

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 17 July 2017

Public Authority: Salisbury City Council
Address: The Guildhall
Market Place
Salisbury
Wiltshire
SP1 1JH

Decision (including any steps ordered)

1. The complainant requested information regarding a complaint against an employee of Salisbury City Council (the Council), and the tender process for the Council's 2015-2017 Christmas Lights switch on.
2. The Council withheld certain information under section 21 (information accessible to applicant by other means), section 40(1) (applicant's own personal data), section 40(2) (third party personal data), section 41 (information provided in confidence), section 42 (legal professional privilege) and section 43 (prejudice to commercial interests).
3. The Commissioner's decision is that for the information relating to the complaint, the Council was entitled to rely on section 40(1) and section 40(2). For the information relating to the price bid by the successful company, the Council was entitled to rely on section 43(2). For the information relating to the tenders and the tendering process, the Council has correctly applied sections 40(1), 40(2) and 43(2) to the majority of the withheld information, but a small amount of the withheld information has been incorrectly withheld. The Commissioner finds that the Council was not entitled to rely on section 21.
4. The Commissioner also finds that the Council breached section 10 of the FOIA by providing its original response outside of the statutory timeframe of twenty working days.
5. The Commissioner requires the public authority to provide the disclosed information again with the withheld information specified in the confidential annex included to ensure compliance with the legislation.

6. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

7. On 11 April 2016, the complainant wrote to the Council and requested information in the following terms:

I wish to make Freedom of Information Requests regarding the following:

1. *My complaint against [named individual]*
2. *The award of the 2015/16/17 Christmas Lights Tender*

The requested materials shall include all emails, letters, contracts tenders, tender award, memos and meeting minutes, both internal and external to SCC, pertaining to both matters. Nothing must be omitted.

8. The Council responded on 16 May 2016 and confirmed that it held information relevant to the complainant's request. It explained that it was withholding the information as it was exempt under section 40, section 41, section 42 and section 43. The Council explained that for sections 42 and 43 it considered the balance of the public interest lay in maintaining the exemptions.
9. The complainant requested an internal review on 6 June 2016. He subsequently contacted the Commissioner on 11 August 2016 since he had not received the outcome of the internal review.
10. The Commissioner established that the Council had posted the outcome of the internal review on 20 June 2016 but this was not received by the complainant. The letter was returned by the Post Office as undelivered.

Scope of the case

11. Following the Commissioner's intervention, on 23 August 2016, the complainant confirmed to the Commissioner that he had now received the outcome of the internal review, which upheld the Council's previous refusal.
12. The complainant wished to pursue his complaint and the Commissioner wrote to the Council to request a submission regarding withholding the requested information.

13. The Council provided a submission to the Commissioner on 19 September 2016. In this correspondence the Council advised that it had reviewed the withheld information and had disclosed some information, with redactions, to the complainant. The Council maintained its reliance on section 40 and 43 with regard to the remaining withheld information.
14. On 5 October 2016, the complainant confirmed receipt of the Council's revised response, but confirmed that he remained dissatisfied. The Commissioner therefore proceeded to investigate.
15. During the course of the investigation, the Commissioner informed the Council that she considered some of the information withheld under section 40(2) did not engage the exemption and that the Council had not informed the complainant that some of the requested information had been published.
16. The Council wrote to the complainant on 16 February 2017 to provide the information again with the discussed redaction removed. In this letter, the Council also informed the complainant that it had not previously informed him of information available on its website that fell within the scope of the request.
17. On 18 April 2017, the Council confirmed to the Commissioner that the letter dated 16 February 2017 had been returned undelivered to the Council. The Commissioner therefore proceeded to issue a decision notice in this case.
18. Having considered the correspondence, the Commissioner is of the view that the complainant's request should have been considered under the Data Protection Act 1998 (DPA) as well as under the FOIA. This is because some of the requested information, if held, would be the complainant's personal information. The Commissioner has written to the Council to advise it of its obligations under the DPA, which does not form part of this decision notice because it is a separate legal process from a section 50 complaint.
19. In light of the above, the scope of the Commissioner's investigation was to consider whether the Council had correctly applied sections 21, 40(1), 40(2) and 43(2) to the withheld information.
20. The Commissioner will also consider whether the method of communication of the internal review and the letter dated 16 February 2017 was adequate and whether the Council is required to take further steps to communicate the information to the complainant.

