

6 October, 2011

Mr Julian Todd

Our Ref: F0004984

Your Ref:

Email: request-80293-
xxxxxxxxx@xxxxxxxxxxxxxxxxx.xxx

Dear Mr Todd,

Re: Freedom of Information request - Zero data loss of EPC information

I write further to your e-mail of 17 July requesting information about the procurement and award of the contract for establishing and maintaining both the Domestic and Non-Domestic Register for Energy Performance Certificates and other Documents to Landmark Information Group, following the publication of Decision Notice FS50309543 of 21 June 2011. Your request has been considered under the Freedom of Information Act 2000.

As you are aware, your request raises complex public interest considerations together with the specific exemption under section 43(2) of the FoI Act - prejudice to commercial interests, which had to be analysed before I could come to a decision. As a consequence, I have had to seek two extensions of time, by 20 working days each, in order to decide if the public interest in withholding the information outweighs the public interest in disclosing it.

The department has made every effort to trace back through its records to locate the documents that have been requested but unfortunately we have been unable to trace all of the documents you refer to. It will not therefore be possible to provide you with all of the information you have requested. In addition, our records indicate that some of the information requested is either incomplete or may not be the final version in any instance. In the case of documents where there is doubt about whether we have traced the final version, we have reviewed the information that is available and have wherever possible identified the draft version which best represents the final version of the document being requested. Where our records indicate that the document version is more than two weeks from the date quoted in your email, we have taken the decision either not to release it as it is not a true representation or it has been redacted because of the previous decision of the commissioner. Finally, it is also possible that some of the exemptions presented in

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the Decision Notice FS50309543 of 21 June 2011 will apply to some of the documents listed in this request. Having said that, I have attempted to respond to each of the eight questions listed in your request as follows:

1) A copy of the pre qualification questionnaire issued by DCLG on 20 March 2006 mentioned in <Whereas A> of the 2006 contract.[5] - Provided.
Please see attached **(Annex A)**

2)
(a) A copy of the Invitation to Submit Outline Proposals issued on 3 May 2006 mentioned in <Whereas B>, - Provided.
Please see attached **(Annex B1 to B6)**
(b) the number of Operators these were submitted to. -
Letters were sent to at least 4 bidders - Landmark, MDA, HCR Consortium and Capita
(c) a copy of the Outline Proposal submitted by Landmark.-
In the Decision Notice FS50309543 of 21 June 2011 the Commissioner decided that there is sufficient evidence available to suggest that disclosure of this information would be likely to prejudice the commercial interests of Landmark. DCLG is therefore satisfied that section 43(2) of the FOI Act is engaged for any information considered to be of a commercially confidential nature and all the remaining information in the outline proposal is to be found in the contract, of which you already have a copy. We therefore submit that the exemptions and the supporting public interest test previously presented still apply.

3)
a) A copy of the Invitation to Submit Best and Final Offers issued on 4 August 2006 mentioned in <Whereas C>
Please see attached **(Annex C1 to C6)**
(b) the number of potential service suppliers these were sent to:
There were 2 - Landmark and MDA
(c) a copy of the Best and Final Offer submitted by Landmark. –
In the Decision Notice FS50309543 of 21 June 2011 the Commissioner decided that there is sufficient evidence available to suggest that disclosure of this information would be likely to prejudice the commercial interests of Landmark. DCLG is therefore satisfied that section 43(2) of the FOI Act is engaged for any information considered to be of a commercially confidential nature and all the remaining information in the Best and Final Offer is to be found in the contract, of which you already have a copy. We submit that the exemptions and the supporting public interest test previously presented still apply.

4) A copy of the notice to OJEU issued by DCLG on 15 June 2007 mentioned in <Whereas A> of the 2008 contract.[6] - Provided.
Please see attached **(Annex D)**

5)
(a) A copy of the Invitation to Submit Outline Proposals issued on 17 August 2007 mentioned in <Whereas B>. -
Please see attached **(Annex E1 to E5)**

(b) the number of operators these were sent to. - Our records are incomplete however they do indicate there was a minimum of 5 operators.

(c) a copy of the Outline Proposal submitted by Landmark.-
In the Decision Notice FS50309543 of 21 June 2011 the Commissioner decided that there is sufficient evidence available to suggest that disclosure of this information would be likely to prejudice the commercial interests of Landmark. DCLG is therefore satisfied that section 43(2) of the FOI Act is engaged for any information considered to be of a commercially confidential nature and all the remaining information in the Best and Final Offer is to be found in the contract, of which you already have a copy. We submit that the exemptions and the supporting public interest test previously presented still apply.

6)

(a) A copy of the second Invitation to Submit Outline Proposals issued on 21 September 2007 mentioned in <Whereas C>,
The department has made every effort to trace back through its records to locate the documents that have been requested but unfortunately we have been unable to trace the documents you refer to.

(b) the number of operators these were sent to. - Our records are incomplete however they do indicate there was a minimum of 5 operators.

