

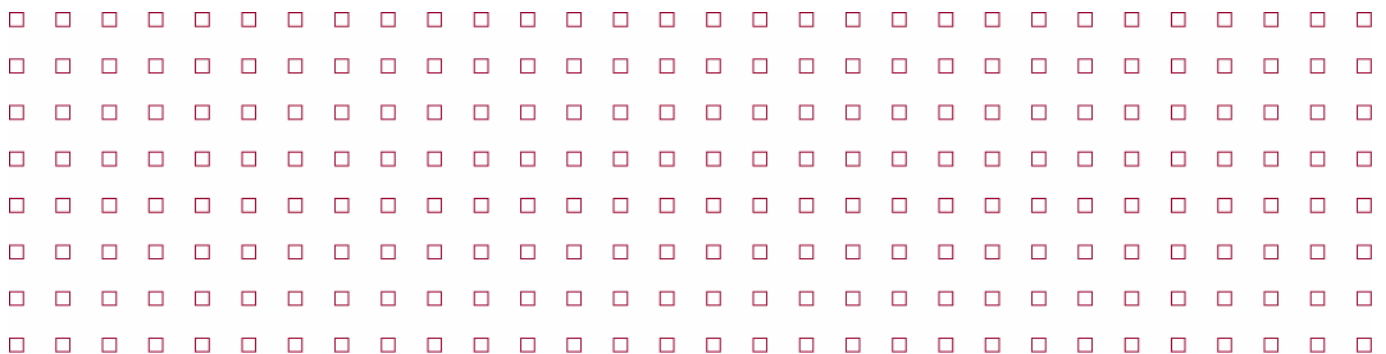


# **Freedom of information guidance**

Working assumptions –  
procurement

## **Annex A**

20 November 2008



## Contents

The table below is drawn from the Office of Government Commerce's 'Freedom of information (civil procurement) policy and guidance', available at [www.ogc.gov.uk](http://www.ogc.gov.uk).

NB - This annex is only intended as a summary of the information included in the procurement process and should be used by authorities as a starting point when making their own disclosure decisions, based on the circumstances of the particular case.

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## 1. General procurement information

Information type	Discussion	Working assumption decision
Information on suppliers compiled from widely available sources (e.g. product catalogues, press stories)	Already in the public domain, so clear exemption applies. However, requesters could be directed to the original information sources to satisfy their information need.	Not to be released (Section 21)
Information on suppliers aggregated from knowledge gained within the authority through their supplier dealings (e.g. performance over several contracts). Also includes derived information (e.g. opinions drawn from data).	If the aggregated information is critical of a supplier and released, it could (but may not) damage commercial interests. If it were known that only information relating to suppliers (where there are no concerns about performance) would be disclosed, a refusal to disclose aggregated information on a particular supplier would effectively identify them as performing badly. Anonymised information may generally be disclosed.	Not to be released (except for anonymised information).  (Section 43 (2) may apply)
Information obtained from suppliers and not generally available (future product info, research plans, financial details).	This information will generally have been specifically requested by the authority and supplied with a reasonable expectation it would not be made public. Otherwise, companies may refuse to divulge the information, to the probable detriment of the public interest.	Not to be released (Section 41 may apply)  (EIR regulation 12(5))
Gateway Review reports	Refer to the Gateway Review information working assumption.	Refer to the Gateway Review working assumption

## 2. Initiation information (start of procurement planning up to readiness to issue bid documentation)

Information type	Discussion	Working assumption decision
All vision, strategy and planning documentation, including business cases	The key document in this phase is the business case (strategic outline, outline or full). NHS guidelines for PFI/PPP contracts mandates the publication of business cases within a month of their final approval, but allows for the possible redacting of information. However, non-PFI work may operate in a different environment and direct correlation may not be appropriate. In some cases, information may be subject to release as a managed process for early supplier involvement. Only disclosure outside of this process is detrimental.	Not to be released in phase (unless part of a managed process for early release of information). Disclose when bid documentation issued  (Section 36 and Section 43)
Requirements information	Early disclosure of requirements, unless part of the procurement strategy, could prejudice the tendering process and give unfair advantage to some suppliers. In some cases, information may be subject to release as a managed process for early supplier involvement. Only disclosure outside of this process is detrimental.	Not to be released in phase  (Section 43(2))

### 3. Tender information (release of tender documents up to selection of preferred bidder)

Information type	Discussion	Working assumption decision
All project management documentation, with the following exceptions	This covers the typical documentation generated during management of selection when run as a project (e.g. Prince 2 products). Demonstrates procurement was properly managed, but release during tendering could damage process.	Not to be released in phase. Disclose when contract let  (Section 36 and Section 43)
Project issue and risk logs	These may contain critical information about tenderers.	Not to be released in phase. (Section 36 (2) (b) (i))  Decide by case thereafter
All information received from tenderers	This covers tender documents, correspondence, negotiation notes, etc.	Not to be released in phase (thereafter, see table for following phase)  (Section 43)
All evaluation information	Covers evaluation reports	Not to be released in phase (thereafter, see table for following phase)  (Section 36 and Section 43)

#### 4. Contract negotiation information (successful bidder notified up to contract signature)

Information type	Discussion	Working assumption decision
Tender information received from unsuccessful bidders	This covers tender documents (including prices).	Not to be released, except for non-sensitive information  (Section 43(2))
Tender evaluation information on unsuccessful bidders (including ranking)	Although commercially non-sensitive information could be disclosed, the public interest in favour of disclosure of sensitive information is generally weaker than that for winning bidders.	Generally disclose, except for sensitive information  (Section 43(2))
Identity of unsuccessful bidders		Generally disclose (unless security/ H&S related)
Evaluation information for successful bidders		Generally disclose