Reasons for decision

Information relating to the complaint against a staff member

Section 40(1) and section 40(5)(a): the applicant's personal data

21. Section 40(1) of the FOIA provides that information which is the personal data of the applicant is exempt from disclosure under the FOIA. This is because there is a separate legislative access regime for an individual's own personal data, namely the right of subject access under section 7 of the DPA. The exemption is absolute, which means there is no requirement to consider the public interest. Section 40(5) of the FOIA provides that public authorities are not obliged to confirm or deny that they hold information which is (or if it were held, would be) personal data of the applicant.
22. The definition of personal data is given in section 1(1) of the DPA:
'personal data' means data which relate to a living individual who can be identified:
 - (a) *from those data, or*
 - (b) *from those data and any other information which is in the possession of, or is likely to come into the possession of, the data controller*
23. In its correspondence of 19 September 2016 the Council cited the exemption at section 40(1) in respect of information that was the complainant's personal data. This is because the complaint that was the subject of the request had been made by the complainant himself. The Commissioner is satisfied that the complainant is, or would be, the subject of some of the requested information. This is because the requested information, if held, would identify the complainant and be linked to him in terms of the complaint he made.
24. In light of the above, the Commissioner is satisfied that the exemption at section 40(1) is engaged with regard to the complainant's personal data. She also finds that the Council was entitled to refuse to confirm or deny under the FOIA that it held this information by virtue of section 40(5)(a). This is because disclosure under the FOIA is disclosure into the public domain. The complainant will have some personal knowledge of the information held on the basis that he made the complaint in question, but the wider public would not have such knowledge. The Council therefore ought to have considered whether the complainant was entitled to receive any of his personal data under section 7 of the DPA. As set out above the Commissioner has advised the Council of its obligations in this regard.

Section 40(2): third party personal data

25. Section 40(2) of the FOIA states that a public authority is not obliged to disclose information that is the personal data of an individual other than the applicant if to do so would contravene breach any of the data protection principles or section 10 of the DPA.
26. The Council cited section 40(2) of the FOIA with regard to the information that was not the complainant's personal data. Having inspected this information the Commissioner is satisfied that it is the personal data of a number of third parties. Primarily it is the personal data of the individual who was the subject of the complaint, but it includes personal data relating to other individuals involved in dealing with the complaint.

Would disclosure contravene any of the data protection principles?

27. The Commissioner is mindful that the FOIA is applicant blind. Despite the fact that the complainant has prior knowledge about the complaint he submitted, disclosure under the FOIA is to the public at large and not just the applicant.
28. The Council maintained that disclosure of the information in question would be unfair and would therefore contravene the first data protection principle, which states that personal data must be processed fairly and lawfully. In making her decision, the Commissioner has taken the following factors into account:
 - The reasonable expectations of the individuals;
 - The consequences of disclosure; and
 - The balance between the rights and freedoms of the individuals and the legitimate interest in having the requested information disclosed into the public domain.
29. The Council told the Commissioner that the individuals concerned believed that their personal information would not be disclosed into the public domain. For this reason the Council had not sought consent from any of the individuals. The Council argued that disclosure of the withheld information would be likely to cause distress to the individual who was the subject of the complaint, especially since the complaint was not upheld. In addition the Council was concerned that disclosure would discourage individuals from providing information in relation to complaints in future, which would make their handling more difficult.
30. The individual who was the subject of the complaint is a Council employee, and the Commissioner understands that the complaint relates to their professional role and not their private life. Similarly, the other

individuals' information was obtained in a professional rather than private context, ie the handling of the complaint.

31. The Commissioner considers that employees of public authorities should be open to some degree of scrutiny and accountability and should expect that some personal data about them may be released because their jobs are funded by the public purse. The Commissioner also acknowledges that the subject of the complaint enjoys a senior position within the Council and would generally therefore have a lower expectation of privacy regarding their professional role than that of a junior staff member.
32. However, the Commissioner considers that certain types of information should generally not be disclosed, even though it relates to an individual's professional life and not their personal life. This includes information that relates to complaint/personnel matters. The Commissioner is satisfied that the nature of the allegation, and the fact that no evidence of wrongdoing was found, strengthens the expectation that the information would be withheld.
33. The Commissioner also considers that those involved in complaint procedures, such as third parties providing evidence or statements, would normally have a reasonable expectation prior to participating in the process that the information that they were providing will not be disclosed to the public.
34. The Commissioner's published guidance¹ explains that in assessing fairness, authorities should consider the likely consequences of disclosure in each particular case. Personal information should not be used in ways that have unjustified adverse effects on the individuals concerned. It is often the case that the detrimental consequences resulting from a disclosure would be obvious. It will also be important to consider the level of distress that disclosure would be likely to have and this will depend on the nature of the information.
35. The Commissioner considers that, given the expectations of the individuals as set out above, disclosure of their information into the public domain would be likely to cause damage and/or distress to those individuals. The Commissioner is also mindful that the allegations made by the complainant were not upheld, which adds weight to the argument that it would be unfair to disclose information into the public domain.

