

GUIDANCE TO TENDERERS ON FREEDOM OF INFORMATION ACT 2000: ACCESS TO INFORMATION ABOUT OR ARISING UNDER CONTRACTS

1 Introduction

1.1 All information relating to any tender made to the Council or any contract to which the Council is party, including information arising under the contract or about its performance, will be covered by the Freedom of Information Act 2000 (the Act) from January 2005. The Council will be under a legal obligation to disclose such information if requested unless an exemption applies. The legal obligations to respond to a request for information falls on the Council. The Council must determine whether an exemption applies to information and whether the request should be refused. The Council may also be subject to disclosure obligations under other legislation or codes of practice. This Guidance sets out the approach of the Council to the disclosure of information about contracts.

2. General rules on disclosure

2.1 The Council has determined that, in the absence of special circumstances:-

- The Invitation to Tender (ITT) will always be available under the Act to those who enquire.
- Responses to tenders (apart from price information – see below) will be held in confidence at least until award of the contract.
- Broad cost information will generally be available after award of contract under the Act to those who enquire.
- Detailed tender prices will be held in confidence until 7 years after expiry or completion of the contract awarded as reserved information (see below)

2.2 Tenderers must therefore inform the Council, on the enclosed Schedule of Reserved Information, of such other information which it regards as being eligible for exemption from disclosure by the Council under the Act. The reasons for all such exemptions must be fully justified against the relevant section of the Act.

3. Reserved Information

3.1 The Act specifies a number of different grounds for exemption. Most of these are not considered to be relevant to a tendering process or subsequent award of contract. Those which are most likely to be relevant are:-

- The information constitutes a trade secret (section 43(1))
 - Disclosure would prejudice the commercial interest of any person (including the Council) (section 43(2))
 - Disclosure would constitute an actionable breach of confidence (section 41(1))
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- Personal data or information relating to the private life of any individual which is appropriate for protection (section 40)
- 3.2 If the Council agrees that information nominated by the successful tenderer may be legitimately classified as “reserved”, the Schedule of Reserved Information will form an integral part of the contract. The Schedule will list the class or category of information or the information itself and specify which exemptions under the Act apply to each specified class, category or specific information. The schedule shall indicate when it is likely that the information can be made available under the Act or if the information is unlikely ever to be made so available. Where such information is exempt under the rules governing commercial matters, (section 43(2)), then unless special circumstances apply, it will not be withheld under the Act for more than three years after completion/expiry of the contract.
- 3.3 Information relating to the overall value, performance or completion of the contract, contract records and administration will not generally be accepted as reserved information. The Council may however withhold access to such information under the Act in appropriate cases. The decision whether to withhold information shall be for the Council alone to determine. It shall have no obligation to consult the contractor.
- 3.4 The Council will automatically make information available under the Act from 3 years after completion/expiry of the contract, in the absence of specific agreement to the contrary. In the event that the Council receives a request for such information before the expiry of the 3 year period which it considers it may be appropriate to provide it will, wherever possible, notify the tenderer and take into consideration any representations made by the tenderer within 7 days of receipt of the notice by the tenderer.
4. **Handling requests for information and notice to those affected**
- 4.1 Other than as set out above the Council shall have no obligation to consult the contractor where any request for information, whether under the Act or otherwise, touches or concerns the contract.
5. **Information about the provision of the service which is the subject of the contract which arises in the course of performance of the contract**
- 5.1 The Council will have obligations to respond to the Act and other requests for information and the contract will include appropriate terms requiring the contractor to supply such information as requested by the Council.

Any enquiries about this policy and its application should be addressed to the Borough Solicitor, Bracknell Forest Borough Council, Easthampstead House, Town Square, Bracknell, Berks RG12 1AQ

SCHEDULE OF RESERVED INFORMATION: FREEDOM OF INFORMATION ACT 2000

Reserved Information	When available for disclosure	Relevant Section of Act	Reason
Tender responses (excl price information)	After award of contract	Section 43(2)	Commercial confidentiality
Generic tender price information	After award of contract	Section 43(2)	
Detailed tender prices	7 years after expiry or completion of the contract awarded	Section 43(2)	Commercial confidentiality

Signed..... Name Company Date.....
