

**Freedom of Information Act 2000 (FOIA)**  
**Decision notice**

**Date:** **5 May 2020**

**Public Authority:** **Hertfordshire County Council**  
**Address:** **County Hall**  
**Pegs Lane**  
**Hertford**  
**Hertfordshire**  
**SG13 8DQ**

**Decision (including any steps ordered)**

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1. The complainant has requested information about the council's award of contract to a company, Avanti School's Trust (AST), to run a school in the county. The council provided the majority of the information however it withheld some information from disclosure, applying section 43(2) (prejudice to commercial interests), and section 40(2)(personal data).
2. The Commissioner's decision is that the council was correct to apply sections 43(2) and section 40(2) to withhold the information from disclosure.
3. The Commissioner does not require the council to take any steps.

## Request and response

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4. On 11 July 2019, the complainant wrote to the council and requested information in the following terms:

*""Hertfordshire has for many years had a reputation for providing excellent schools and I greatly benefitted from that schooling in my youth. Schools are an essential public service and there is a very significant public interest in understanding the process whereby Avanti Schools Trust was selected to run this school and to test the robustness of the selection process, particularly given Avanti have no other schools in the area.*

*Accordingly, could you provide me with copies of the following documents:*

*Avanti Schools Trust's application to run this new school and the applications of any other entity who bid to run this school;  
the assessment criteria, template scoring grids and documents setting out the assessment process;*

*the name and qualifications of the individuals on the selection panel;*

*the actual scores awarded to Avanti and any accompanying documents containing an assessment of their bid; and*

*the notes taken by the selection panel during the interview process with Avanti."*

5. The council responded on 30 August 2019:
- It withheld the application information regarding part 1 of the request under the exemption in section 43(2) (commercial interest).
  - It provided copies of the assessment criteria etc.
  - It withheld the names of those sitting on the panel under section 40(2) (personal data of third parties). It said that it does not hold other information relating to the individuals. It did however disclose details of job titles.
  - It disclosed a copy of the interview questions, however it withheld other information under section 43(2), particularly the scores and 'due diligence' information which it held about AST.

6. Following an internal review, the council wrote to the complainant on 8 October 2019. It upheld its decisions from its initial response.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 9 October 2019 to complain about the way his request for information had been handled.
8. He argues that the council was not correct to withhold the information in response to his request.
9. During the course of the Commissioner's investigation the council disclosed further information to the complainant on 28 February 2020. However, the complainant wrote back to the council on 3 March 2020 saying that he remained unhappy with the level of redaction which the council had made to the information it had disclosed.
10. The Commissioner therefore considers that the complaint is whether the council was correct to apply sections 43(2) and section 40(2) to withhold the information it has.

### **Reasons for decision**

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#### **Section 43(2) – prejudice to commercial interests**

11. Section 43(2) of the FOIA states that information is exempt if its disclosure *would or would be likely to prejudice the commercial interests of any person, including the public authority holding it.*
12. Section 43(2) is a qualified exemption and is therefore subject to the public interest test.
13. The exemption can be engaged on the basis that disclosing the information either "would" prejudice commercial interests, or the lower threshold that disclosure 'would be likely' to prejudice those interests. The council argued that a disclosure of the information 'would be likely' to prejudice its, and the company's commercial interests.
14. The council clarified that the process was not a tendering process per se. It was a competition run in accordance with the Department of Education (the DoE) Free School Presumption Process 2018. The competition led to a recommendation being made to the DoE. The final decision was then made by the Regional Schools Commissioner on behalf of the Secretary of State. A funding arrangement would then be agreed between the DoE and the successful company, not between the

council and the company. AST were announced as submitting the winning bid by the council on 2 July 2019. The funding arrangement with the DoE had not, however, been completed by that time, being expected to be agreed between April 2020 and September 2020.

