

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 4430

1 February 2012

**REQUEST FOR INFORMATION: CORRESPONDENCE BETWEEN DEFRA AND
NORFOLK COUNTY COUNCIL AND CORY WHEELABRATOR**

You emailed Defra on 3 December 2011 to ask that we supply to you "copies of all written exchanges including minutes of any meetings, that relate to the proposed Norfolk Waste PFI contract between 28th June 2011 and 2nd December 2011: -

- A) Between (1) DEFRA ministers and/or civil servants
(2) Members and/or officers of Norfolk County Council
- B) Between (1) DEFRA ministers and/or civil servants (2) Cory Wheelabrator Ltd and/or its representatives".

As you know, we are dealing with your request under the Environmental Information Regulations 2004 (EIR).

Please note that neither Defra Ministers nor officials are in direct contact with Cory Wheelabrator. Therefore, I am advising you that the information that you have requested is not held by Defra. 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.

The correspondence between Defra and Norfolk County Council is attached to this letter, as follows:

- *Correspondence 2.pdf*
- *NCC Request.pdf*
- *Spelman Murphy letter 7 Nov.pdf*
- *Murphy Spelman letter 8 Nov.pdf*
- *Spelman Murphy letter 10 Nov.pdf*

The information detailing the period 28 June to September 2011 was sent by Norfolk County Council to Defra on 28 September under RFI 4207.

You will note in reading through the document *Correspondence2.pdf* that we have redacted information under the following exceptions allowed by the Regulations.

Regulation 12(5)(e) – commercial confidentiality

Information relating to financing arrangements in respect of the Council's contract with Cory Wheelabrator (which is yet to be signed) 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.

This information is commercially sensitive, and potentially subject to contractual duties of confidentiality. It is information, which is not in the public domain.

Regulation 12(4)(b) – unfinished information/documents

In addition to Regulation 12(5)(e), some of the information is unfinished e.g. some of the figures, bank terms etc included in the text of emails. This information is part of ongoing work/negotiations with financiers etc in respect of Norfolk Council's contract with Cory Wheelabrator (which is yet to be signed).

Regulations 12 (3) and 13(2)(a)(i) - named officials

As regards the names of officials, this personal data is being withheld as the information falls under the exception in regulations 12(3) and 13(2)(a)(i) of the EIRs, which relate to personal data relating to third parties. Regulation 13(2)(a)(i) of the EIRs exempts from disclosure personal data relating to third parties where disclosure would breach the Data Protection Act 1998 (DPA). In this case, we believe that disclosure of the information would breach the first data protection principle in Schedule 1 of the DPA in two ways. First, disclosure would not constitute 'fair' processing of the personal data and, second, disclosure would not satisfy any of the conditions for data processing set out in Schedule 2

of the DPA. In particular we do not consider that there is a legitimate interest in disclosure in this case. Release of names of junior officials poses a risk to the neutrality of the civil service, the names would add nothing to the public's understanding of this matter and the public authority's accountability does not require release of names. Consequently, we believe that regulations 12(3) and 13(2)(a) (i) of the EIRs exempt the information from disclosure.

For your ease, I have noted in *Correspondence 2.pdf* which Regulation applies. For the named officials, I have noted which organisation the official in question works in.

The document *NCC Request.pdf* has only had officials' names removed under the above-named Regulations 12 (3) and 13(2)(a)(i).

Public Interest Test

As the WIDP Programme Office explained to you in the letter dated 20 September, there is always a public interest in ensuring transparency in the dealings between Defra and the Council, 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 and the Council can do so in the assurance that confidences will be respected.

We have used the same criteria to review the correspondence for this request to ensure balance between providing you with the information you seek, as well as maintaining confidentiality with our partners.

As the 20 September letter explains, there is a public interest in maximising the Council's capacity to make well-informed decisions, by encouraging bids and discussions that are as informative as possible. As such Defra cannot divulge such information.

There is a strong public interest in the maintenance of the confidentiality of valuable commercial information, the disclosure of which could be potentially anti-competitive. Information that would assist the Council in evaluating bids and finalising contracts could also, coming into the hands of competitors, erode a bidder's competitive edge, or even undermine their commercial viability. These risks could deter bidders and inhibit discussions currently and in the future, narrowing choice. Again, we cannot divulge such information.

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

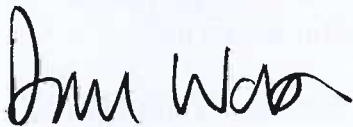
In keeping with the spirit and effect of the EIRs, all information is assumed to be releasable to the public unless exempt. The information released to you may now be published on our website together with any related information that will provide a key to its wider context.

I attach Annex A, which explains the copyright that applies to the information being released to you.

I also attach Annex B 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

A handwritten signature in black ink, appearing to read 'David Watts', with a stylized, cursive script.

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

Annex A

Copyright

The information supplied to you continues to be protected by copyright. You are free to use it for your own purposes, including for private study and non-commercial research, and for any other purpose authorised by an exception in current copyright law. Documents (except photographs) can be also used in the UK without requiring permission for the purposes of news reporting. Any other re-use, for example commercial publication, would require the permission of the copyright holder.

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Annex B

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

