



## Response to Request for Information

Reference      FOI 061532  
Date            05 June 2015

### ***Refuse Service***

#### **Request and response in 'blue':**

Please treat the following as separate requests under the FOIA:

1. On what date were refuse services outsourced?  
[The start date of the contract was 1<sup>st</sup> April 2006](#)
2. Who were refuse services outsourced to?  
[Enterprise Managed Services Ltd](#)
3. What categories of employees were outsourced?  
[Refuse Collectors.](#)
4. Please provide a copy of the outsourcing agreement between the Council and the entity identified in Request 2 above, including any amendments or variations.  
[See attached redacted copy of the agreement.](#)

[In respect of the information that has been withheld due to it being confidential and commercially sensitive, at this time, we should explain that in considering requests for information under the Freedom of Information Act 2000, a public authority may decide that the information requested is exempt from disclosure. This, in turn, may require the public authority to apply a public interest test to ensure it is satisfied that the public interest in withholding the information is greater than the public interest in disclosing it.](#)

[The Council considers that the information you have requested, which we have identified above, is exempt from disclosure under Section 43 of the Freedom of Information Act. Section 43 of the Act permits the Council to withhold information if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.](#)

[We should explain that Section 43 of the Freedom of Information Act 2000 permits the Council to withhold information if its disclosure would, or would be likely to, prejudice the commercial interest of any person, including the Public Authority holding it. The Council considers that to disclose the information you](#)

have requested, at this stage, would prejudice the commercial interests of the parties concerned and this information is therefore exempt from disclosure under section 43 of the Act. This information is commercially sensitive to the tenderers and it is important to their competitiveness that they are able to remain as a participant in the market. With regards to the Council's commercial interest, if the Council disclosed this type of information it would adversely affect our ability to source suppliers in a competitive environment.

Where the Council decides that the information requested is exempt from disclosure under section 43 of the Freedom of Information Act, it must then apply what is known as a "public interest test". This requires the Council to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing information.

In applying the public interest test the Council gave careful consideration to the arguments for and against disclosure. When considering factors which would favour disclosing the information, the Council had to assess whether disclosure of the information would:

- Allow for more informed debate on the issue;
- Promote accountability and transparency for our decisions and in our spending of public money; and
- Assist the public to understand and challenge our decisions.

Against these considerations the Council had to balance the likelihood of disclosure having an adverse affect on the commercial interest of the tenderers concerned and the Council itself.

Having taken into account the arguments for and against disclosure, the Council decided that the public interest in this case is best served by maintaining the exemption and by not disclosing the information requested, at this stage. The Council considers that the possible benefits of disclosure are outweighed by the real risk of causing prejudice to the commercial interests of the tenderers concerned and the Council itself. In this case there is an overriding public interest in ensuring that companies are able to compete fairly and in ensuring there is competition for public sector contracts.

We have also considered Section 40 (2) and (3) - Personal Information.

The Council has obligations to protect the personal information of individuals under the Data Protection Act. Therefore there is an exemption on disclosure of information which we feel is the personal information of identifiable individuals. The Council believes that any detailed information would be personal data as defined by Section 1(1) of the Data Protection Act (DPA) as it relates to an identifiable individual. Therefore the information you requested is personal data as described in section 40(2)(a) of the FOIA. 40 (2) Any information to which a request for information relates is also exempt information if –  
(a) it constitutes personal data which do not fall within subsection (1), and  
(b) either the first or the second condition below is satisfied.

Having determined that the information is personal data we then considered whether any disclosure would breach any of the data protection principles in respect of section 40(3)(a)(i) detailed below, 40 (3) The first condition is – (a) in a case where the information falls within any of the paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene – (i) any of the data protection principles, The first principle in the Data Protection Act states:  
“1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –  
(a) at least one of the conditions in Schedule 2 is met.”

Therefore we have to consider whether it would be fair to disclose the information to the public, especially in light of the fact that the information is disclosed to the wider public not just the specific requester. In short, would it be fair on the individuals in question to disclose their personal information. We do not feel that the individuals in question would reasonably expect their information to be disclosed in this way and therefore it would be unfair on them to do so. Therefore by disclosing this information the Council risks being in breach of the first principle of the Data Protection Act and therefore the exemption provided by Section 40(2) and (3) of the Freedom of Information Act is engaged.

Therefore in conclusion we feel that disclosure of the information in question risks the Council being in breach of the first principle of the Data Protection Act. As a result the exemption provided by Section 40(2) and (3) of the Freedom of Information Act is engaged. As an absolute exemption we are not obliged to consider the public interest test.

5. Please confirm the basis of the transfer of employees to the entity identified in Request 2 above (i.e. under TUPE, by way of secondment). If temporary, please confirm the length of the temporary transfer.  
TUPE transfer.