

MATRIX-SCM / LBB
MANAGED SERVICES FOR TEMPORARY AGENCY RESOURCES 2018
REDACTION NOTICE

We are withholding some elements of the Contract as we consider that the following exemptions apply to it. Those sections that have been redacted are set out on the first page of the contract.

Section 44 - Prohibitions on Disclosure

Information is exempt if there is an existing statutory bar to the disclosure of information by a public authority

Section 40(2) - Personal data

S44 Section 44

The council contends that the withheld parts of the contract schedules are exempt under section 44 of the Freedom of Information Act.

The council believes that the information is exempt as it falls within the Public Contracts Regulations 2006 - and in particular Regulation 43. The Public Contracts Regulations apply to this contract, and the tender was advertised in the OJEU.

In order for information to fall within regulation 43 it must be:

- Forwarded to the public authority by the tenderer
- The information was forwarded to the council by the tenderer. These were not documents jointly produced by the council and MATRIX SCM – they were solely produced by MATRIX SCM and submitted by them to the council as part of their bid for the contract;

and

- Reasonably designated by the tenderer as being confidential
- The information has been designated by the tenderer as being confidential. The council believes that the designation, in respect of the withheld information is reasonable. The council believes that in respect of the information withheld there is a duty of confidence.

The council also believes there is a common law duty of confidence in relation to this information:

- The information was imparted in circumstances giving rise to an expectation of confidence. Information submitted in a procurement exercise which contained financial information and detailed methodology is sensitive material and would be expected to be treated as confidential.
- The information has the necessary qualities of confidence. It is not available by other means, and is substantive and not trivial. The information cannot be obtained publicly, or

from MATRIX SCM without payment for their services. The information contained detailed methodology for provision of a service including detailed costing.

- Unauthorised disclosure would be detrimental to the economic operator. The ICO guidance states that whilst one can never say with certainty what impact a disclosure in future would have, if a public authority can show that disclosing the information would or would be likely to be detrimental it should be regarded as confidential (subject to the other tests being made out).

Section 40(2) – Personal Data

We consider that the absolute exemption set out in Section 40 (Personal information) subsection 2 applies to the names of individuals that have been redacted from these documents.

Personal Information is governed by the Data Protection Act 1998 and is defined as any *data which relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.*

The withheld information is exempt because disclosure would contravene the first data protection principle which requires that personal data is processed fairly and lawfully. Disclosure of the requested information would breach this principle and in particular the requirement of fairness because these individuals would have a reasonable expectation of privacy and do not expect that the council would disclose their names or contact details in response to a freedom of information request.

The council's redaction policy states that officers' names and contact details under the level of Assistant Director will generally not be released. All of the posts redacted are under the equivalent of Assistant Director level. It is not practicable to contact all the individuals to ask their views on release.