

**Freedom of Information Act 2000 (FOI)
Environment Information Regulations 2004 (EIR)
– ice rink drawings**

Your request for information has now been considered. The Council holds the following information.

You asked:

With regards to the drawings for the ice rink, do you have one of last year we can look at and compare?

Answer:

As the requested information relates to planning and developmental activities, I have also considered the request in line with the provisions of the Environmental Information Regulations 2004 (EIR) as I judge that this brings it within the scope of the Regulations in that the information is environmental in nature and relates to activities undertaken that have an impact on the environment.

The drawings provided by Icescape Limited were supplied in commercial confidence to the Council. Therefore, this information has been withheld from disclosure by Leicester City Council and this letter acts as the statutory refusal notice required by Section 17(1) of the FOI Act because of the exemption contained at FOIA Sections 41 - Information in Confidence, and Section 43(2)- Commercial Interests (and also by implication the exception to disclosure contained at Regulation 12(5)(e) of the EIR-Confidentiality of Commercial or Industrial Information) – the disclosure of this information would, or would be likely to, prejudice the commercial interests of any party (including the authority holding it).

A public authority engaging qualified exemptions under the provisions of the FOI Act (and by extension, any exceptions to disclosure under EIR) must consider the public interest (defined broadly as something of benefit to the public - as opposed to something they may be interested in) for and against disclosure.

The public interest is served where disclosure would for example:

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- a. facilitate the accountability and transparency of public authorities (even though this may involve breach of a confidentiality provision) i.e. is the Council ensuring value for money?;
- b. protect the public against unsafe products or unscrupulous business practices (even though this may involve revealing a trade secret); or
- c. bring to light information affecting public safety.

In FOI and EIR terms, The Information Commissioner's Office recognises there are circumstances in which a public authority might hold information with the potential to prejudice commercial interests.

In procurement terms this can include: information provided during a tendering process about both successful and unsuccessful tenders; details of a contract with a successful company; future procurement plans; and performance information about a contractor.

The information withheld from disclosure clearly meets this requirement. The simple question is would disclosure of the requested information to the wider world prejudice the commercial interests of anyone? Is there a public interest in making such a disclosure?

In this case, the Council has a duty to consider the commercial interests of both the Council and the contractor involved where such disclosure is contemplated.

The Council duly consulted with the contractor involved (Icescape) in line with its duties under the FOIA Section 45 Code of Practice for request-handling and its equivalent Code of Practice made under Regulation 16 of the EIR.

The contractor's response argued that in this case the disclosure fails the accountability and transparency argument and will lead to a loss of competitiveness (as the bargaining position of the public sector is prejudiced) meaning higher costs to the public sector of service provision in the future (as service providers will raise their prices in line with each other).

Reviewing this response, it is clear to me that it is in the public interest to ensure there is competition for public sector contracts.

The contractor has expressed the opinion that they expect confidentiality throughout a process and that they do not consider the information requested would meet a test to make it disclosable. I agree and would add that both the Council and contractors clearly put their time, effort and money into participating into a process they expect to be confidential.

Contractors generally accept that the Council, as a public authority, will release details of at least the winning bid once the process is complete but this consists of

the overall value of the contract and the name of the successful bidder, not the detailed contents of an unsuccessful bid.

I consider therefore that the information requested retains a degree of commercial sensitivity appropriate to the process, and in addition Section 41(1) – information given in confidence also applies to any information submitted as part of a bid. Such information has the necessary duty of confidence attached to it and the disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

Such action would clearly compromise the Council's interests and could dissuade future bidders from tendering, resulting in fewer bids and higher costs to the Council.

Turning to the EIR (should it be deemed environmental information) the Information Commissioner advises that a 4-stage test needs to be met when assessing the application of this exception, namely that:

- The information is commercial or industrial in nature.
- Confidentiality is provided by law.
- The confidentiality is protecting a legitimate economic interest.
- The confidentiality would be adversely affected by disclosure.

To summarise, I consider the above-cited arguments regarding disclosure to the wider world at this stage of the process would compromise the Council's interests and also compromise the future commercial interests of a contractor by revealing their business processes and costings to the wider world.

I consider the citing of the Section 43(2) exemption of the FOI Act (and by extension, EIR Regulation 12(5)(e)) in the Council's original response correct and supported by ICO guidance, and I also believe that in addition, Section 41(1) also applies to the requested information under the FOI Act.

You may re-use the information under an [Open Government Licence](#).

If you are dissatisfied with the handling of your request please write to:

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Legal Services
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