

Decision whether to apply an exemption/s to a request under the Freedom of Information Act 2000

Parts 1 to 3 to be completed by the FOI Practitioner before submission for a decision.

Parts 4 to 8 to be completed by the FOI Champion after taking legal advice where relevant.

1. Please give details of the request.

Who is the request from:

Public

What is the request for:

The 'Quality' sections for responses made by Voyage 1 Limited for the Unplanned Care Service (Pilot) (ref: DN291109 / OJEU: 2016/S 113-201668).

When was the request received:

14/11/2017

Additional details:

Voyage Care have stated that it is important to note that there was no FOI Declaration form supplied by the authority as part of the tender pack documentation and that we therefore had no opportunity to state on submission of the tender those elements of the tender we regarded as commercially sensitive or a trade secret. Had we been provided with an FOI Declaration form by the authority within the tender documentation we would have stated our reasons for non-disclosure.

2. Please list in the box below the exemption/s under consideration¹.

Section 43(2) Commercial Interest - information which would or would be likely to prejudice the commercial interests of any person

¹ If you are not sure which exemptions are applicable please seek advice from Legal Services.

3. Please state in the box below why you think the exemption/s should be applied.

The information requested is for our written responses to a competitive tender. These include our delivery approach, USPs, training programmes, staffing details, etc. Making our responses public would mean that our commercial competitors would have full access to our approach to a commercially competitive activity which would then give an unfair advantage when they compete against us in future tenders. In relation to this specific tender, as it is a pilot service and required an innovative solution, releasing our approach would give an unfair advantage to our competitors should similar services arise elsewhere. In addition as this tender was for only 2 of the 8 beds at Pelham, our approach as to how we will utilise the remaining 6 beds is separate from this tender and would again give an unfair advantage to competitors.

The nature of social care tenders is that commissioners examine our approach to supporting vulnerable individuals with a range of care and support needs. When we discuss these needs, it is on the assumption that the information be kept private (e.g. we have included details from an individual's communication plan that we would not wish to be in the public domain).

We go into detail about how we would design, implement and deliver this service. As it is an innovative approach that we would seek to replicate elsewhere, releasing this information would give competitors an unfair advantage when bidding against us for similar services elsewhere.

Besides our approach to this tender, we go into detail about our future plans for remainder of Pelham Lodge. Access to this knowledge would give competitors an unfair advantage when bidding against us for future call-offs in Nottinghamshire.

In our response, we specifically reference the support needs of people we support in Nottinghamshire, but did this on the basis that the information would not be released into the public domain. It would not be fair on these individuals to release this information into the public domain. Releasing this information, even if it cannot be attributed to a specific individual, compromises our ability to be explicit with commissioners when discussing these needs and reduces staff and client confidence in providing information.

Further, in our application, we name employees and provide personal details such as qualifications. We would not wish for this to be in the public domain as it would mean that staff are inadvertently and, without their permission, having their

personal details released into the public domain. This information is confidential and should not be released.

We also reference a number of business partnerships we have in our response. This was done on the basis that the information was provided in confidence and we did not agree with our business partners that our commercial partnerships would be made public.

Releasing pricing information would put us at a disadvantage when bidding for future tenders against other providers who would have access to our approach to pricing and thus be able to model their response accordingly.

For the avoidance of doubt, we do not consent to any element of our tender response being disclosed for the reasons set out above.

4. Are any of the exemptions under consideration qualified exemptions (i.e. exemptions which require consideration of the “public interest”) ²?

Yes If yes please go to part 5.

No If no please go to part 7.

5. Does the request for information relate to a high profile matter or are there complicated issues to consider?

Yes If yes the Departmental FOI Champion must consult with the Monitoring Officer or the Head of Legal Services before reaching a decision.

No If no please go to part 6.

6. Please record your “public interest” considerations³ (*qualified exemptions only*):

Specify the exemption being considered:

² If you are not sure which exemptions are “qualified” please seek advice from Legal Services.

³ Please set out the arguments for and against the release of the information taking into account the public interest. You will need to consider whether the public interest in disclosing the information outweighs the public interest in maintaining the exemption. The ICO state that the public interest test should be applied separately for each exemption being considered. Please use a continuation sheet if necessary.

Section 43(2) Commercial Interest - information which would or would be likely to prejudice the commercial interests of any person (including the local authority holding it).

Section 40(2): Someone else's personal data

26. If the requested information is (or contains) other people's personal data, which is not also personal data of the requester, section 40(2) may be engaged. Section 40(2) sets out an exemption for third party data if one of two conditions is met.

These conditions are as follows:

First condition:

1. Disclosure of the information to a member of the public otherwise than under FOIA would contravene: any of the data protection principles (section 40(3)(a)(i)), or a DPA section 10 notice (section 40(3)(a)(ii)).

For disclosure:

The public interest means, the public good, not what may be of interest to the public or the requester.

Information is in the public interest if it:

- Improves confidence in public bodies
- Improves transparency in public affairs and decision making
- Demonstrates effective spending of public finances and value for money

Against disclosure:

Against this public interest must be balanced the legitimate commercial interests of the County Council.

The release of this information would be likely to prejudices Voyage Care commercial interests, discloses trade secrets, renders them vulnerable to losing competitive advantage and without knowledge of how the information will be subsequently used or distributed or disposed of may inadvertently impact on their markets.

The release of the information would breach S.40.2 of the freedom of Information Act – someone else personal information thus breaching the first Data Protection Act principle.

7. Please record your decision⁴.

⁴ This decision must be taken in consultation with the Monitoring Officer or the Head of Legal Services if you answered yes to part 5.

Decision:

To withhold details of requested information – Do not release

Reason:

The exemption should be applied because release of this information is very likely to lead to a renegotiation of the contract, resulting in increased costs to the County Council, possible legal action from Voyage care / ICO.

8. Please sign and date your decision.

Signed: Alison Fletcher

Officer: Complaints, Information & Mediation Officer

Dated: 30/01/2018