15. The information which the council withheld under section 43(2) is information relating to:
  - Staff structure, planning and budget information of the applicant organisations.
  - Financial and budgetary information of schools
  - Some notes taken during the interview process together with the individual scores of the organisations bidding.
16. It said that the information relates to the commercial interests of Avanti Schools Trust (AST) as it details the applications specific forward plan and budget information relating to the bid. It said that if this information was disclosed it would provide competitors with market sensitive information. It added that although AST had been successful in its bid to run the school the overall procurement process being run by the council had been extended until 11 November 2019, and so it considered it possible that AST would bid to provide services for other schools which formed part of the further tenders it was running. It also confirmed to the Commissioner that it would be very likely to run further such competitions in the future as further housing developments will require additional schools to be built.
17. AST also confirmed to the council that sections of its bid in this contract would be re-used in other such bids it intends to make in the future. It considered therefore that a disclosure of this information would be likely to prejudice its commercial interests as it could be copied and used by its competitors in order to provide them with a competitive advantage over AST.
18. The council argued that a disclosure would release information that would diminish AST's competitive position by publicising commercially sensitive intellectual property, gained through investment in their services and bidding strategies. This information would also give insight into the way they each operate, pricing structures and service delivery which currently differentiates AST from its competitors. This would place AST at a commercial disadvantage against its direct competitors in future bids, and constitute a breach of trust.
19. The council argues that the information provided by the organisation includes method statements – essentially a statement as to how the organisation will structure and set up the schools, and how it will go

about running them. It argued that the information is not in the public domain and the applicants would have had no expectation that this information would be made public when they submitted it to the council.

20. The council clarified that the submission form informed bidders that the information they provided would only be used for limited purposes, included determining the bidding competition. It argues that the organisations would believe that they were submitting their information in confidence, so therefore they would believe they were free to submit any information to support their bid, including commercially sensitive information.
21. The council argues that each organisation bidding in the competition would have spent time and resources preparing their submission. The withheld information contains a breakdown of the evaluation scores and notes which the council awarded to the companies for their bids. Competitors would therefore be able to identify which areas had been marked more highly by the council, and why that was the case. It considers that a disclosure of this information would therefore allow competitors to copy or amend parts of their own future bids in order to be more competitive against the organisation which submitted the bid in future competitions.
22. It clarified that it does intend to run several similar competitions in the future as further housing developments require more schools to meet demand. It also said that there is no reason to suppose that the criteria used in these future competitions would change significantly with the new competitions it intends to run. There is therefore a clear possibility that information from one organisation's bid in this competition may be used by other organisations in order to be more competitive against its competitors in these future competitions.
23. It therefore considered that a disclosure of this information at the time of the request would provide information on AST's successful bid, and that a disclosure of this information would be likely to prejudice AST's future bids for any of the other schools compared to the other companies who might bid for the same contracts.
24. It said that it had also taken into consideration the impact of disclosing information relating to the financial viability of schools before they have been afforded the opportunity of support in structuring their finances.

The Commissioner's analysis

25. The Commissioner's guidance on section 43<sup>1</sup> states:

*"A commercial interest relates to a person's ability to participate competitively in a commercial activity. The underlying aim may be to make a profit however it could also be to cover costs or to simply remain solvent."*

26. Section 43(2) of the FOIA is a prejudice-based exemption and in order to be engaged, the following criteria must be shown to apply:

- the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – ie disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.

27. The withheld information relates to the activity of seeking to procure services. It is information provided by AST during the bid, evaluation information relating to the bid, and information relating to the due diligence carried out during their assessment, and notes taken during the interview process. It includes information such as method statements, financial and budget information etc which form part of the structure of AST's bid.

*Would a disclosure of the information prejudice 'commercial interests'?*

28. Providing services for the purposes of obtaining a profit is a commercial activity, as is seeking to provide such services. Any disclosure which affects a party's ability to successfully carry out such an activity in a competitive market therefore relates to the commercial interests of the party concerned.

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<sup>1</sup> <https://ico.org.uk/media/1178/commercial-interests-section-43-foia-guidance.pdf>

29. The Commissioner's guidance on section 43 outlines *that "information about the procurement of goods and services by a public authority is usually considered to be commercially sensitive. This can include information provided during a tendering process"*
30. The interests under consideration are therefore the commercial interests of AST and the council. The council however has only applied the exemption in respect of AST and the other bidding companies' commercial interests.

