



Date issued: 05 September 2017

Life Sciences Hub Procurement

I am writing in response to your request for information regarding The Life Sciences Hub contract, clarified by your email dated 25 July 2017 as relating to the second part of the first contract process.

For ease of reference, I have reproduced your questions below and set out our corresponding responses.

1. A copy of the marking papers from the second selection process meeting.

We hold some information that meets this description. However, following careful consideration and consultation with the Welsh Government, I consider that this information is exempt from disclosure by virtue of section 43, section 33 and section 36 of the Freedom of Information Act.

Section 43 (Commercial Interests)

This section states:

Section 43(2) 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 requested contains data that would give insight into the operation and activities of third parties, namely Office Visions and Paramount ('the tenderers'), which would be likely to prejudice their commercial interests. The information also provides an insight into the Welsh Government's process and criteria for scoring tender interviews against particular questions, which would be likely to prejudice its ability to accurately assess future similar tenders and thus achieve value in the use of public money.

The information that we hold was obtained from the Welsh Government and accordingly we consulted the Welsh Government regarding your request. The Welsh Government has objected to disclosure on grounds including prejudice to its commercial interests and those of other tenderers.

As disclosures under the Freedom of Information Act are effectively into the wider public domain, I have considered your request without reference to your identity.

The documents held by us include the scores for each section of the interviews with the tenderers, together with associated notes, which include information regarding methodology, quality, performance and the project itself. This information could give potential future contractors an insight into the competitive tendering process and the interview process, content and scoring against criteria.

The Welsh Government is likely to be conducting procurement exercises in the future, which may incorporate similar elements to this contract. The market for this type of contract is highly competitive and the release of this information could disadvantage the tenderers for this contract in tendering for future similar contracts by giving competitors an insight into their methodologies and the scoring of these, thus providing an unfair competitive advantage. The potential harm could be substantial due to the value of this type of contract.

Furthermore, if tenderers to future contracts were able to use this information to formulate their approach in tendering for similar contracts, comparing the scoring and associated notes for the two tenders for the Life Sciences Hub contract, this could provide tenderers with an unfair advantage by enabling them to formulate a methodology with a higher potential for good scores. This would also prejudice the Welsh Government's ability to properly assess the tenders to ensure the tenderers ability to deliver the contract to the standard required and achieve value in the use of public funds.

Prejudice Test

The exemption at s43(2) is a qualified exemption and I have considered whether the necessary prejudice is established by following the three step test adopted by the Information Tribunal in *Christopher Martin Hogan and Oxford City Council v the Information Commissioner* (EA/2005/0026 and 0030), as outlined by the ICO in its guidance entitled 'The Prejudice Test'.

Applicable interests

The prejudice that would occur relates firstly to the commercial interests of the tenderers for this contract and the application of the exemption is to protect the ability of the tenderers to compete fairly for contracts, through an open process where none of the parties has an advantage over the others. In addition, the prejudice that would occur relates to the commercial interests of the Welsh Government and the application of the exemption is for the purpose of protecting the ability of the Welsh Government to freely negotiate and enter into contracts, through an open process where no party has an advantage over the other.

Nature of the prejudice

Disclosure of this information would have a detrimental effect and such effect would not be trivial due to the value of this type of contract. Disclosure would negatively affect the

ability of the tenderers to compete equally and fairly in seeking the award of similar contracts, as third parties would have prior knowledge of the selection process and the basis of the interview scoring for a similar contract. The disclosure would negatively impact the ability of the Welsh Government to fairly assess similar future contract due to parties having prior knowledge of the scoring process. This could result in the Welsh Government not achieving the best possible outcome, resulting in disadvantage to the public purse.

The likelihood of prejudice

The Welsh Government is regularly involved in tendering contracts, and it is likely that this will include contracts with similar elements to the Life Sciences Hub contract. Potential contactors are likely to be well-informed and conduct suitable research prior to submitting their tender and/or attending a selection interview with a view to ensuring they have the best possible chance of success; it is therefore likely that prejudice will arise.

In order to apply the exemption at s43(2) it is necessary to consider whether the public interest in maintaining the exemption overrides the public interest in disclosure. The ICO guidance 'The Public Interest Test' advises that 'the authority should consider the arguments in favour of disclosing the information and those in favour of maintaining the exemption' and I have undertaken such consideration as show below.

For disclosure

- Transparency and accountability in Welsh Government decision making – it is in the public interest that public authorities are as open and transparent as possible in the way that they operate and the way in which decisions are made.
- Promotion of public understanding of the decision-making process and ensuring integrity and value of money in the transactions agreed by the Welsh Government.

