

04 March 2014

Dear [REDACTED]

FREEDOM OF INFORMATION ACT 2000 – INFORMATION REQUEST
(Our file: FOI_13-005)

Your request of 05 January 2014 for information submitted to the University in connection with the procurement exercise for construction of the Exemplary Low Carbon Building has been considered and some of the information requested is attached in the accompanying material.

I would note that due to last-minute technical delays, this transmission only contains our response relating to three (3) of the firms; the requested data relating to the two (2) other firms should be shipped out tomorrow. Please accept my apologies for the time it has taken to provide the requested information

For your convenience, I have reproduced your request on page 4 of this letter and provided our response in line with each question. I trust this will be to your satisfaction.

It is, however, not possible to satisfy all elements of your request, and in accordance with section 17 of the Freedom of Information Act 2000 this letter acts as a partial Refusal Notice. The exemptions are indicated within the attached document and the reasons for exemption are as stated below:

| Exemption | Reason |
|-------------------------------|--|
| s.40(2), Personal information | Disclosure of some of the requested information would contravene one of the data protection principles |
| s.43(2), Commercial interests | Disclosure of information will be likely to prejudice the commercial interests of a person as defined by the Act |

In regards the application of section 40(2), we believe that there are data within several of the documents requested that meet the definition of 'personal information' as defined by section 1(1) of the UK Data Protection Act 1998 (hereafter 'DPA')

Specifically, we believe that the names, roles, stated abilities and knowledge of a number of individuals named in both the Pre-Qualification Questionnaire responses and the qualitative submission elements of the tenders is personal information.

The University does not impose any restriction on onward disclosure of information released under the Act, unless that information constitutes a 'dataset'¹. In considering a disclosure under FOI, the University must take into consideration that any information released will be placed in the public domain, through our own disclosure log or by other means. As this information was submitted as part of a private tender, there would be no expectation at any time by these individuals that this information would be released into the public domain.

We do not have consent from the individuals concerned for the release of this information nor do we believe that there are any Schedule 2 conditions present that would allow release in the absence of such consent. We do not believe that there is any public interest in the level of detail relating to these individuals that would justify the release of this information. We believe that the release of this personal information would be prejudicial to the individual data subjects' rights, freedoms and legitimate interests.

In regards the application of section 43(2), it is our belief that the release of specific details within some of the tender documents would, or would be likely to, prejudice the commercial interests of a variety of parties. These parties would include the firms making the tenders themselves and, additionally, some of the firms that partnered with the tendering firms.

We have been in contact with all the tendering firms and with most of the firms partnered with the tendering firms. Our application of s.43(2) is based on evidence received from these firms.

The Information Commissioner's Office (ICO) has established a multi-criteria test for assessing whether a section 43(2) exemption applies.² The first criterion is whether the information relates to, or could impact on a commercial activity. The submission of information in support of a bid for a multi-million pound contract for the provision of construction services is clearly a commercial activity.

The second criterion is whether the commercial activity is conducted in a competitive environment. There can be little doubt that the construction of major buildings, particularly those with cutting-edge technologies, is carried out in a competitive environment. The sums of money involved are significant, both in the awarding of the tender and the amount spent to draft and submit documentation in support of a bid for tender. The fact that 10 firms submitted bids is clear evidence of the competitive nature of the construction market.

The next criterion is whether the information is commercially sensitive. Information provided by contractors is likely to have differing levels of sensitivity. Indicators of commercial sensitivity include evidence of the teams' design skills and innovation, financial understanding of the design, the level of detail in the information submitted, and the balance they strike between price and quality. These factors give companies an edge in the construction market place. Environmental innovation in ideas and raw materials are particularly relevant to this particular project, which explicitly included a requirement for innovation within the invitation to tender.

Additionally, the position of a firm itself within the marketplace can determine the commercial sensitivity of the information it submits in a tender. The consultants and

¹ <http://www.legislation.gov.uk/ukpga/2000/36/section/11>

² http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_5_V3_07_03_08.ashx

contractors who worked together on tenders would undoubtedly wish to emphasise elements of their particular bid that would be different, or superior to other bids. This type of information is central to the commercial success and viability of these firms.

The degree of commercial sensitivity will vary from firm to firm. It is dependent on the position of that firm in relation to its competitors, the nature and extent of the information supplied with the tender and their own internal assessment of the risk or prejudice to their interests resulting from the release of the tender information.