¹ <https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

36. The Commissioner accepts that disclosing this information into the public domain would undoubtedly interfere with the individuals' data protection rights. Unless there is a strong justification for doing so, it would be an unwarranted intrusion into the individuals' privacy. In order to assess whether there is a justification for doing so, the Commissioner will consider whether there is any legitimate public interest in disclosing the requested information.
37. The complainant in this case has argued that the information ought to be disclosed because he is concerned about possible wrongdoing by Council staff. However, where a complaint is found not to be upheld it is less likely to be fair to disclose information relating to that complaint. The Commissioner has seen no evidence to suggest that there is an overriding public interest which demands that the information be disclosed into the public domain.
38. The Commissioner has also considered whether the requested information is necessary for the complainant to pursue a legitimate private interest. The Commissioner understands that where a complainant is dissatisfied with the authority's response or handling of their complaint, the appropriate route is to contact the relevant regulatory body, in this case, the Local Government Ombudsman. The Commissioner does not consider it necessary for a complainant to receive all information held regarding the investigation of the complaint before proceeding down this route. The Commissioner does not therefore consider disclosure to be necessary in this context.
39. For the reasons set out above the Commissioner is satisfied that it would be unfair to disclose the relevant information, and thus it would constitute a breach of the first data protection principle. The individuals concerned have a reasonable expectation that their personal information would be withheld, the disclosure itself would interfere with their privacy rights, and there is no overriding public interest to justify this intrusion. It follows that the Council was entitled to rely on the exemption at section 40(2), and the Commissioner is not required to consider the application of section 41 and 42 to this information.

Information relating to the award of the Christmas Lights contract

40. As set out in paragraph 13, the Council provided the complainant with redacted documents falling within the scope of the second part of the request. The Commissioner has been provided with copies of the original documents for her consideration. The Council relied on the exemption under section 43(2) to redact the following information from the documents disclosed to the complainant:

- Tender documents submitted by all bidding companies;
 - Company names (in relation to their scores);
 - Prices quoted by each tender (when anonymised and ranked in order of score);
 - A statement regarding the winning company's cost structure;
 - The price quoted in the winning tender;
 - The price difference between the winning bid and a competitor's bid;
 - The name of an unsuccessful company in relation to their tender; and
 - The name of a further unsuccessful company and price bid.
41. A list of the redacted documents and the withheld information is contained within a confidential annex. This has been provided to the Council but not to the complainant since it contains details of the information the Council considers exempt from disclosure.

Section 43(2) – commercial interests

42. Section 43(2) of the FOIA states:

Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any persons (including the public authority holding it).

Tender documents

43. The Council confirmed to the Commissioner that it considered disclosure of the tenders submitted by all of the bidding companies would affect the commercial interests of both the third party companies and the Council.
44. The Council explained that each business will have spent time and resources preparing its tender for submission. The Council considered that it would be prejudicial to the commercial interests of the tendering businesses to disclose to the world at large the tender submissions as this would enable competitors to copy or improve on parts of the tender for future tender bids, whether to provide services to the Council or other parties.
45. The Council explained that many of the documents were not "boilerplate" documents but were specifically tailored to this contract and it considered that their confidentiality was particularly important as the Council would be tendering for similar services again in 2017/18.

46. The Council further explained that it saw no reason to anticipate that the market for these services would have changed significantly by the time the new invitation to tender is issued.
47. The Council explained that the businesses had incurred time and expense to prepare tenders for the current contract and would find their commercial advantage significantly reduced if competitors were able to copy their approach. The tendering companies were approached to request their opinions regarding the disclosure of the requested information. All but one company informed the Council that it did not consent to disclosure of the tender documents.
48. The Council set out that it considered that disclosure of the tender documents would also prejudice the commercial interests of the Council itself. The Council explained that if competing companies were able to copy previously submitted tenders, this would risk the homogenisation of tender submissions to the Council in future. This action would make it more difficult for the Council to distinguish those companies which are able to provide the best service and value for money, having prepared their submissions based on knowledge and experience in the market, from those companies which simply copied their competitors' submissions.