The harm that would be caused to the commercial interests

31. The competition run by the council is similar in nature to a tendering competition. The Office of Government Commerce previously published guidance to public authorities on tendering information. The guidance outlines the likelihood as to whether relevant information can be disclosed at each section of a tender or not, and provides working assumptions as regards procurement information and the FOI Act.<sup>2</sup> Whilst this document was published for guidance only, it did provide a useful starting point for authorities considering the sensitivity of information received as part of a tendering process both during, and after the contract award phase has been completed.
32. The guidance suggests that, post tendering phase, (i.e. after the tendering process has been completed, and any analysis and review of the process has taken place), there is a general ability to disclose evaluation information.
33. However, with the prospect of very similar competitions being run by the council in the future, this point is weakened as a disclosure of such information at the time of the request was likely to put information in to the public domain which AST argues it is likely to use in its future submissions. Clearly a disclosure of sensitive information which would allow AST's competitors to change their approach in these future competitions against AST, on very similar contracts, would be likely to prejudice the commercial interests of AST.
34. For instance, a breakdown of the evaluation information notes and individual scores by the council would provide competitors with a strong

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[https://webarchive.nationalarchives.gov.uk/20100609095909/http://www.ogc.gov.uk/documents/OGC\\_FOI\\_and\\_Civil\\_Procurement\\_guidance.pdf](https://webarchive.nationalarchives.gov.uk/20100609095909/http://www.ogc.gov.uk/documents/OGC_FOI_and_Civil_Procurement_guidance.pdf)

indication of the parts of the bid submitted by AST which the council marked more highly than others. This would provide an advantage to AST's competitors as they could amend their own bids to match or beat AST's score in this area in similar competitions in the future. Whilst there may be benefits to this to some extent, overall, the loss of a level playing field in such competitions undermines fair competition. The council clarified that it did disclose the overall evaluation scores, but it withheld the breakdown of these for these reasons.

35. As noted, the council contacted AST and asked it if it considered the information was commercially sensitive and should be withheld from disclosure. AST confirmed that it considered that the information should be withheld and provided strong reasons why it considered that to be the case. Following the council making redactions on the basis of the arguments it had presented, AST confirmed it was happy with the level of redaction which the council had made.

#### The level of likelihood

36. The Commissioner notes that whilst the competition for the school had been completed, further competitions are likely to occur for similar services. The council confirmed the likelihood that further competitions would be run in the future and AST confirmed that it would be interested in bidding for further contracts.
37. The council has disclosed much of the information which it holds, however it has withheld this information on the basis it retains its commercial sensitivity given that AST confirmed that some of the same information is intended to be used again in future competitions.

#### Conclusions

38. The Commissioner is satisfied that there is a significant risk that a disclosure of the information withheld under section 43(2) would prejudice any subsequent bids which AST sought to make. She is therefore satisfied that the exemption was engaged correctly by the council.

#### The public interest

##### The public interest in the information being disclosed

39. The complainant argues that the council will not let him know what AST said to win the right to set up a new school, who made the decision or what the reasoning for the decision is. He argues that there is a clear and overriding public interest in this information being available. He does not consider that the council should be able to withhold this



information from the public and shield the council's decision making from proper and legitimate public scrutiny.

40. The Commissioner agrees that there is a public interest in creating transparency over the planning and setting up of new free schools. The methodology used, and future plans on how the school will be run, are likely to be high on the list of concerns which the public will have about such schools being set up in their area. There is therefore a strong public interest in allowing the public access to as much information as possible, highlighting whether the decision of the council to award AST the contract is appropriate. This will inevitably include details of how the school will be structured and run by AST.
41. The Commissioner also considers that some of the details may become relatively obvious as the school opens and moves forward. Details such as staff structures etc will become fairly obvious to children and parents within the school. The Commissioner also notes that as AST already runs some schools, some of this information may already be partially identifiable through analysing how these current schools are structured and perform. AST provides details of the other schools it runs on its website at <https://avanti.org.uk/our-schools/>.
42. The Commissioner therefore agrees with the complainant's argument that there is public interest in knowing how services will be delivered. She notes however that some of this information has already been disclosed by the council in response to the request for information.

