

Our ref: 748, 189

Your ref:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

From:

[REDACTED]  
**Commercial and Procurement  
Business Support and  
Governance Team**

3 South  
Lateral  
8 City Walk  
Leeds LS11 9AT

GTN: [REDACTED]

Mobile: [REDACTED]

17 March 2017

via E-mail

cc:

Dear [REDACTED]

## **FOI 748, 189 REQUEST FOR HIGHWAYS ENGLAND TECHNICAL VALIDATION CLARIFICATION ALL AREAS ASSET SUPPORT CONTRACTS**

I am writing regarding your request for information, received on 9 February 2017. In that request, you asked us for:

*'all of the information relating to the issuance, possible referred to as 'technical validation clarification', for successful tenders in respect of [Asset Support Contract] ASC contracts assigned since their introduction.*

*[You are ] seeking, with regard to this specific issue:*

- *The rates stated to be used by each contractor for each contract*
- *All queries raised*
- *All responses provided*
- *All additional queries / responses to conclusion*

*With regard to Area 10, [you are] seeking all post 05/04/2012 exchanges that ultimately led to agreement and copy of the outcome.'*

In my email dated 23 February 2017 I explained that the estimated cost to compile the information you requested would exceed £450. Section 12 of the Act does not oblige us to comply with requests if they exceed this limit. We agreed that we would be able to provide you with all queries relating to third party claims and Annex 23 for Area 10 only, all Tender Clarifications relating to third party claims and Annex 23 for Area 10 only, all emails relating to the requested subject for Area 10 only.

In response to your request for information relating to the *'rates stated to be used by each contractor for each contract'* I am writing to advise you that we do hold information that is relevant to your request of 9 February 2017 but regret to inform you of my decision not to disclose this information.

The information you requested is being withheld in reliance on the exemption in section 43 of the Freedom of Information Act 2000 [https://ico.org.uk/media/for-organisations/documents/1178/awareness\\_guidance\\_5\\_v3\\_07\\_03\\_08.pdf](https://ico.org.uk/media/for-organisations/documents/1178/awareness_guidance_5_v3_07_03_08.pdf) because its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). In applying this exemption we have had to balance the public interest in withholding the information against the public interest in disclosure. The key public interest factors for and against disclosure are detailed in Annex 1.

In response to your request for all Annexes relating to Third Party Claims [Area 10 only] please see the attachments with this letter.

*In response to your request for 'all queries raised, all responses provided and all additional queries / responses to conclusion [Area 10 only]' we have obtained the following information only*

C-153-11-8-11	Network Information 6.6 Third Party Claims	What is the basis of the Damage to Crown Property claims sums - cost+fee or CECA schedule of rates?	For claims under the £5k threshold - costs are made up of partly CECA rates, partly market rates and partly cost.	26-Aug-11
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In response to your request for the Highways England Area 10 model contract documents are a matter of public record and can be accessed via the following web link: <https://data.gov.uk/data/contracts-finder-archive/contract/569302/>

If you are unhappy with the way we have handled your request you may ask for an internal review. Our internal review process is available at: <https://www.gov.uk/government/organisations/highways-england/about/complaints-procedure>

If you require a print copy, please phone the Information Line on 0300 123 5000; or e-mail [info@highwaysengland.co.uk](mailto:info@highwaysengland.co.uk). You should contact me if you wish to complain.

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. The Information Commissioner can be contacted at:

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

If you have any queries about this letter, please contact me. Please remember to quote reference number 747242 in any future communications.

Yours sincerely

  
**Business Manager**

**Annex 1 – Public Interest Test**

<ul style="list-style-type: none"> <li>Request for the rates stated to be used by each contractor for each contract</li> </ul> <p style="text-align: center;"><b>Information</b></p>	
<p><b>FOIA Exemption S.43 (1) &amp; (2) – Commercial Interests</b></p>	
<p><b><i>Factors supporting disclosure</i></b></p>	<p><b><i>Factors supporting non-disclosure</i></b></p>
<ul style="list-style-type: none"> <li>There is a clear public interest in the work of government being closely examined to encourage the discharging of public functions in the most efficient and effective way;</li> <li>There is an important public interest in the work of public bodies being transparent and open to scrutiny to increase diligence and to protect the public purse;</li> <li>There is a public interest in disclosing information about public procurements to ensure there is transparency in the spending of public money and that public bodies are getting value for money when entering into contracts;</li> <li>There is a strong public interest in releasing information which shows the criteria used when assessing options to illustrate that the processes used were fair and appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>The procurement process must be seen to be fair and that commercial interests of the suppliers of services are not unduly prejudiced by the release of commercially sensitive information. It is important to maintain the confidence of our suppliers in order to achieve best value for the tax payer;</li> <li>The methodology outlined in the bid may be construed as a “trade secret” in that it is a strategy owned and developed by the consultant. If the methodology was made available to competitors in the market place it would undermine the commercial interests of the consultant when bidding for other contracts by reducing their competitive edge;</li> <li>To reveal the details of the bid would seriously undermine our ability to negotiate the best value for money for the public purse on future contracts as the rates and methodology are still current;</li> <li>The consultants object to the release of their bid information on the grounds that it contains commercially sensitive information in terms of a “trade secret” and rates; and such a release would be actionable</li> </ul>
<p><b>Conclusion: there are compelling arguments which support withholding the information which outweigh those supporting release.</b></p> <p><b>PIT Members:</b></p> <p><b>Date of PIT: 21/2/2017</b></p>	