

Our ref: 762, 168

Your ref:

[REDACTED]

via E-mail

cc:

From:

[REDACTED]
**BIA Commercial &
Procurement**
4 SOUTH
Lateral
8 City Walk
Leeds LS11 9AT

GTN:

[REDACTED]

24 May 2018

Dear [REDACTED]

RESPONSE TO YOUR FOI REQUEST 762, 168

I am writing to confirm that we do hold the information you requested on 24/4/18 but have decided that some of this information cannot be disclosed.

The information that can be released is in the order of the questions you have asked in your request:

- 1. In 2016 you replied to my FOI 738,640 the ASC is not prescriptive as to the methodology to be adopted by the service provider. I am told the ASC is prescriptive. Please explain how the contract is not prescriptive as to the methodology to be adopted by the service provider.**

Our response was correct with regard to your question raised. The response provided in 2016 was framed with a context around specific Asset Support Contracts (ASC), in particular ASC 3 and its Service Information Annex 23 - Third Party Claims. This is an older ASC Contract and is not prescriptive as to the methods adopted by the Service Provider for the recovery from Third Parties for Damage to Crown Property that fall below the threshold amount stated; the claim follows general principles that the claim must be justified, substantiated and in sufficient detail to support the claim made. With newer ASC Contracts, Service Information Annex 23 has been augmented setting out under its Appendix A the principles to be followed by the Service Provider when calculating the amounts to be claimed against any third party to recover the costs in the name of the Highways England.

- 2. You replied the number 1153 relates to the assumed amount of third party claims as stated in the Area 3 tender documents. I am told 1153 was applied to all contracts. How did 1153 accorded with the contract and how was the process was uncovered.**

1153 was a notional number for DCP claims; it represented a theoretical total number of claims reported on the Area 3 tender. We understand that it was made up of 733 traced and 420 untraced incidents, it was simply a statement made at the time of tender. Given the age and nature of this information, our search has not been able to locate the source document. We are unsure as to the extent of its application.

3. You replied the new process, as agreed with the insurance industry. With who in the insurance industry. I am asking for all information and what information you have about this.

The process you refer to was the process developed by Kier, the Service Provider in a number of operating contracts. This was an initiative undertaken by them with their contacts in the insurance industry, for the claims they pursue that fall below the threshold stated in Annex 23 of the Service Information. We do not hold any information with regard to their negotiations or processes and recommend you contact Kier in operating contracts which are of interest to you.

The following information is being withheld under the exemption(s) in section(s) 43(1&2) (<http://www.legislation.gov.uk/ukpga/2000/36/section/43>) of the Freedom of Information Act 2000:

4. You replied the release of all labour, plant and equipment rates, is considered commercially sensitive and inappropriate, particularly given that these rates are detailed individually with each claim form submitted to the insurance company. I am told this is not commercially sensitive and you say the rates are detailed on claims so why would it be. I am asking for the rates.

The disclosure of rates in support of a claim as claim packs to the insurer of the Third Party is different to the disclosure of rates to the world at large.

Conclusion: there are compelling arguments which support withholding the information which outweigh those supporting release.

It is accepted that while there would be some public interest in release of information about such rates generally (particularly high level data about the costs of dealing with these sorts of incidents), we consider that there is very little public interest in releasing the information actually requested and that the sort of information can only really be of interest to other commercial entities operating in this area, i.e. it is of private, not public interest.

It is considered that the public interest in maintaining the exemption is significant given the potential prejudice to the public purse and the significant public interest in maintaining fair and open competition between commercial organisations operating in this arena.

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 attached.

Request for Information: You replied the release of all labour, plant and equipment rates, is considered commercially sensitive and inappropriate, particularly given that these rates are detailed individually with each claim form submitted to the insurance company. I am told this is not commercially sensitive and you say the rates are detailed on claims so why would it be. I am asking for the rates.

FOIA Exemption S.43 (1) & (2) – Commercial Interests

<i>Factors supporting disclosure</i>	<i>Factors supporting non-disclosure</i>
<ul style="list-style-type: none"> • There is public interest in the work of government being closely examined to encourage the discharging of public functions in the most efficient and effective way; • There is public interest in the work of public bodies being transparent and open to scrutiny; 	<ul style="list-style-type: none"> • Commercial interests of suppliers of services will be unduly prejudiced by the release of what they consider to be commercially sensitive information. • It is important for clients to maintain the confidence of suppliers about the confidentiality of commercial rates in order to maintain competition and the competitive bidding tender process to achieve best value for the tax payer; • With the level of detail requested for release, the information potentially reveals the prices for a range of services and goods obtained by our Service Providers. If released to the public, this information would, or would be likely to prejudice the commercial interests of contractors because what they had paid for a range of goods and services would be in the public domain, thus prejudicing their ability to negotiate the best price when purchasing goods and services for future incidents. This in turn would be likely to prejudice the commercial interests of Highways England (and the public purse) who have to pay the Service Provider these rates to the contractor for a far wider list of Services provided under the Operating Contracts. • The rates and prices at large may be construed as a “trade secret”. If the rates are made available to competitors in the market place it would undermine the commercial interests of the suppliers when bidding for other contracts by reducing their competitive edge; • 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; • The suppliers object to the release of their bid information on the grounds that it contains commercially sensitive information in terms of a “trade secret”

	<p>rates; and such a release would be actionable</p> <ul style="list-style-type: none">• It is considered that the cost of locating and extracting the information necessary to comply with the request would exceed the appropriate limit set out under s12 of FOIA.
<p>Conclusion: Withhold</p> <p>PIT Members: Patrick Carney, [REDACTED]</p> <p>Date of PIT: 23/05/18</p>	

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. 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 762,168 in any future communications.

Yours sincerely

[REDACTED]