

Dirprwy Gyfarwyddwr, Diogelwch Cymunedol
Deputy Director, Community Safety



Llywodraeth Cymru
Welsh Government

13 April 2016

Dear ,

ATISN 10324 - Request for copy of training bid submitted by successful tenderer

Thank you for your request which I received on 15 March about your request for copy of training bid submitted by successful tenderer.

A copy of the information I have decided to release is enclosed.

I have decided that some of the information is exempt from disclosure under section(s) 40(2), 41(1) and 43(2) of the Freedom of Information Act, 2000 (FOIA) and is therefore withheld. The reasons for applying these exemptions are set out in full at Annex 1 to this letter.

If you are dissatisfied with the Welsh Government's handling of your request, you can ask for an internal review within 40 working days of the date of this response. Requests for an internal review should be addressed to the Welsh Government's Freedom of Information Officer at:

Information Rights Unit,
Welsh Government,
Cathays Park,
Cardiff,
CF10 3NQ
or Email: FreedomOfInformationOfficer@wales.gsi.gov.uk

Please remember to quote the ATISN reference number above.

You also 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.

However, please note that the Commissioner will not normally investigate a complaint until it has been through our own internal review process.

Yours sincerely

Annex 1

I have decided to withhold the following information:

Information being withheld	Section number and exemption name
Private telephone number and signature	S 40(2) – Personal Data
Details of how the total cost was arrived at	S 43(2) - Commercial Interests
Identity of specific security exercises	S 41(1) – Information owed a legal duty of confidence

This Annex sets out the reasons for the engagement of sections 40(2), 43(2) and 41(1) of the Freedom of Information Act and, where required, our subsequent consideration of the Public Interest Test.

Information released in response to an FOIA request is not just released to the person making the request but is released to the World at large. Consequentially, before releasing the information we need to consider the likely effects of making that information available to everybody, rather than the personal interest the requester may have in being provided with the information.

Engagement of section 40(2) – Personal Data

Section 40 of the FOIA sets out an exemption from the right to know if the information requested is personal information protected by the Data Protection Act 1998 (DPA).

Personal data is defined in Section 1(1) of the DPA as:

“personal data” means data which relates to a living individual who can be identified from those data; or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

Under Section 40(2) of the FOIA, personal data is exempt from release if disclosure would breach one of the data protection principles. We consider the principle being most relevant in this instance as being the first.

The first data protection principle.

This states:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

- (a) at least one of the conditions in Schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

We consider that the private phone number and the signature of a private individual clearly falls within the description of personal data as defined by the DPA and that its disclosure would breach the first data protection principle. The first data protection principle has two components:

1 Personal data shall be processed fairly and lawfully and

2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met

Guidance from the Information Commissioner's Office (Personal information (section 40 and regulation 13) v 1.3) states (at p11):

□ *The starting point is to consider whether it would be fair to the data subject to disclose their personal data. The key considerations in assessing this are set out in the section on Fairness below.*

□ *If disclosure would not be fair, then the information is exempt from disclosure.*

(a) In this instance therefore, we do not believe that the individual concerned would have any expectation that this specific information would be made public. Thus, we believe release of this information would be unfair and so breach the first data protection principle. For that reason, the information is being withheld under section 40(2) of the FOIA. This is an absolute exemption and not subject to the public interest tests.

Engagement of section 43(2) - Commercial Interests

Section 43(2) states that information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The information being withheld provides details as to how the total bid figure was reached. I believe that putting this information into the public domain would allow competitors to gain an insight into how 888-group arrange their business and to identify the company's margins, etc. This would be likely to allow those competitors to target their bids for future tender exercises to the detriment of 888-group. This would put 888-group at a significant disadvantage, as it would not have similar details of its competitors.

Section 43 is a qualified (public interest tested) exemption. This means that in order to engage it, I must show that, irrespective of any prejudice that would, or would be likely to arise from disclosure, the public interest in withholding the information is greater than the public interest in releasing it. I have therefore given consideration to the effects of disclosure of the information to the world at large as the information is made available to anybody and everybody, not just the requestor. As such, when considering your request I have considered the wider effects of disclosure rather than any personal interest you may have in being provided with the information.

Public interest arguments in favour of disclosure

Disclosure would allow the public to scrutinise the award of public sector contracts to satisfy themselves that the authority is getting the best value for the public pound.

Public interest arguments in favour of withholding

It is not in the wider interest to release information that would put a company at a significant disadvantage to its competitors. Value for money is best achieved by ensuring there is a fair and competitive market between companies bidding for public sector contracts.

Disclosure of how a bid price is arrived at is unlikely to add to the public knowledge as to whether a contract is value for money as the cost is only one factor taken into consideration when bids are assessed. What is actually being provided is of greater importance. The release of the total cost of the bid, and details of what that is providing is sufficient to allow the public to decide whether a contract provides value for money or not.

Balance of public interest test

I have concluded that, on balance, the public interest lies in favour of maintaining the exemption for the detailed information on how the bid total figure was reached.

Engagement of section 41 – Information owed a legal duty of confidence

Section 41(1)(b) states that information is exempt if its disclosure to the public would constitute an actionable breach of confidence.

The Welsh Government believes that the identity of specific security exercises should be exempt from disclosure. This information was provided to us with an expectation that such details would be held in confidence.

Discussions with the Office of Security and Counterterrorism has indicated that, except in a few high profile, public, cases, information identifying specific security exercises are not placed into the public arena. I believe, as such, this information is worthy of protection and thus should be held in confidence.

This is an absolute exemption and not subject to the public interest tests.