Against disclosure

- There is an inherent interest in avoiding the prejudice that would arise in the event of specific interview scoring and related information being disclosed and used to the advantage of competitors in future tenders.
- The information is current and while in time its value to third parties may diminish, it is still relevant at this point in time.
- There is a framework in place for scrutiny of Welsh Government actions through a statutory audit process, which provides transparency more effectively than ad hoc disclosure.
- Disclosure may not add substantively to public understanding, as this is not disclosure of full information but an element of a transaction, which would serve the requester's private interest in this case rather than be of interest to the public at large.
- Disclosure of this type of information could reduce the number of businesses willing to tender for contracts to work for the Welsh Government.

On balance, I consider that it is in the greater public interest to withhold the information at this time. Accordingly, the exemption at section 43(2) of the Freedom of Information Act 2000 is maintained.

Section 33 (Public Audit Functions)

I also consider that the information is exempt from disclosure by virtue of section 33(2) of the Freedom of Information Act relating to public audit functions.

Section 33 (1) applies to any public authority which has functions in relation to:

- (a) the audit of the accounts of other public authorities, or
 - (b) the examination of the economy, efficiency and effectiveness with which other public authorities use their resources in discharging their functions.
- (2) Information held by a public authority to which this section applies is exempt information if its disclosure would, or would be likely to, prejudice the exercise of any of the authority's functions in relation to any of the matters referred to in subsection (1).

The information held in relation to question 1 of your request comprises part of the documentary evidence about the award of the contract provided to the Auditor General for Wales (AGW) by the Welsh Government in connection with a review into the process of awarding the contract for the fit-out of the Life Sciences Hub.

While the AGW has statutory access rights to documents and information that relate to the exercise of many of his functions, such rights operate on the basis that the information provided is identified as necessary by the AGW. However, the effective performance of audit functions is dependent not just on obtaining information that the AGW identifies as necessary for an examination but also ongoing cooperation by the audited body, including the free volunteering of potentially relevant information by the audited body, so as to enable, for example, the effective planning of examinations.

The disclosure of information at this point in time could lead to reduced voluntary provision of information and also most likely resistance, such as through questioning the necessity of access to requested information.

Disclosure of this information would therefore be likely to prejudice the exercise of the AGW's functions in relation to audit by discouraging audited bodies' ready cooperation with auditors. The free and open engagement of audited bodies is critical for maintaining efficient and effective audit processes to enable the AGW to ensure that public bodies can account for public funds allocated to them, and that their work delivers value for money. This applies particularly in relation to commercially sensitive information, as has been requested in this case.

This exemption is subject to the public interest test, which I have applied as shown below:

For disclosure

- Transparency and accountability in the audit process in relation to public money.
- Wider public understanding and knowledge of the workings of the public audit process.

Against disclosure

- Disclosure would discourage future cooperation with public auditors, particularly as disclosure would harm the ability of the Welsh Government to attract tenders for similar contracts for the fit out of or refurbishment of buildings (as set out in respect of the s43 exemption).
- The negative impact on the supply of information would compromise the effectiveness of auditors in conducting their work in order to hold public bodies to account.

Given the above, I have concluded that the balance of public interest lies against disclosure, and the s33 exemption is maintained.

Section 36 (Effective Conduct of Public Affairs)

The Auditor General for Wales also considers that disclosure of the information would prejudice the effective conduct of public affairs. The information therefore falls within the exemption provided by section 36 of the FOIA. The reasons that such prejudice arises, and the public interest considerations, are the same as set out above in relation to the application of the exemption of s33(2).

2. Details of the Total Final Cost of the fit out/furniture installation carried out by Paramount as we believe the true Total Final costs have been hidden.

We do not hold information that meets this description.

If you wish to complain about the handling of your request, please write to Martin Peters, Head of Law and Ethics, by email to martin.peters@audit.wales or by post to 24 Cathedral Road, Cardiff, CF11 9LJ.

I must also refer you to section 50 of the Freedom of Information Act under which you may apply to the Information Commissioner for a decision on whether or not your request has been dealt with in accordance with the Act. The Information Commissioner's contact details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire SK9 5AF
email: casework@ico.gsi.gov.uk
Tel: 01625 545745
Fax: 01625 524510

You should note, however, that the Information Commissioner would normally expect you to have exhausted our internal complaints procedures before dealing with such an application. Further guidance may be found on the Information Commissioner's website: <https://ico.org.uk/>

If you have any queries, please do not hesitate to contact me.

Yours sincerely,