

Department for Environment, Food and Rural Affairs

Waste Infrastructure Delivery Programme (WIDP)
Area 6C, Ergon House,
Horseferry Road,
London SW1P 2AL

Telephone 08459 33 55 77

Website www.defra.gov.uk



Our ref: RFI 4659

24 April 2012

Dear

REQUEST FOR INFORMATION: NORFOLK COUNTY COUNCIL WASTE PROJECT

Thank you for your request for the copies of all the written exchanges including, reports, email, letters, minutes of meetings and handwritten notes and diary entries relating to Norfolk Waste PFI (WIC) contract from 1st March 2011 to 1st February 2012 between:-

- (A) Defra's Transactor and Cory Wheelabrator (the preferred bidder).
- (B) Defra's Transactor and Norfolk County Council
- (C) Defra's Transactor and Caroline Spelman.

As you know, we have handled your request under the Environmental Information Regulations 2004 (EIRs).

Defra's Transactor and Cory Wheelabrator (the preferred bidder).

Defra's Transactor has attended meetings with Norfolk County Council (NCC) and Cory Wheelabrator. However, the Transactor did not take any notes of the meetings, nor did the Transactor (nor other Defra officials) correspond directly with Cory Wheelabrator. Therefore, we restate our original response to your earlier requests that there has been no correspondence between Defra's Transactor and Cory Wheelabrator.

Defra's Transactor and Norfolk County Council

Copies of correspondence between Defra's Transactor and NCC have been sent to you previously. We have withheld correspondence which are covered by Regulation 12(5)(e) which relates to commercial confidentiality.

Defra's Transactor and Caroline Spelman

There has been no correspondence between Defra's Transactor and the Secretary of State.

The exceptions engaged



Regulation 12(4)(a) – information not held

Defra's Transactor has not communicated with Cory Wheelabrator, nor has the Transactor corresponded directly with the Secretary of State. The information is therefore exempt under regulation 12(4)(a) of the EIRs, which relates to information which is not held at the time when an applicant's request is received. Regulation 12(4)(a) is a qualified exception, which usually means that a public authority is required to conduct a public interest test to determine whether or not information should be disclosed or withheld. However, the Information Commissioner, who is the independent regulator for requests made under the EIRs, takes the view that a public interest test in cases where the information is not held would serve no useful purpose. Therefore, in line with the Information Commissioner's view, Defra has not conducted a public interest test in this case.

Regulation 12(5)(e) – commercial confidentiality

Disclosure of information relating to financing arrangements in respect of the Council's contract with Cory Wheelabrator and, in some cases, other contract related information e.g. contract terms, financing deal considerations and negotiations, including comments which include information about the process relating to financing, could prejudice commercial interests generally. This includes information about the procurement process/actions in relation to NCC, or other relevant 3rd parties (including banks and other financiers), which relate to financing and contract arrangements, including views of the organisations involved.

Public Interest Test

Regulation 12(5)(e) – commercial confidentiality

The WIDP Programme Office is aware that there is always a public interest in ensuring transparency in the dealings between Defra's Transactor and the various participants in this project, ensuring best value for money and that the award of contracts, and other dealings, is a fair and transparent process. But there is also a strong public interest in ensuring that, for their part, those who have dealings with ourselves can do so in the assurance that confidences will be respected where there is no overriding public interest in breaching confidence.

The correspondence in question are mainly between banks, NCC and ourselves. As such, and especially at this stage of the project, there are very detailed discussions on budgets and activities which, if released, could potentially prejudice future dealings between the parties involved.

Therefore, we have concluded that in all the circumstances of the case, the information should be withheld.

I attach an annex giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter, please contact me.

Yours sincerely

David Watts
Programme Manager
WIDP Programme Office
Email WIDP.programmeoffice@defra.gsi.gov.uk

Annex A

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision within 40 working days of the date of this letter. Please write to Brendan Walsh, Head of Defra's Information Rights Team at Area1B, Ergon House, Horseferry Road, London, SW1P 2AL, (email: informationrights@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF