

Public Interest Test Decision Notice



FOI Reference:	FOI-1819-0469-025602
Subject of Request:	FOI request - payments made to pharmacies for locally commissioned NHS or private services
Exemption(s) applied:	<input type="checkbox"/> Section 31 – Law Enforcement
	<input type="checkbox"/> Section 42 – Legal Professional Privilege
	<input checked="" type="checkbox"/> Section 43 – Commercial Interests
	<input type="checkbox"/> Other:

Reason exemption applies:

Section 43 of the Freedom of Information Act 2000 (“the FOIA”) states that “information held by a public authority is exempt information if its disclosure under (the Act) would or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)”.

The release of the information sought would prejudice future tendering exercises that may be undertaken for these projects by preventing the Council from obtaining value in competitive tendering exercises, and by allowing the existing contractors’ competitors to unfairly compete with them.

Under the FOIA, section 43 is a qualified exemption. This means that even if information falls within an exemption, a public authority is under a duty to consider whether disclosure should nevertheless be made in the public interest.

The public interest test has been applied, as follows:

Factors considered in favour of disclosure:

Facilitate accountability and transparency in the spending of public money

Disclosure of the requested information could feasibly aid the public in understanding the Council’s contracting arrangements and processes.

Facilitate the accountability and transparency of public authorities for decisions taken by them

Disclosure of the requested information could feasibly aid the public in understanding the Council's contracting arrangements and processes, and how public money has been spent in this area.

Bring to light information affecting public safety

A number of the contracts relate to services aimed at preventing harm to the public, and release of this information may offer an insight into how the Council are tackling these issues.

Factors considered in favour of withholding the information:**Third Party/Competition issues**

There is an important distinction to be drawn between financial interests and commercial interests. It is the latter, i.e. the effect on the ability of the Council to compete or to trade, that is under consideration in applying the exemption.

The Council regularly applies for similar grants and engages in commercial activities with providers on a regular basis. The information to be withheld has a direct link to the future commercial applications of the Council.

Timings of the disclosure

The contracts for both the needle exchange and supervised consumption services are due to be retendered within the next 18 months. Consultation regarding the new contract has taken place within the last month. There is a public interest in ensuring this process is conducted fairly, without prejudice to any provider.

Deter competition for public sector contracts

There is a public interest in ensuring that companies can compete fairly and that there is fair competition for public sector contracts. Disclosure of the requested information will prejudice this. Disclosure may restrict the number of companies willing to work with the public sector for fear of losing a commercial advantage if their pricing structures and cost are released to their potential or actual competitors. This will also compromise the Council's ability to achieve value for money from its future contracts.

The circumstances under which the public authority obtained the information

Whilst bidders are no doubt aware of the obligations of the Freedom of Information Act on both public authorities and the companies themselves, tenders are nevertheless submitted in the expectation that a degree of confidence will attach to the commercially sensitive information contained within them, at least for the time period until the contract has been signed and sealed.

At this moment, release of such information would harm their ability to bid if the Council has to offer this contract again. The release of this information would be a breach of the

duty of confidence which the Council owes to bidders in relation to their information while the contract is being formed

Public Interest Test Decision

<input type="checkbox"/>	To disclose the requested information	<input checked="" type="checkbox"/>	Not to disclose the requested information
Date:	06/09/2018		
Signed:	Nathan Matterson		
Title:	Junior Legal Assistant		