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Tender information received from successful bidder, with the exceptions below	General tender information, including total tender price (but not supplier's costing information, see below). Note that if cost information could be deduced from price information (e.g. consultancy, where total price = days * day rate), then consultation may be needed before a decision on disclosure is reached.	Generally disclose (unless security/health and safety related)
Payment terms		Generally disclose after contract signature
Information on the supplier's approach to the work	Likely not to be sensitive unless the supplier has a unique approach that could be considered a 'trade secret' (see section 3.2 for definition).	Generally disclose except for information agreed as 'trade secret'  (Section 43(1))
Financial models	For more complex work, detailed models of how the cash flow for both the authority and supplier would be managed over the life of the contract (e.g. recovering low initial capital charges through incentivised support work).	Not to be released (Section 43(2))
Price breakdown	Price breakdowns, without knowledge of the underlying financial model, could be misleading and need proper presentation.	Not to be released (until no longer sensitive)  (Section 43(2))

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CVs and reference sites	CVs are likely to come under the Data Protection Act. Reference site information was probably supplied to the bidder in confidence.	Not to be released (Section 40)
Information on supplier's costing mechanisms	This covers information relating to profit margins, day rates (where used to calculate a fixed price), overhead costs, etc. This may give advantage to a competitor.	Not to be released (Section 43(2))
Information relating to contract negotiation	Covers correspondence, meeting minutes, emails, contract change notices, etc. Decision will depend on sensitivity and content, and should not comprise suppliers' negotiations with sub-contractors or the public authority's negotiations with any third parties.	Generally disclose except for information agreed as commercially sensitive, with time limits

## 5. Contract delivery information (from start of work to completion)

Information type	Discussion	Working Assumption decision
All project management documentation, with the following exceptions:	This covers the typical documentation generated during management of contract when run as a project (e.g. Prince 2 products). Demonstrates project was properly managed.	Generally disclose
Project risk logs	The project should be able to explore issues freely and cooperatively between parties. Disclosure would damage this freedom, to the detriment of the project.	Not to be released in phase. (Section 36(2)(b)(i))  Decide by case thereafter
Exception reports	These may contain critical info about suppliers. Disclosure could prejudice process (due to a reluctance to raise/accept). See discussion under item 2.	Not to be released in phase  (Section 36(2)(b)(i))
Lessons learnt report	These may contain critical information about suppliers. Disclosure could prevent candour and hence restrict valuable information.	Not to be released  (Section 36(2)(b)(i))

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Contract information (general)		Generally disclose (unless security/health and safety related), but see below for exceptions
Contract information requiring particular attention:		
Price breakdown	See under tender information in previous table	Not to be released (until no longer sensitive)  (Section 43(2))
Service level agreements	Information provides key indicator that proper management is in place. Strong public interest element, probably low commercial impact.	Generally disclose
Performance measurement procedures	As above, with possibly even lower commercial impact.	Generally disclose
Incentive mechanisms	Information provides key indicator that proper management is in place. Details of the mechanisms may be considered sensitive by suppliers, but there is a strong public interest element in disclosure. Summary information should be considered.	Generally disclose
Criteria for recovering sums	Stronger commercial argument, since it would indicate financial risk to which company is exposed. Subsequent knowledge of performance would mean financial impact could be deduced, possibly affecting company's financial position.	Generally disclose, but not full details

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Pricing mechanisms	Covers milestone payments, price variation mechanisms (e.g. fee rate increases per year). Case law supports release of this information, based on public interest in disclosure.	Generally disclose
Dispute resolution procedures	Information provides key indicator that proper management is in place. Strong public interest element, probably low commercial impact.	Generally disclose
Invoicing arrangements	Probably no commercial impact, so exemptions unlikely to apply. However, if they did, it is difficult to see any public interest in non-disclosure.	Generally disclose
Contract management arrangements	Information provides key indicator that proper management is in place. Strong public interest element, probably low commercial impact.	Generally disclose
Exit strategies and break options	Information provides key indicator that proper management is in place. Strong public interest element, probably low commercial impact.	Generally disclose
Sub-contractor details	Covers their identity, management arrangements, flow-down of contract conditions.	Not to be released (except for their identity)  (Section 36)

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Assessing or reporting on contract performance	This covers information relating to performance against SLAs, KPIs SPAs, benchmarks, etc. Mostly relevant to longer term service provision. Overall, likely to be in public interest to release, but financial sensitivity for supplier needs to expire.	Generally disclose once any financial sensitivity has expired
Information on sums recovered	Where contracts have liquidated damages clauses, information may be included about: a) have damages been imposed, b) the amounts involved. The former could arguably be disclosed, but the likelihood is that the latter could then be deduced from other information. The latter is probably commercially/financially damaging (but beware if covered under EIRs), but only for a definable period.	Not to be released until any financial sensitivity has expired  (Section 43 (2))
Information on project progress	Covers progress review minutes, reports, correspondence. More relevant to start/end projects. Disclosure may be in public interest, but supplier reputation could suffer if major project known to be delayed (with fall in share price, loss of bids in progress, etc). Also, important that such information is put in context (e.g. delay may be due to new requirements or other valid reasons).	Generally disclose
Product/service verification procedures	Covers details of test documentation, e.g. strategy, procedures, acceptance plans. Also covers building acceptance/commissioning plans. Possible 'trade secret' and IPR issues, especially for service companies. Release of detailed procedures to competitors effectively enables re-use by them, possibly giving them competitive advantage.	Generally disclose except where 'trade secrets' agreed  (Section 43(1))
Product/service verification results	Covers results from above activities. Same comments as above, as procedures may be deduced from results.	Generally disclose except where 'trade secrets' agreed  (Section 43(1))

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Contract change information	Same arguments as for contract. Disclosure of all information likely to be in the public interest.	As for contract
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