

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2013

Public Authority: West Sussex County Council

Address: County Hall
Chichester
West Sussex
PO19 1RQ

Decision (including any steps ordered)

1. The complainant requested various items of information in relation to the Arundel Controlled Parking Zone (CPZ) scheme. West Sussex County Council (WSCC) provided the information it had identified as falling within the scope of the request. The Commissioner's decision is that WSCC has complied with its obligations under section 1(1) of the FOIA. However, in failing to provide all relevant information within the required timescale, WSCC has breached section 10(1) of the FOIA and in failing to cite an exemption in its refusal notice, it has also breached section 17(1)(b) of the FOIA. The Commissioner requires no steps to be taken.

Request and response

2. On 17 December 2012, the complainant wrote to WSCC and requested the following information in relation to the Arundel CPZ scheme:

*"...a copy of **the Project Centre contract and its schedules, including agreed changes**, [complainant's emphasis] as allowed for in Condition Z37 (Transparency Obligations) of the contract...*

... Also, having now obtained a copy of the NEC Professional Services Contract...could you please explain:

What is the relevance of 1 Option Y (UK) 21 to this contract?

What is the meaning (and relevance to this contract) of 1 Option Y (UK) 31? (This clause does not appear to be contained within the 2nd Edition of the NEC Professional Services Contract, so presumably it cannot apply to the Project Centre contract?)

*Finally, can you please confirm the **total expenditure to date** on this contract and also confirm whether this figure includes Expenses and VAT?"*

3. WSCC responded on 9 January 2013, providing an explanation in relation to the complainant's queries and the current figure for all items of the expenditure regarding the project, exclusive of VAT. It also informed the complainant that a copy of the contract with the exception of commercially sensitive information had previously been sent to him.

4. The complainant was not satisfied with this response and various correspondence between the complainant and WSCC followed, including an email from WSCC on 21 January 2013 which stated:

"The invitation to tender document for the Project Centre (see attached) that has been e-mailed previously to yourself is identical to the 'contract' that you refer to. The only difference is ... (specific rates for each part of the project), which have subsequently been deemed as being commercially sensitive..."

The only change to the contract (incorporating an expansion of the original study area ... was agreed via e-mail and the purchase order changed accordingly."

5. On 6 February 2013, WSCC informed the complainant that it could now provide the activity pricing schedule which had not previously been disclosed as it had been considered commercially sensitive information.

6. However, on 7 February 2013, the complainant contacted WSCC expressing concern that the document sent to him the day before was not the Priced Activity Schedule for the Contract as it must contain more detail about the various activities within the Invitation to Tender document.

7. WSCC explained to the complainant on 18 February 2013 that:

"Whilst that might be a reasonable expectation – and something that would probably apply for contracts of greater value, it does not apply in this case and there are no documents that contain the level of detail you seek."

8. It also provided a copy of an email exchange which led to the only amendment of note for the extension of the scheme's study area.

9. The complainant did not accept this and on 3 April 2013 formally requested that WSCC undertake an internal review and following the internal review WSCC wrote to the complainant on 5 April 2013 reiterating that it had now provided all relevant information falling within the scope of the request.

Scope of the case

10. The complainant contacted the Commissioner on 23 April 2013 to complain about the way his request for information had been handled. He was particularly concerned that he had not received all the information held by WSCC in relation to the contract, its schedules and all of the contract amendments. He was also concerned that he had not received a statement of the total costs incurred by WSCC via the Project Centre contract.

Reasons for decision

Section 1

11. Under section 1(1) of the FOIA, in response to a request for information a public authority is only required to provide recorded information it holds and is not therefore required to create new information in order to respond to a request.
12. In his consideration of this case, the Commissioner is mindful of the former Information Tribunal's ruling in EA/2006/0072 (Bromley) that there can seldom be absolute certainty that additional information relevant to the request does not remain undiscovered somewhere within the public authority's records. When considering whether a public authority does hold any additional information therefore, the normal standard of proof to apply is the civil standard of the balance of probabilities.
13. The Commissioner's judgement in such cases is based on the complainant's arguments and the public authority's submissions and where relevant, details of any searches undertaken. The Commissioner expects the public authority to conduct a reasonable and proportionate search in all cases.
14. In this particular case the complainant believes there is more information held in the form of tender documents containing detailed proposals and pricing schedules, and copies of all amendments to the contract as opposed to the one he has received from WSCC. He is also

concerned that he has not received a statement of the total expenditure on the Project Centre.

15. WSCC however, considers that it has identified and provided all relevant information falling within the scope of the request and believes the problem has arisen because the complainant appears to have expected more, different or a different quality of documentation to that which exists.
16. The Commissioner therefore asked WSCC to provide details of the criteria it follows to engage the wider process for tendering and if there was a figure below which, WSCC does not engage its full tendering process.
17. WSCC confirmed to the Commissioner that its contractual procedures are governed by Standing Orders on Contracts and Procurement, published as part of its constitution and binding on officers and elected members involved in all aspects of purchasing goods and services.
18. It further confirmed that the Standing Orders set out different levels of process and governance dependent on the size of the contract which affect whether a full published tender exercise is undertaken and the levels of formality the contract itself needs to have. It also confirmed that there is a financial threshold for when a decision to award a contract must be taken by an elected member.
 - For contracts with a value of less than £5000, WSCC confirmed that there are no formal requirements other than general obligations to evidence value for money.
 - For contracts up to £75,000, either one or more quotations or a tender exercise are required.
 - For contracts over £75,000 formal competitive tenders are required.
19. WSCC also explained that for contracts between £5,000 and £75,000 a number of discretions arise which may determine the need for more or less formality. These include:
 - The actual value of the contract
 - The range of potential suppliers
 - Previous experience of a supplier
 - Information to support value for money – comparisons, benchmark, previous contracts etc.
 - The dependencies or other grounds for urgency of the contract.
20. WSCC further explained that the form of contract is similarly prescribed so that contracts under £5000 have no mandatory requirements and

very formal requirements apply to contracts valued over £75,000. However, contracts between those figures should be in writing in a form approved by the Head of Law and Governance but the precise form will be a matter for discussion between the officers in Legal and the relevant service.

21. WSCC confirmed to the Commissioner that actual value of the contract in question (excluding VAT) was £20,350. The Commissioner therefore asked WSCC to clarify what discretions were relevant in this particular case.
22. In this particular case, WSCC confirmed that the most economically advantageous tender option was followed, also allowing for factors other than price to be considered. The tender needed to comply with minimum standards on legal, technical environmental and safety and was objectively evaluated with a weighted scoring system based on quality and price.
23. Whilst the Commissioner acknowledges that the complainant's expectation of additional information is entirely reasonable, having considered the general contractual requirements followed by WSCC and the details of the contract in question, he has concluded that based on the balance of probabilities, that no additional relevant information exists and that WSCC has complied with its obligations under section 1(1) of the contract.

Section 10

24. Section 10 of the FOIA provides that a public authority must provide all relevant information within 20 working days of receipt of the request. The Commissioner notes that WSCC's did not provide all relevant information to the complainant within the appropriate timescale and has therefore recorded a breach of section 10(1) of the FOIA.

Section 17

25. Section 17 of the FOIA concerns the refusal of the request and section 17(1) requires a public authority to specify any exemption it is relying on to withhold information. Although WSCC subsequently withdrew its reliance on section 43 of the FOIA, its failure to specify this in the refusal notice represents a breach of section 17(1)(b) of the FOIA.

Right of appeal

26. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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