#### The public interest in the exemption being maintained

43. The Commissioner acknowledges that the exemption is designed to protect commercial interests and she has given due weighting to the public interest in maintaining such protection in this specific case. The central public interest in the exemption being maintained revolves around protecting commercial activity and the level playing field which exists when carrying out tendering competitions of this nature.
44. The Commissioner has already established, on the basis of the arguments provided, that there is a more than hypothetical risk of prejudice occurring to AST if the withheld information was disclosed.
45. The Commissioner considers that release of the information would undermine the AST's' position in competitive tenders with other companies. The council argued that a disclosure of the information would give its competitors insight into the way the companies operate, their pricing structures, and service delivery, which is information which currently differentiates them from their competitors.

46. The council argued that there is a strong public interest in protecting the commercial interests of the applicants and ensuring that they can compete fairly in relation to similar applications in the future. It argued that there is a very strong public interest in ensuring the fairness of competition, and it would be against the public interest if an organisation's commercial interests were harmed simply because they had been chosen as the best candidate to run a school. It considered that there is a public interest in ensuring that taking part in one competition, at their considerable expense, did not result in a loss of competitive advantage for a significant period of time.
47. In the Commissioner's opinion, there is a very strong and inherent public interest in ensuring fairness of competition and it would be firmly against the public interest if a company's commercial interests were harmed simply because they have been awarded, or recommended to be awarded a public sector contract.
48. A disclosure of the information at the time that the request was received would interfere with the level playing field on future competition bids. AST had been successful with its bid on this school, and further such competitions are likely to be run in the future. The council clarified that it considered that the evaluation criteria it used in this competition was likely to be relevant to future competitions, and AST confirmed that it would be using some of the same information in future bids it made. It is therefore inevitable that AST's competitors would look at the information available through this FOI request and amend their own bids in order to be more competitive against AST in these future bids. It is not in the public interest for the level playing field to be affected in such a way.
49. Additionally, the council highlighted that if companies noted areas where the council had marked particular areas highly in bids, this would be likely to narrow down the information it received from companies in the future. It would potentially lead to a lack of innovation in ideas submitted to it as companies concentrated on replicating or bettering the areas which it has marked more favourably in past bids.
50. Having considered all of the above, the Commissioner's decision is that there is a strong public interest in protecting the commercial interests of AST and ensuring that they can compete fairly in new competitions.
51. In saying this, the Commissioner recognises that as some of this information, such as staff structure and the way that AST provides its services, will become less sensitive, if not obvious, over time.

52. The Commissioner has therefore decided that the public interest in maintaining the section 43(2) exemption outweighs the public interest in disclosure.

### **Section 40 personal information**

53. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
54. In this case the relevant condition is contained in section 40(3A)(a)<sup>3</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
55. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
56. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

### ***Is the information personal data?***

57. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual"*.

58. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
59. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

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<sup>3</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

60. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
61. The council categorised and withheld two types of information which they considered to be personal data:
- a) Curriculum vitae's (CV's) and biographies of individual's either currently working for the companies, or those working elsewhere who would move to work for the company if they were successful in their bid for the contract.

The council, however, clarified that where it had established that information on the individuals was already within in the public domain it had not redacted this information.

- b) The names and qualifications of individuals on the evaluation panel. It noted however that it did not hold this information for all individuals, only council officers.
62. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the individuals. She is satisfied that this information both relates to and identifies the individuals concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
63. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
64. The most relevant DP principle in this case is principle (a).

### **Would disclosure contravene principle (a)?**

65. Article 5(1)(a) of the GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

66. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
67. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

## Lawful processing: Article 6(1)(f) of the GDPR

68. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that “*processing shall be lawful only if and to the extent that at least one of the*” lawful bases for processing listed in the Article applies.

69. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”<sup>4</sup>.*

70. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-

- i. **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii. **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
- iii. **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

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<sup>4</sup> Article 6(1) goes on to state that:-

*“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.*

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

*“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.*

71. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

*Legitimate interests*

72. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
73. The legitimate interest of the public in having access to the withheld information is to create greater transparency over the past experience and qualifications of those who will be involved in the school once it becomes active, and of individuals who were on the evaluation panel.
74. The public has a legitimate interest in knowing that the decision was made by individuals with the appropriate knowledge and experience to be able to make decisions of this nature. Clearly it also has a legitimate interest in knowing that the individuals who will be involved in the school have the necessary experience and knowledge to be able to provide an appropriate level of service to parents and children, and to provide effective management of the school.
75. The council also considered that another reason for requesting this information might be to argue that the council, and the individuals on the evaluation panel, had reached an incorrect decision with the DoE.