(c) a copy of the second Outline Proposal submitted by Landmark..-
In the Decision Notice FS50309543 of 21 June 2011 the Commissioner decided that there is sufficient evidence available to suggest that disclosure of this information would be likely to prejudice the commercial interests of Landmark. DCLG is therefore satisfied that section 43(2) of the FOI Act is engaged for any information considered to be of a commercially confidential nature and all the remaining information in the Best and Final Offer is to be found in the contract, of which you already have a copy. We submit that the exemptions and the supporting public interest test previously presented still apply.

7)

(a) A copy of the Invitation to Submit Best and Final Offers issued on 14 December 2007 mentioned in <Whereas D>,
The department has made every effort to trace back through its records to locate the documents that have been requested but unfortunately we have been unable to trace the documents you refer to..

(b) the number of potential service providers these were submitted to. –
Letters sent to at least 4 bidders..

(c) a copy of the best and final offer submitted by Landmark.-
The reasons for providing redacted versions of the Landmark Best and Final Offers document are set out in **Annex F** attached.
In the Decision Notice FS50309543 of 21 June 2011 the Commissioner decided that there is sufficient evidence available to suggest that disclosure of this information would be likely to prejudice the commercial interests of Landmark. DCLG is therefore satisfied that section 43(2) of the FOI Act is engaged for any information of a commercially confidential nature and all the remaining information in the Best and Final Offer is to be found in the contract, of which you already have a copy. The exemptions and the supporting public interest test presented still apply.

And finally,

8) Whether DCLG or another third party entirely independent of Landmark that reports to the government is contracted to receive a fully up to date copy of the Energy Documents data which it can independently verify is complete.

As I understand your question, there is no third party contracted to independently receive energy documents data. However, DCLG is able to carry out checks, or appoint third parties to carry out checks on our behalf and Landmark regularly carries out penetration tests to test the overall security of the system and its resilience against data loss. Landmark reports the outcome of such tests to DCLG whenever they are carried out. The owner or tenant of any building, or any person acting on their behalf, can also submit requests via the England & Wales Domestic Register website to the Register Operator (Landmark) for the information needed to enable them to obtain the disclosure of the EPC Report Reference Number (RRN). There have been no reported instances of anybody being unable to retrieve an EPC that has been lodged on the Register.

Department for Communities and Local Government as an organisation aims to be as helpful as possible in the way it deals with requests for information under the Freedom of Information Act 2000. If, however, you are not satisfied with the way in which your request has been handled or the outcome, you may request an internal review within two calendar months of the date of this letter. Information about the Department's review procedures and how to apply for an internal review of your case is contained on the Department's website at

<http://www.communities.gov.uk/documents/corporate/pdf/1384250.pdf>

This also explains your right to apply directly to the Information Commissioner for a decision in the event that you remain dissatisfied following the Department's review.

Generally, the ICO cannot make a decision unless you have exhausted the Internal Review procedure provided by Communities and Local Government. The Information Commissioner's address is in the leaflet referred to above.

If you have any queries about this letter, please contact me. Please remember to quote the reference number above in any future communications.

Kind regards

Raphael Smith

Annex F

<p style="text-align: center;"><i>Exemption in full</i></p> <p>43(2) Information is exempt information as disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person.</p>	
<p style="text-align: center;"><i>Factors for disclosure</i></p> <ul style="list-style-type: none"> • Promoting accountability and transparency by public authorities and decisions taken by them. • Allowing the public to understand how decisions are made by the Department and Government in general. • Benefits to the public from having information on environmental information so that they can participate in decision-making from a position of knowledge rather than mere speculation. 	<p style="text-align: center;"><i>Factors for withholding</i></p> <ul style="list-style-type: none"> • The need to protect commercially sensitive information of third parties, disclosure of which would or would be likely to be injurious to their commercial interests. • Prejudice to the ability of the Department to let contracts with the private sector in future, if there was an expectation among prospective contractors that such information would be routinely released.
<p style="text-align: center;"><i>Reasons why public interest favours withholding information</i></p> <p>The contracts, and service agreements, between the DCLG and Landmark Information Group relating to the Domestic and Non-Domestic EPC databases are extensive and do contain commercially sensitive information. For example, the contractual obligations include reference information from the Landmark Invitation To Tender (ITT) response. The final contract and service agreements were the result of an ITT, Best and Final Offer and negotiations between DCLG and Landmark. Therefore, the release would prejudice the commercial interests of Landmark. The contract, and service agreements, to operate the EPC databases was subject to an “open” competition, for which several IT companies submitted bids, and to disclose details of Landmark’s contracts and service agreements would place Landmark at a disadvantage in any subsequent bidding process when the EPC database operating contract came up for renewal. There are also some details about software used which need to be withheld because of system security issues.</p>	
Type of Document	Applicable Exemption
Freedom of Information Act 2000, Part II – Exemption Information	Section 43 – commercial interests
Landmark Best and final Offer.	Section 43 – commercial interests