

---

## INFORMATION RELEASED UNDER THE FREEDOM OF INFORMATION ACT

---

Information released title	Video content creation tender: P3D-B50-17 ASVID
Original request	Request for access to the successful tender submitted under UKCES' 'Video content creation' tender opportunity (P3D-B50-17 ASVID).
Date of release	14.01.2015
Requester type	Digital productions company

### Information released:

I can confirm that the UK Commission for Employment and Skills (UKCES) holds the information requested. Please find attached a redacted copy of the winning tender submitted by Somersault Productions Ltd in response to UKCES' recent video content creation tender opportunity (P3D-B50-17 ASVID). *[If you would like access to a copy of this document, please email: [catherine.hodgkinson@ukces.org.uk](mailto:catherine.hodgkinson@ukces.org.uk)]*

As you may be aware, in some circumstances, certain types of information requested may be withheld under an exemption or exemptions articulated in the Freedom of Information Act 2000 (FOIA). In line with best practice, UKCES consulted with the winning bidder to consider disclosure and engagement of exemptions. Having reflected on this consultation, we have concluded that certain information is exempt from release. The tender document disclosed is therefore annotated with the relevant exemptions engaged. The remainder of our response below explains in detail how UKCES considered all the circumstances in question in concluding that these exemptions should be engaged.

*Exemption 40(2): Information is exempt information if disclosure would breach one of the data protection principles.*

The reason that this exemption is engaged is due to this information consisting of personal information, in the form of names, contact details and photographs of employees of Somersault Productions and names of employees of organisations with whom Somersault has worked. Release to the general public would be likely to breach one of the data protection principles. This is because we would not be meeting our duty to process personal data fairly and lawfully, as set out in the first data protection principle. Such personal details of employees contained within the tender document are held as part of UKCES' procurement procedure. To process this information for any other purpose – as in this instance by releasing it under the Freedom of Information Act - would not be the reasonable expectation of these individuals - and therefore a breach of the principle.

*Section 41 – Information provided in confidence*

*Information is exempt information if it was obtained by the public authority from any other person (including another public authority and, the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by*

*that or any other person.*

It is our view that information relating to the winning bidder's client projects is exempted from disclosure due to an obligation of confidence to these clients.

As you may be aware, a duty of confidence arises when a confidant is provided with information by the confider in the expectation that the information will only be used or disclosed in accordance with the wishes of the confider. In ascertaining whether an obligation of confidence has arisen in a particular case, the Information Commissioner's Office (ICO) advises that public authorities take account firstly of the circumstances under which information was provided to the authority and secondly of the nature of that information.

In terms of the circumstances under which the bidder provided information to UKCES, explicit conditions were attached to its subsequent use or disclosure. In the Declaration section of the bidder's tender, specific reference was made to the sensitive nature of client information shared. It is also our view that details of the bidder's client projects has the necessary "quality of confidence", comprising information which is not in the public domain.

There are several other factors that UKCES has taken into consideration in determining that the information is protected from disclosure by an obligation of confidence. UKCES does not have consent from the bidder to release the information and disclosure would give rise to an actionable breach of confidence. The bidder is required by law to honour the terms of certain Non-Disclosure Agreements in existence between the bidder and their clients. This commitment to confidentiality was also restated when the bidder obtained approval from their clients to share information about the projects with UKCES only, for the sole purpose of supporting the tender submission.

Finally, we have reflected on the public interest as required by the test of the common law duty of confidentiality. We have weighed up the public interest in disclosure against both the wider public interest in preserving the principle of confidentiality and the impact that disclosure would have on the interests of the confider. We have concluded that the confidences of tendering organisations must be respected in order to maintain trust and integrity in UKCES' procurement process. Undermining this would be at odds with our goal of obtaining maximum value in the spending of public money to support the objectives of UKCES.

*Section 43(2) – Commercial interests*

*Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). NB – A person may be an individual, a company, or any other legal entity.*

The reason that Section 43(2) is engaged relates to the commercial interests of the successful bidder and to UKCES as the supplier of a people management standard. Disclosing core financial information, pricing data and material that is the intellectual property of the bidder would have an adverse impact on that party's ability to operate commercially in the market. Release of costs quoted by the bidder (section 4.3 of the tender) would expose their pricing strategy and prove advantageous to competitor businesses when bidding for other opportunities. In relation to the presentation of section 4.2 of the tender, the bidder invested considerable skill, time and experience in producing this document. Exposing the creative approach taken by the bidder in presenting the document would risk others adopting a 'copy and paste'

approach and would thus threaten their competitive advantage in submitting future tenders. Turning to the potential prejudice to UKCES, disclosure of the elements described would be likely to damage our own commercial interests, potentially weakening our position in future procurement exercises. This could in turn have consequences on the market performance of Investors in People, an area in which we operate in a commercial environment, competing with others in the provision of people management standards.

We have weighed the prejudice caused by possible disclosure against the likely benefit to the wider public. We recognise that there is a public interest in ensuring that UKCES is accountable and transparent both in the spending of public money and in conducting its role as guardian of the Investors in People Standard and framework. However, we also recognise that there is a strong public interest in securing fairness during procurement exercises. This is achieved by withholding sensitive financial information, unique elements such as tender document presentation and pricing strategies. Both as a public body and as an organisation operating in a commercial market, UKCES is committed to maintaining a level playing field in its competitive opportunities to enable it to procure the best services at the most competitive rate. This situation would be threatened by a disclosure of market sensitive information. We have concluded, therefore, that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.