiversity.

I have enclosed a PDF of the GROUNDS MAINTENANCE PERFORMANCE STANDARDS.

I have enclosed a PDF Contract Section Headings.

Details of how to appeal this decision are below.

Appeal Process

If you are not content with the outcome of an internal review, you can complain to the Information Commissioner's Office (ICO).

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow

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Yours sincerely

Adele Newsome
Customer Experience Manager
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