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Dear [REDACTED]

Freedom of Information Act 2000 – Information Request (Our file: FOI_15-110)

We have now considered your request of 19 June 2015 for information relating to expenditures by UEA for services provided by Unify. As we have not received a response to our request for clarification in our email of 22 June, we have proceeded on the basis that your request is for the average annual spend over the last three (3) years with Unify for all services and goods provided to UEA by that firm.

We regret that on this occasion it is not possible to provide the requested information.

In line with section 17 of the Act, this letter acts as a refusal notice. The Act contains a number of exemptions that allow public authorities to withhold certain information from release. We have applied the following exemptions to your request.

Exemption	Reason
s.43(2), Commercial interests	Disclosure of information will be likely to prejudice the commercial interests of a person as defined by the Act

Exemption explanation

In regards the application of section 43(2), it is our belief, supported by direct evidence provided by Unify, that the release of the average spend by UEA on services provided by Unify over the past three (3) years would or would be likely to, prejudice the commercial interests of a party; in this case Unify themselves.

The Information Commissioner's Office has established a multi-criteria test for assessing whether a section 43(2) exemption applies¹ and we address each criterion in turn.

The first criterion is whether the information relates to, or could impact on a commercial activity. The sale and purchase of IT infrastructure the associated support and maintenance of that infrastructure is undoubtedly a commercial activity.

¹http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailled_specialist_guides/AWARENESS_GUIDANCE_5_V3_07_03_08.ashx

The second criterion is whether the commercial activity is conducted in a competitive environment. The University must obtain the best deal for its IT-related products and services, and there are many companies seeking to provide those products and services who are required to compete against one another to win the University's business. The very fact that some of the services that are provided by the company at the heart of this request are shortly going out to tender is evidence of the competitive environment in this area.

The next criterion is whether the information is commercially sensitive. The average annual expenditure for services provided by Unify would, or would be likely to, reveal information about the pricing model of Unify and in this competitive environment, the pricing structure of competitors is crucially important. Added to the sensitivity of this information is the fact that services currently provided by Unify will shortly be going to tender and there will be active competition for such services.

The next criterion is whether there will be damage to the commercial interests of Unify. Flowing directly from the commercial sensitivity of the requested information is the fact that use of such information by competitors would put Unify at a distinct disadvantage in the upcoming tendering process. We have consulted with Unify and have been directly informed by them that they feel that (a) the total price would certainly be of interest to their competitors, in the same way that the maintenance charges alone would be and that (b) their competitors may be able to gauge our pricing strategy or profit margin from that information leading to prejudice that they state would be more than trivial particularly in combination with information released previously to you this year.

Additionally, under FOI, release to one requester can be considered as release to the world. It is our position that release this information would, in effect, provide competitors of Unify with information that would be prejudicial to their commercial interests.

The final criterion is the likelihood of such prejudice occurring. Given that the services provided by Unify will shortly be going to tender, the commercial sensitivity of the information, and the competitive nature of this area, we are confident that there is a strong possibility that this information would be used, and that the prejudice would occur.

Public Interest Test

A public interest test² 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 public time and effort are spent in this respect, both to further the transparency and accountability of public authority activities.

However, there is also a clear public interest in ensuring there is fair competition for public sector contracts and in protecting the ability of institutions to compete on a level playing field. Any distortion of what is currently a blind tendering process has the potential effect of raising costs to the public sector which would not be in the public interest.

Revealing the pricing structure for certain contracts will not increase understanding of the tendering process, nor will it lead to improved or more numerous bids being submitted in the future. On balance, we believe the public interest lies in maintaining in the current blind tendering process for these IT contracts.

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.

²http://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 whose [contact details](#)³ can be found on their website.

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

³ https://ico.org.uk/Global/contact_us