

**The Freedom of Information Act 2000 (FOIA)
&
Environmental Information Regulations 2004 (EIR)

(and the Tendering & Contracting Process)**

Suffolk County Council has a duty under the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations (EIR) to respond to requests for information. This may require disclosure of information that is part of a tender/contracting process.

We are mindful of the potential commercial risks to our suppliers in the disclosure of information.

To assist you, we have produced a list of questions that may be raised under the contracting process, and the likely response that we will provide.

Frequently Asked Questions:

Question:

What information relating to Suppliers falls under the scope of FOIA/EIR?

Answer:

All information held by us is within the scope of the FOIA or EIR and must be disclosed on request unless we determine that an exemption applies.

For example, we would be under a duty to disclose information about a contract with domiciliary care provider, unless that information was covered by an exemption.

Question:

Do suppliers and contractors have to comply?

Answer:

Yes. If we receive a request that includes information held by a Supplier or Contractor on our behalf, the Supplier or Contractor concerned shall have to comply with the FOIA/EIR legislation and supply that information to us to enable us to communicate a response.

FOIA/EIR places strict legal deadlines on public authorities that must be complied with, therefore the Supplier/Contractor will be expected to supply that information in good time to ensure we do not breach the legislation.

Question:

Will Confidentiality Clauses prevent information from being disclosed?

Answer:

No, the confidentiality obligations in contracts will be subject to our statutory obligations under FOIA/EIR legislation. There will have to be genuine commercial and/or legal reasons as to why information should be treated as confidential.

Information provided in confidence will only be exempt if disclosure of that information

would give rise to an actionable breach of confidence.

This is a narrow and specific legal exemption, which applies in very limited circumstances defined by the courts through complex case law, and you should therefore not assume this exemption shall apply just because information is confidential.

Question:

Will the Council consult with Contractors on the disclosure of information?

Answer:

It is our decision whether or not to disclose contractual information. We will, when possible, consult to take the views of Suppliers/Contractors into account when making a decision under FOIA/EIR legislation.

We strongly recommend that if a Supplier/Contractor considers information would be exempt under FOIA/EIR legislation, it identifies for us **the exact nature and location** of this information in their tender.

Question:

What are Exemptions to disclosure?

Answer:

The FOIA exempts certain types of information from the Rights of Access. There are two types of exemptions:

Absolute Exemption, such as information that is reasonably obtainable elsewhere (i.e. in a publication scheme or on the internet), information provided in confidence and where release would amount to contempt of court.

Where information falls within the terms of Absolute Exemption, we may refuse to disclose the information and, in some circumstances, can also refuse to confirm or deny whether the information exists.

Qualified Exemptions, such as information intended for future publication (i.e. there are plans to publish the information in the future and it is reasonable, at the time of the request, not to disclose it immediately) and information relevant to criminal investigations and criminal/civil proceedings.

Qualified Exemptions will only apply in circumstances where we can prove that there would be a real and significant damage (prejudice) to us or to other people if the information was made public ("Public Interest Test").

The EIR exempts certain types of information from the Rights of Access. There is only one type of exception:

Qualified Exemptions, such as information material that is still being completed, unfinished documents including drafts, or incomplete data and information that is an internal communication.

Qualified Exemptions will only apply in circumstances where we can prove that there would be a real and significant damage (prejudice) to us or to other people if the information was made public ("Public Interest Test").

Question:

What information is likely to be disclosed/ not disclosed?

Answer:

Likely exemptions applying to information supplied or held by Suppliers/Contractors include information constituting a trade secret or a unique way of delivering/providing the contracted service, or cases where disclosure would prejudice the commercial interest of any person, including us.

Information that would likely be disclosed:

- standard contractual terms;
- general procurement activities;
- commercial activities;
- nature of supplies;
- services or works which are subject to contract;
- appropriate parts of Invitation to Tender;
- overall contract prices on particular supplies services or works;
- performance standards in particular contract; and
- completion or administration of a particular contract.

Information that may be considered for exemption:

- detailed cost breakdown; where the cost breakdown is unique to the supplier/contractor;
- methodology of delivery; where the methodology used to deliver the service is unique to the supplier/contractor; and
- unique or special information; where the information is specific, unique and of demonstrable value and where release into the public domain will have a demonstrable negative impact on the commercial viability of the supplier/contractor.

Question:

What information is likely to be refused under FOIA/EIR legislation?

Answer:

All requests that are subject FOIA/EIR legislation must be assessed individually at the time the request is made. Examples of information that is likely to fall under an FOIA/EIR exemption would be:

- trade secrets (secret formula or recipe, sensitive commercial interests which could prejudice either the Council, Suppliers/ Contractors);
- unit prices of goods or information that could identify profit margins;
- Information given in confidence and disclosing would constitute an actionable breach of confidence; and
- Personal data - disclosure of which would breach Data Protection Act 2018

Question:

What is the Public Interest Test?

Answer:

It is important to note that public interest does not mean what is of interest to the public but rather, what is in the interest of the public, which will evolve with time and changing circumstances.

We will consider whether, in all the circumstances of the case, the public interest in withholding the information is outweighed by the public interest in disclosing the exemption.

If the two are evenly balanced, the presumption will be in favour of disclosure.

Question:

What happens if an FOIA or EIR request is sent direct to a Supplier?

Answer:

Suppliers and Contractors should not deal with FOIA/EIR requests themselves, even if it relates to information they hold on our behalf.

Should a Supplier or Contractor receive an FOIA/EIR request directly they would need to respond asking the individual to resubmit their request to the Information Governance Team at Suffolk County Council using the following email address: FOI@suffolk.gov.uk

Further information:

General enquiries about FOIA/EIR: FOI@suffolk.gov.uk

Procurement specific enquiries: procurementbusinesssupport@suffolk.gov.uk