Documents relating to the awarding of the contract

49. The Council withheld information which would disclose the price tendered by the winning bidder. The documents which contain information redacted for this reason are listed in the confidential annex as documents 1, 2, 3, 4, 7, 11 and 13.
50. The Council told the Commissioner that it had redacted the price submitted by the winning bidder as disclosure of this information would be likely to prejudice the Council's commercial interests. The Council set out that the existing contract would be concluded in 2017 and a new invitation to tender will be issued inviting businesses to bid to provide very similar services from 2018.
51. The Council explained that if a business was looking to submit a tender and had knowledge of the sum previously paid, it would be unlikely to submit a significantly lower bid even if it was able to provide the same services for a significantly lower amount. The Council considered that this could lead to the Council paying more than necessary for the required services. The Council explained that the tenders received for 2015-2017 varied from £30,000 to £135,000.
52. Documents 6 and 7 relate to a discussion of an unsuccessful company's tender, and the expected price of a specific service within the winning tender, respectively. The Council redacted the company's name and

identifying information from document 6. The document discusses why the company was not awarded the contract, and the Council considered that disclosure of the company name in this context would be detrimental to the company's reputation. The company had confirmed to the Council that it did not consent to the disclosure of any information relating to its submitted tender. The Council redacted from document 13 the name of another unsuccessful company and the price put forward in its tender.

The Commissioner's position

53. In order for a prejudice based exemption, such as section 43(2), to be engaged, the Commissioner believes that three criteria must be met:
- Firstly, the actual harm which the public authority believes would, or would be likely, to occur if the withheld information was disclosed has to be related to the applicable interests within the relevant exemption;
 - Secondly, 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
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
54. With regard to the first criterion of the three limb test described above, the Commissioner accepts that the potential prejudice described by the Council clearly relates to the interests which the exemption contained at section 43(2) is designed to protect. The Council has provided arguments relating to prejudice to both its own commercial interests and those of the bidding companies.
55. With regard to the second criterion, the Commissioner is satisfied that disclosure of the information in question has the potential to harm both the companies' and the Council's commercial interests. This is because, in the Commissioner's view, it is logical to argue that, in a competitive

and lucrative market, companies would seek to use the withheld information to gain an advantage over their competitors who have previously tendered for a contract with the Council. The Commissioner also accepts that if the amount the Council was willing to pay in 2015 is disclosed, the companies bidding in 2018 will likely use this figure as a benchmark even if they are able to provide the service for a significantly lower sum of money.

56. With regard to the third criterion, the Commissioner will consider the price paid, successful tender, unsuccessful tenders and other withheld information separately.
57. The Council confirmed that it was relying on the lower level of 'would be likely to' prejudice regarding the price bid by the winning contractor. The Commissioner is satisfied that if this information was disclosed, there is a more than hypothetical risk of prejudice occurring to the Council.
58. The Council confirmed that it was relying on the higher level of 'would' cause prejudice to the winning contractor's tender document. The Commissioner accepts the Council's arguments that disclosure of the successful tender would more likely than not prejudice the successful company's commercial interests. The Commissioner accepts that competitors would seek to use this information to gain an advantage over the successful contractor.
59. The Commissioner does not, however, accept the Council's arguments that the Council's commercial interests would be prejudiced on the basis of receiving identical tenders for the upcoming Christmas Lights tender. The Commissioner is mindful that the Council has made clear in the previously disclosed information that it does perform background checks and research on the tendering companies. The Commissioner considers it unlikely that the Council would accept all information provided in a tender without question.
60. With regard to the unsuccessful tenders, the Council confirmed that it was relying on the higher level of 'would' prejudice. The Commissioner does not accept that the likelihood of prejudice meets the threshold of 'would' cause prejudice to the unsuccessful companies and the Council. The Commissioner considers that as the tenders were unsuccessful, the likelihood of a competitor using the tender as a future template is reduced. The Commissioner does, however, accept that the likelihood of prejudice occurring meets the lower threshold of 'would be likely to' prejudice the unsuccessful companies as there is a more than hypothetical chance that competitors would attempt to use the tender documents to gain a competitive advantage.

