

To withhold the information using Section 43 of FOI the information must either be a trade secret (Section 43 (1)) or be shown to damage the commercial interests of any person, company or public authority (Section 43(2)).

While it is noted that any release of information is likely to be viewed negatively, our obligation is to consider only the information that is being considered for release and any harm release might cause. There needs to be a direct connection between the information released and any harm caused.

In this case the information is a pricing structure and methodology produced by the company Cintra.

While the term 'trade secret' is not defined within the FOI Act, it is noted that it can have a fairly wide meaning. It could include the pricing structure and how a company intends to operate its contract. As stated above the information is the pricing structure and – as the information is broken down into finite detail of costs and payments unique to Cintra this is considered to be a Trade Secret.

We also need to consider whether the release of the information would harm the commercial interests of either West Midlands Police or any of the companies involved (Section 43 (2) FOIA).

To apply this part of the Act we need to conduct a public interest test. In broad outline this means we need to list the reasons for release and balance those against the reasons not to release. For a public interest test the balance is on release.

### **Factors favouring non-release**

Information could lead to translation companies withdrawing from future tendering processes for languages / translation services.

Release of the information could interfere with Cintra's negotiations with other companies.

### **Factors favouring release**

Release of the information could increase competition for future tendering processes.

The information concerns public sector expenditure and there is a public interest in transparency and accountability, particular concerning public sector expenditure.

### **Balance Test**

It is noted that Cintra were opposed to release and therefore there may be some damage to the relationship between the police and this company by the release. However, Freedom of Information is a legislative obligation and it has been in place for over ten years. Police have purchased this service with public money with public money and therefore it is in the public interest for there to be transparency in this process. Companies are aware of this and any company that does business with the public sector will need to acknowledge the transparency obligations that are contained within the FOI Act.

The information itself does reveal a pricing structure. It does provide information which might enable some companies to undercut on the prices that Cintra are charging for a particular specification. It should be noted that this could work to increase competition for future

negotiations between police forces and translation / language companies. Increased competition is in the public interest if it drives down prices and therefore public sector spending.

Release could harm the commercial interests of Cintra. If other companies saw the prices being charged to the police services and expected those prices themselves, or indeed offered the same service at a reduced cost. Also, if other companies saw the methodology that Cintra use this could affect Cintra future trade with West Midlands Police and other companies.

Any harm caused by release would be mitigated by what information is already in the public domain.

[In-Tend Electronic Tendering Site - Contracts - Current \(in-tendhost.co.uk\)](https://in-tendhost.co.uk)

### **Balance Test**

For a public interest test, issues that favour release need to be measured against issues that favour non-disclosure. The public interest is not what interests the public, or a particular individual, but what will be the greater good, if released, to the community as a whole.

The issues supporting disclosure have been considered however, on balance, it is considered that the public interest lies in not disclosing the information. This is due to the harm it would cause in any future tendering processes.

WMP want to maintain the quality of the service provided, rather than encourage a situation where companies are competing solely on price. The high quality of service provided is obviously in the interest of the wider public.

Having considered the arguments for and against, the public interest test favours withholding the requested information. West Midlands Police will not disclose information that could reveal Commercial Interests that could damage the trading of the company Cintra.