



Llywodraeth Cymru
Welsh Government

8 December 2015

Dear ,

**ATISN 9879 – CONTRACT FOR BUSINESS WALES – ENTREPRENEURSHIP AND
SME SUPPORT SERVICE, CONTRACT NUMBER C198/2014/2015 (LOT 1)**

I have considered your complaint in accordance with the procedure outlined in the Welsh Government's Practical Guide for Making Requests for Information, which is available by post on request or via the internet at:

<http://gov.wales/about/foi/makerequest/?lang=en>

In conducting my review, I have referred to a recent Freedom of Information Tribunal decision to uphold a decision not to release tender submission under a S43 (2) exemption made by North East Lincolnshire Council.

The Appeal Tribunal unanimously agreed with the Information Commissioner's decision to uphold the Council's refusal to disclose the bid. It concluded that:

- Disclosing the requested information would prejudice the Council's commercial interests as showing how a winning bidder presented its material and answered questions would demonstrate how the Council distinguished between bids and therefore undermined the competitiveness of future tender exercises.*
- Disclosing the requested information would prejudice the bidder's interests because information on how a bid was presented and the added value that may have been offered would place that bidder at a commercial disadvantage in the future.*

In addition the Tribunal specifically made the point that the commercial sensitivity of bids was unaffected by the remaining duration of the current contract nor how far in the past the bid had been prepared. It concluded:

"If a prospective tenderer were to be able to review its competitor's previous bid documents including trade secrets, this could inhibit competitive tendering and reduce the number of bidders willing to participate which would not be in the Council's interest."

It then went on to consider whether it was in the public interest to allow the exemption. Whilst it accepted that there should be transparency and accountability in decision making these principles were not significantly advanced by the information requested especially as Appellant had received detailed debrief information at the time.

Indeed the Tribunal considered that there were strong public interests in not disclosing the requested information including:

• That potential private sector tenderers should not be discouraged from submitting tenders for fear that their commercially confidential information will be released as this may affect the quality of tenders. • There was a public interest in maintaining an efficient competitive market for these services. Unanimously, therefore the disclosure of the information sought under FOIA was refused.

I have therefore concluded that our Officers were correct to reject your request for a copy of any relevant documents identifying your reasons for awarding scores to us and to the successful bidder and I uphold the previous decision. You received detailed feedback regarding the scoring methodology in the letter dated 22nd October 2015. The Officers involved in the tender process are able to provide a face to face de-brief of your tender submission. If you would like to accept this offer, please contact Sharon Phillips, Sharon.phillips@wales.gsi.gov.uk to arrange a meeting.

If you remain dissatisfied with this response you have the right to complain to the Information Commissioner. The Information Commissioner can be contacted at:
Information Commissioner's Office,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire,
SK9 5AF.

Yours sincerely

Sue Moffatt - MBA, FCIPS

Cyfyngwr Achredu CEDR Accredited Mediator

Cyfarwyddwr Masnachol Llywodraeth Cymru a Chyfarwyddwr Gwasanaeth Caffael Cenedlaethol

Commercial Director Welsh Government & Director National Procurement Service