61. The Commissioner accepts that disclosure of the information redacted from documents 6 and 7 would be likely to prejudice the tendering companies' commercial interests. This information includes Council officers' opinions on the experience and pay structures of some of the tendering companies. The Commissioner accepts that if these opinions were disclosed, there is a more than hypothetical chance that they would prejudice the specified companies' commercial interests.
62. The Commissioner notes that the unsuccessful company named in document 13 consented for information relating to its tender to be disclosed. The Commissioner also considers that it is evident from the already disclosed information that the company was not the winning bidder. Consequently the Commissioner requires this information to be disclosed. The Commissioner also requires the information in documents 1, 2, 3, 4, 7, and 13 which relates to this company to be disclosed.
63. The Council explained that, as the complainant is the director of the company that consented to disclosure, this company's tender is reasonably accessible to him and is therefore exempt under section 21 of the FOIA. However, having reviewed the Council's copy of the tender the Commissioner understands that the document includes a handwritten annotation. The right of access under the FOIA is to information held by a public authority, and this includes annotations to documents. The handwritten annotation is not reasonably accessible to the complainant and the Commissioner cannot, therefore, accept the Council's reliance on section 21 of the FOIA to withhold it. The Commissioner requires the Council to disclose the document including the annotation.
64. With regard to section 43(2), since the company has provided consent for disclosure and the Council has not provided persuasive arguments for why disclosure of this tender bid would prejudice the Council's commercial interests, the Commissioner does not accept that the exemption is engaged. The Commissioner requires the Council to disclose the information in document 18.

Public interest test

65. The Commissioner has accepted that section 43(2) is engaged in respect of certain information as set out above. Since this is a qualified exemption the Commissioner must consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest in disclosure of the information

66. The complainant has explained that he considers the Council has knowingly wasted public money and he considers all of the requested

information should be disclosed in order to confirm why the contract was awarded to a company that cost the tax payer £90,000 more than the local equivalent.

67. The Council acknowledged that there is an inherent public interest in transparency in the Council's decision-making process, however, it considered that this had been met by the disclosure of the anonymised scoring sheets and the internal report into the tender award process.

Public interest in maintaining the exemption

68. The Council argued that the balance of the public interest lay in maintaining the exemption under section 43(2). The Council believed there is an inherent public interest in ensuring competition for public sector contracts and obtaining value for money for the Council.
69. As set out above, the Council considered that if competitors were able to copy the approach of companies submitting strong tenders, this would risk the homogenisation of future tender submissions. The Council explained that this would make it more difficult to achieve value for money when awarding contracts, which would be contrary to the public interest.
70. The Council also considered that if the tender submissions of the companies who have bid for public sector contracts were disclosed, this would put these companies at a competitive disadvantage compared to companies which tender only for private contracts. The Council explained that this may dissuade companies from tendering for public work in future, reducing the pool of companies willing to carry out such work. This Council considered this reduction in competition would be contrary to the public interest.

The Commissioner's position

71. The Commissioner must make her decision on the basis of the information provided to her. The Commissioner is disappointed that the arguments put forward by the Council were not of the standard she would expect for a case such as this. However, as the Commissioner's officer has returned to the Council on more than one occasion during this case, the Commissioner did not consider it proportionate to continue to correspond with the Council and has proceeded to make her decision on the basis of the arguments provided.
72. The Commissioner considers that there is always a general public interest in the disclosure of information relating to the spending of public money and consideration should be given to whether disclosure of the requested information would increase the public understanding of the management of public funds.