The next criterion goes to the prejudice itself: would there be damage to any party's reputation, business confidence or ability to compete? Under FOI, release to one requester can be considered as release to the world. We believe that release of the requested information would, in effect, provide all competitors with information that many firms would consider commercially sensitive.

Almost all the companies we contacted expressed concern at the release of certain requested information to competitors. They were of the opinion that competing firms would be interested in some of the requested information and would use it to their advantage, to the disadvantage of their competitors. This is the very reason that the tender process is private in nature.

Contractors therefore are naturally very cautious of giving any small amount of information in fear that other contractors may use it to their advantage and win future work.

In addition, as noted above, environmental innovation is integral to the awarding of this contract. Therefore there is information within each PQQ response and qualitative submission element that is unique to that firm. Substantial time and funds have gone into each submission and were competitors to see such information, the 'edge' each firm has over its competitors would be eroded.

We have no doubt that in this highly competitive environment, financial, commercial and technical information within each tender would be highly prized information by competitor organisations. The technical innovation, level of commercial and financial risk each firm is willing to assume, and the manner in which each firm works, and bids for work are all factors that we believe a competitor would wish to view.

A public interest test³ must be applied to the exemption for prejudice to commercial interests. There is no doubt that there is a legitimate public interest in knowing the amount and way in which substantial public funds are spent in this respect, to further the transparency and accountability of public authority activities.

We would counter that there is also a public interest in protecting the ability of companies to compete on a level playing field and to ensure that there is fair competition for prospective bidders. To disclose this information would prejudice not only the competitive and commercial position of submitting firms, but would also hamper the ability of any public institution to obtain the best value from the bidding process.

It is difficult to see how this could be in the public interest. Given the amount of funds involved and the significance of the project itself (and succeeding projects), any distortion of the process would not be in the public interest.

You have the right of appeal against this decision. If you wish to appeal, please set out in writing your grounds of appeal and send to me at the address noted in the heading to this letter.

You must appeal our decision within 60 calendar days of the date of this letter. Any appeal received after that date will not be considered nor acknowledged. This policy has been reviewed and approved by the Information Commissioner's Office.

³http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/the_public_interest_test.ashx

You also have a subsequent right of appeal to the Information Commissioner at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow, Cheshire

SK9 5AF

Telephone: 0303 123 1113

www.ico.org.uk

Please quote our reference given at the head of this letter in all correspondence.

Yours sincerely

David Palmer

Information Policy and Compliance Manager

University of East Anglia

Response to Freedom of Information Act 2000 request (FOI_14-005)

We wish to request under the Act the following information:

1. Copies of the pre-qualification questionnaires submitted by those shortlisted to tender.

Some of the requested information is in paper form appended to this letter.

[Information exempted pursuant to s.40(2), Freedom of Information Act]

[Information exempted pursuant to s.43(2), Freedom of Information Act]

2. The scores attributed to the above firm's pre-qualification questionnaire.

The scores are presented in the table below,

| | Recommended to Receive Invitation to Tender | | | | |
|---------------------------------|---|----------------|------|-----------|-------|
| | Morgan Sindall | Willmott Dixon | Kier | RG Carter | VINCI |
| Percentage overall score | 82% | 82% | 78% | 77% | 75% |

A more detailed breakdown of the assessment of each successful submission is presented below :

| | Morgan Sindall | Willmott Dixon | Kier | RG Carter | VINCI |
|--|----------------|----------------|-----------|-----------|-----------|
| General Information | Completed | Completed | Completed | Completed | Completed |
| Financial Details | Pass | Pass | Pass | Pass | Pass |
| Commercial Matters - Weighted Score | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| Quality, H&S etc - Weighted Score | 16.8 | 19.7 | 14.6 | 14.8 | 17.0 |
| Partnering Experience - Weighted Score | 24.0 | 22.1 | 26.1 | 23.3 | 21.9 |
| Design Development - Weighted Score | 31.5 | 30.2 | 27.6 | 28.4 | 26.3 |
| Total Weighted Score as a % | 82% | 82% | 78% | 77% | 75% |

3. Copies of the qualitative submission elements of the tenders submitted by those shortlisted to tender.

Some of the requested information is in paper form appended to this letter.

[Information exempted pursuant to s.40(2), Freedom of Information Act]

[Information exempted pursuant to s.43(2), Freedom of Information Act]