*Is disclosure necessary?*

76. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
77. The council firstly considered whether it was possible to withhold the names of the individuals concerned. It said however that even if this were done, the curriculum vitae's and qualifications of the individuals concerned would create a strong risk that individuals could be identified by people motivated enough to take steps to try to identify them. It

noted that as the individuals were representatives of the named organisations bidding for the contract this would provide significant information in order to allow the individuals to be identified along with their CV's.

78. It further argued that disclosing the information would not provide any further information as to how AST won the competition, and it was therefore not necessary to disclose this information. It said that this decision was based upon the evaluation criteria. It said that the templates used for the competition are already within the public domain as are the overall evaluation scores. It argues therefore that it is not necessary to disclose the information in order to meet the legitimate interests which have been identified.
79. However there remains a legitimate interest in creating greater transparency about the individuals who would be running or working within the school, and in knowing that the experience and knowledge of those making that decision on behalf of the council. The Commissioner is therefore satisfied that in order to meet this legitimate interest it is necessary for the requested information to be disclosed.

*Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms*

80. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
81. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
82. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

83. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
84. The council considered that there would be no expectation that the information might be put into the public domain as it contains sensitive information which could identify those concerned. It also clarified that its submission documents contained the following information on the purposes the information would be used for:

*"Sponsors should note that content of their applications will only be used in connection with this competition and subsequent appointment process by:*

- *Officials working for the County Council in its Children's Services Department.*
- *Officials engaged by the County Council to provide specialist input to inform or assist with the decision making process.*
- *Officials involved with the process at the Department for Education and the Office of the Regional Schools Commissioner.*

*Information will not be past to any other third party."*

85. This notification naturally provides confidence to individuals that their personal private information would be retained in confidence. They would not therefore expect that the information they provided would subsequently be disclosed to the whole world in response to an FOI request.
86. The council also argued that all of the above would expect that these details would be dealt with in a respectful manner, and in accordance with their rights under Article 8 of the Human Rights Act, which provides a right to respect for ones "family and private life, his home and his correspondence". It considers that any breach of this would be in contravention of their rights under Article 8.
87. The council also argued that some of the individuals do not work for AST but had agreed a position with them once AST were successful in taking up the role. The council argues that if they had not been successful in winning the contract, a disclosure of their agreement could have been discovered by their current employers which may have caused distress. The council therefore argued that this would be an unwarranted intrusion into the private lives of these individuals.
88. This is in addition to the general loss of privacy which a disclosure of this nature would entail.



89. The Commissioner also considers that a disclosure of this sort of information would provide information which could be used for criminal purposes, such as identity theft.
90. Further to this, the evaluation panel were carrying out their duties as council officers, or experienced individuals providing a service to the council. Again they would not have had an expectation that details of their work on the panel evaluating the bids would be disclosed to the whole world, given that senior council officers will be the individual's both accountable for, and publicly named as being responsible for the decisions taken by the council over the matter. The council clarified that, insofar as the individuals were council employees, it did disclose job titles in order that the requestor could have some understanding of the individuals who sat on the panel.
91. Based on the above factors, the Commissioner is satisfied that the individuals would have had no expectation that their information might subsequently be disclosed, that disclosing that information could potentially cause significant harm to them, in addition to the general loss of privacy that a disclosure would entail. She is also satisfied that that information would not generally be in the public domain, although some information may already have been published in resumes of employees or through steps taken by the individuals themselves such as entries on web based content such as 'Linked-in'. As noted, the council has said that where it is aware that some information is already publicly available this has already been disclosed.
92. Given the above, the Commissioner is satisfied that the legitimate interest in the information being disclosed does not outweigh the rights of the individuals.
93. The Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.

### **The Commissioner's view**

94. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

## Right of appeal

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95. 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: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

96. 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.

97. 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**  
**Head of FOI Casework and Appeals**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**