

Response to Request for Information

Reference FOI 002190
Date 17 April 2018

PFI/PF2 Contracts

Request:

1. I would like to know the value of any deductions made over each of the past two years (years ended March 31) under PFI and PF2 contracts
2. I would like to know how many material defects (where the cost of remediation is estimated to be over £50,000) reported in connection with any PFI projects over each of the past two years (years ended March 31)

In response to your above questions, I can confirm that we have a Leisure PFI contract and BSF PFI contract.

With reference to the Leisure PFI contract, the total deductions for the period as requested is £16,186.99. There were no material defects.

With reference to the BSF PFI contract, following careful consideration I regret to inform you that we have decided not to disclose this information.

The information you requested is being withheld as it falls under the exemption in Section 43 of the Freedom of Information Act 2000 which relates to Commercial Interests.

This requires the Council to conduct a public interest test to balance the factors for and against disclosure of the requested information (the public interest here being defined as something of benefit to the public rather than something the public may be interested in).

Disclosure under the Act's provisions should also be considered as being made to the wider world and not to a particular individual for a particular purpose.

In applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosure.

When applying the public interest test in respect of commercially sensitive information, the Council has considered:

- Prejudice or detrimental effect of disclosure
- Specific circumstances of the case
- Effect of disclosure on the wider world/public

In such cases the public interest factors for disclosure include:

- Demonstrating accountability of public money being spent
- Protection of the public from unsafe practices or rogue traders
- Circumstances in which the information was received
- Competition issues

Further consideration also needs to be given to:

- Whose interests will be prejudiced?
- How will those interests be prejudiced?
- Usefulness of information/detail
- Degree of similarity
- Effect on competition
- Effect on the market
- Timing of the request and response
- Can sensitive information be redacted?
- Where is the public interest?
- Is the information commercial in nature? (For this element the information needs to relate to a commercial activity, either of the Council or the Contractor.)
- Is the information subject to confidentiality provided by law?
- Is the confidentiality provided to protect a legitimate economic interest? (This condition is satisfied if disclosure would adversely affect a legitimate economic interest of either the Council or Contractor the confidentiality is designed to protect and harm would be caused to a legitimate economic interest, not just a potential risk that harm might occur.)

In this case, the key considerations in the application of this exemption is that sharing the detail of deductions and defects will disclose information on the sub-contractor's costs, profits and financial performance. Also, to disclose at this junction, within the time periods set out in the agreement, would affect the management of the information flow to market and thus adversely the commercial operation of the sub-contractor.