

Public Interest Test – 1043A/22

Applicable exemption:

Section 43 – Commercial interests

Harm

Disclosure of the unit cost is commercially sensitive, as divulging the pricing model of the supplier is likely to cause financial loss to that organisation. Revealing this information may give competitors an advantage in future tendering processes which would be unfair to the provider of the service. This would undermine the integrity and effectiveness of the tendering process as it may dissuade organisations from submitting tenders or encourage those who do, to compete on price rather than quality. This would reduce the quality of services/products available to the public and for West Midlands Police.

Factors Favouring Disclosure

There is a clear public interest in ensuring that public authorities are retrieving a fair price and value for money from the supplier of these services, especially as it is the public's money and they have the right to ensure that their money is being spent appropriately. Disclosing information about how we spend the public's money and contracts we use would provide a greater transparency in the financial affairs of West Midlands Police. It is clear that there is a public interest in public authorities operating in as transparent a manner as possible, as this should ensure they operate effectively and efficiently.

Factors Favouring Non-Disclosure

Sensitive commercial information such as unit cost will adversely affect the interests of the company involved. There are numerous potential suppliers for some of the products and services, therefore a contractor would have a weakened position in a competitive environment if market sensitive information were released, or information of potential usefulness to its competitors were to be likewise released.

Disclosure of the exempted information may cause a breach of the confidences surrounding the current contracts. There is a risk that disclosure could leave this authority at risk of civil proceedings via an actionable breach of confidence.

Balancing Test

Before deciding which of these arguments is most compelling, a balancing test needs to be completed. In this case, the right of the public to know needs to be weighed against the damage caused to the suppliers and West Midlands' business reputation or confidence in

which it is held by those suppliers. The information, if placed into the public domain, would give the advantage to competitors in any future tendering exercise. It is in the public interest to ensure that companies are able to compete fairly for public sector contracts.

The accountability for public funds is a powerful argument. However, this is offset by the fact that the authority is already subject to a financial audit and is therefore already held accountable for the money that it spends. This process will not be enhanced by a disclosure under FOIA.

When analysing the impact of commercial harm, the number of competitors will always be a factor. The fact that there are numerous suppliers in the market place for Public Service Contracts means that there is clear evidence that the tender process will always attract competitive quotes. This means that the public will get good value for money, which is further guaranteed by the fact that the police service uses tried and tested procurement processes, which are not enhanced by the disclosure of this information.

On balance at this time the public interest test does not favour disclosure of all the requested information.