

## **Freedom of Information – Response – 26938**

*Under the Freedom of Information Act 2000, please send me the winning technical submission document for the HRGP-001 – Corporate Leadership and Management Development Suite of Training Programmes tender, excluding any commercial / pricing details.*

After careful consideration Suffolk County Council (SCC) can confirm that they hold this information however, it is being withheld under Section 41 and Section 43 of the Freedom of Information Act 2000.

### Section 41 – Information Provided in Confidence

s.41 applies where the information was obtained from another party and its disclosure would constitute an actionable breach of confidence.

The winning technical submission was supplied to us by the successful bidder as part of the tender process and is not information created by SCC.

Previous decision notices issued by the Information Commissioners Office (ICO) confirm that tender submissions normally carry the necessary quality of confidence as they include proprietary information that is not publicly available and is only shared with an organisation through a procurement process and therefore under an expectation of confidentiality. This tender was submitted as part of a competitive tender and therefore imports an obligation of confidence.

If SCC releases this information into the public domain in response to a request under the FOIA it would cause an actionable breach of confidence as the information is not otherwise accessible, it was only supplied through a process that require confidentiality to ensure fair competition, the supplier has not consented to disclosure and has no expectation that the information shared would be used for anything other than the procurement process and it could expose the supplier to harm as highlighted in ICO decision notice IC-337353-F9X6.

Under s.41 there is no public interest test and we cannot release information if doing so would breach confidence. Therefore s.41 applied to the entirety of the technical submission.

### Section 43 – Prejudice to Commercial Interests

s.43 applied to information that, if released, would or would be likely to prejudice the commercial interests of any person including the public authority holding it.

In this instance the winning technical submission contains the bidders approaches to writing and structuring the bid, their strategies, methodologies for delivering the contracted work, innovative techniques and solution designs alongside prices structures.

A recent decision notice issued by the ICO (IC-337353-F9X6) identified that these kinds of material would likely prejudice the commercial interests of the winning bidder as they reveal detailed methods, strategic thinking and techniques that won them the bid. Tender submissions contain strategy and delivery approaches that would provide competitors with insight into how the bidder develops successful bids and disclosing this would harm their position in future tender opportunities.

Releasing the information requested would provide other suppliers with an advantage in future tendering, undermining the bidders competitive edge thus harming their ability to compete fairly in future procurement exercises as well as giving competitors insight into the bidders solution development and delivery approach.

s.43 is subject to the public interest test and therefore we must consider this before applying the exemption.

Factors in favour of release:

- Facilitate the accountability and transparency of Suffolk County Council's decisions;
- Facilitate openness and transparency in Suffolk County Council's affairs.

Factors in favour of withholding:

- There is a strong public interest in maintaining the integrity of procurement exercises because it is vital that they are and are perceived as being fair and equal to all parties ensuring that prospective bidders are not discouraged by fear that by taking part will mean loss of their competitiveness through the information provided, fed back and discussed being released into the public domain.
- There is a strong and inherent public interest in ensuring fairness of competition and it would be against the public interest in ensuring fairness of competition and it would be against the public interest if a company's commercial interests were harmed simply because they had submitted a bid.
- The only known interest that disclosure would service would be the private, commercial interests of direct competitors and not to members of the public as the library service has now been brought back in house.
- There is a public interest in maintaining trust and preserving a free flow of information to a public authority where this is necessary for the public authority to perform its statutory functions.
- The information requested contains tender specific strategies, delivery methodologies and competitive innovations the disclosure of which the ICO has confirmed would prejudice commercial interest.

Accordingly, we have determined that it is not in the interest of the Council to release the information. Therefore, this information is withheld under s.43 of the Act.