73. The Commissioner is not persuaded by the Council's argument that disclosure of the tender submissions would lead to a reduction in the number of companies willing to tender for contracts. The Commissioner considers that public sector contracts are sufficiently lucrative that companies would likely accept a level of disclosure in order to bid for such contracts. In this context the Commissioner is also mindful that the Council has already disclosed some information. The Council has provided the complainant with detailed anonymised score sheets, the contract between the Council and the winning bidder, and an internal report into the tender process following the award of the contract. The Commissioner has therefore attached very limited weight to this argument.
74. The Commissioner acknowledges that the complainant has concerns regarding the award of the contract to the winning bidder. The Commissioner is unable to comment on a public authority's internal procedures outside of the FOIA. She does, however, note that she has seen no evidence to suggest that the Council has acted inappropriately. The complainant has not provided evidence of an overspend of the amount stated in his complaint and the Commissioner notes that the "*local equivalent*" the winning bidder is compared to appears to be the complainant's own company. The Commissioner, therefore, considers that the public interest arguments put forward by the complainant relate only to his own private interests and cannot be afforded significant weight in this case.
75. The Commissioner has considered the Council's arguments regarding withholding the price bid in the winning tender. The Commissioner notes that the Council has clearly set out in the disclosed information that price was not its only consideration when choosing a contractor, the Council scored the companies on their tenders and experience. The Council made clear in the disclosed information that it has performed its own research during the tendering process, and in the Commissioner's view this demonstrates that the Council would be capable of taking sufficient action to mitigate any prejudice to its own commercial interests should the information be disclosed. The Commissioner also considers that when tendering for contracts, the Council will have a budget in place prior to inviting tenders and, therefore, the likelihood of the Council overspending on services does not attract significant weight.
76. However, the Commissioner considers that prejudice to the commercial interests of the winning bidder should be afforded more weight in the balancing exercise. The Commissioner is of the opinion that the public interest in disclosure does not extend to disclosing information that would harm the company's ability to protect its position in a competitive environment. The company was awarded the contract on the basis that it submitted the best tender, and the Commissioner is of the opinion

that it would not be fair to disclose information that would disadvantage the company in future tender processes. The Commissioner considers this to be significant in balancing the public interest.

77. The Commissioner has considered the information already disclosed regarding the Council's decision making process and the engagement of the lower threshold of "would be likely to" cause prejudice to the successful company. She has considered whether disclosure of the winning tender document would add significantly to the public debate and understanding of the Council's decision. She has also considered the harm that would be likely to occur to the successful company should its tender documents be released into the public domain. The Commissioner concludes that, in the specific circumstances of this case, the public interest in maintaining the exemption narrowly outweighs the public interest in disclosure of the winning tender. However the Commissioner finds that the winning amount bid should be disclosed.
78. Regarding the unsuccessful tenders and their scores, and the redacted company name in relation to the decision to award the contract to the second highest score, the Commissioner considers that the public interest arguments on both sides are limited. The Commissioner has considered what further understanding disclosure of the unsuccessful tenders and their associated scores would provide. She is not persuaded that this information would inform the public of the reasoning behind the Council's decision any more than the information already disclosed, including the anonymised score sheets and a review into the tender process. Consequently, the Commissioner again finds that the public interest in maintaining the exemption outweighs the public interest in disclosing this information.
79. Regarding document 6, the Commissioner is mindful that the information indicates the Council's opinion on the winning tender price, rather than the price itself. The Commissioner considers the public interest in understanding the reasons for the Council's decision to award the contract slightly outweigh the public interest arguments for maintaining the exemption.
80. For the reasons set out above, the Commissioner requires the disclosure of certain information contained in documents 1, 2, 4, 7, 11 and 13. This is specified in the confidential annex provided to the public authority.

Section 40(2)

81. The Council has sought to rely on section 40(2) to redact personal data from the information it has disclosed. The redacted information is contained in documents 1, 5, 8, 10 and 12. The personal email addresses of Councillors involved in discussion of the tender award have

been redacted from documents 5, 8 and 10. The Commissioner notes that, where used, work (ie public) email addresses have been disclosed.

82. The Council confirmed to the Commissioner that, on occasion, Councillors may choose to use personal email addresses when acting in their professional capacity. The Council set out that it considered personal email addresses to be the personal data of the Councillors and they would have a reasonable expectation that these email addresses would not be disclosed to the public. The Council confirmed that all Councillors have a public email address which members of the public are able to use to contact them. It, therefore, considered that it was not necessary to disclose the personal email addresses of Councillors as they could be contacted via their public email addresses.
83. The Commissioner accepts that disclosure of Councillors' personal email addresses would be unfair for the reasons set out above, and would thus contravene the first data protection principle. The Commissioner finds that the Council was entitled to withhold this information under section 40(2).
84. The names of contact individuals at each of the tendering companies have been redacted from document 12. The Council explained that it takes the view that there is little if any reason to publish the names of individuals who work for companies which tendered for a contract to provide services to the Council. The Council accepted that there may be a greater public interest in knowing some information about the individuals who work for the successful company because those individual may have some responsibility for the services provided under the contract. The Council concluded, however, that such disclosure would be unwarranted in this case because it would run contrary to the expectations of those individuals. The Council concluded that to process the personal data of these individuals in a manner that runs contrary to their expectations would be unfair and therefore breach the first data protection principle. Again, the Commissioner accepts that disclosure of these individuals' names would be unfair, and the Council was entitled to rely on section 40(2).
85. The signatures of the Councillors and officers opening the received tenders have been redacted from document 1, although their names have been disclosed. Due to the risk of fraud or identity theft which would accompany the disclosure of an individual's signature to the general public, the Commissioner considers that the individuals would have a reasonable expectation that their signatures would not be disclosed into the public domain. Given this risk the Commissioner is satisfied that disclosure may cause unwarranted distress to the individuals. The Commissioner also considers that there is no public interest in disclosure of this information. The Council has disclosed the

names of the individuals who opened the submitted tenders, the signatures of these individuals would not add to the public understanding or Council's accountability regarding the tender process.

86. The Commissioner concludes that disclosure of the redacted information in documents 1, 5, 8, 10 and 12 of the confidential annex would be unfair and would, therefore, breach the first data protection principle. Section 40(2) is engaged and the Commissioner does not require the Council to take further action in this regard.

Section 40(1)

87. The Council redacted the personal data of the complainant under section 40(1) of the FOIA. The information redacted from documents 8, 9 and 13 is the complainant's name. The information redacted from documents 8 and 13 is the name of a company connected with the complainant. Document 13 comprises the bid made by the above company for the Christmas Lights Switch On Event contract. Documents 14, 15 and 16 are email correspondence between the complainant and the Council.
88. The Commissioner is satisfied that the information withheld in documents 8, 9, 13, 14, 15 and 16 comprise the personal data of the complainant and are therefore exempt from disclosure under section 40(1). However, the Commissioner does not consider that the company name, or the bid made by that company, is the complainant's personal data. The Commissioner has taken account of the connection between the complainant and the named company. However, in the case of the company name and bid, the Commissioner does not consider that the complainant can actually be identified from this information. The Commissioner therefore requires the company name and bid to be provided to the complainant with the redacted information disclosed.

Information to be disclosed to the complainant

89. The Commissioner considers that as the complainant made his request to the Council by email, it was implicit that he would expect a response in the same format. The Council has not explained to the Commissioner why it decided to respond to the complainant by letter rather than by email. Nor does the Commissioner understand why the Council did not re-issue the correspondence by email following its unsuccessful delivery by post. The Commissioner considers that the Council has not taken reasonable steps to ensure that the complainant has been provided with the information set out in its letter dated 16 February 2017.
90. The Commissioner requires the Council to provide the correspondence set out in paragraph 16, along with the information requiring disclosure in this notice, to be provided to the complainant by email.

Section 21

91. During the course of the investigation, the Council wrote to the complainant and explained how he could access some of the requested information via the Council's website. However, as set out above the Council subsequently informed the Commissioner that the letter, sent by recorded delivery, was returned to the Council undelivered.
92. The Commissioner has reviewed the Council's website and considers that the Full Council minutes are reasonably accessible to anyone accessing the Council's website. As the Council provided the complainant with the date of the relevant meeting, the Commissioner accepts that access to the specific information is straightforward.
93. The Commissioner has considered whether the information in question is reasonably accessible to the complainant in this case. The complainant made his request by email and communicated with the Council and the Commissioner by email. She considers that the applicant is capable of accessing online information and, therefore, the Council's website. Consequently the Commissioner finds that the Council would have been entitled to rely on the exemption at section 21 of the FOIA, had the complainant received the Council's correspondence.
94. However, as set out above the Commissioner notes that the Council failed to communicate its explanation to the complainant. Therefore the Commissioner requires the Council to provide the complainant with the information that it considered fell under the scope of section 21.

Section 10: Time for compliance

95. Section 1(1) of the FOIA states that:

Any person making a request to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*
- (b) if that is the case, to have that information communicated to him*

96. Section 10(1) of the FOIA states that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
97. The Commissioner notes that in this case the complainant submitted his request on 11 April 2016 and the Council issued its original response on 16 May 2016. This was outside of the statutory 20 working days and therefore the Council breached section 10(1) of the FOIA.

98. The Commissioner notes that in its original response dated 16 May 2016 the Council states:

"...whilst there is a general time frame of 20 working days to respond to a freedom of information request, where a public authority requires additional time to consider whether qualified exemptions apply to the information requested, they are entitled to additional time, up to 40 working days from the date of the request."

99. This is incorrect. Section 10(1) sets out a statutory time for compliance and any request for information must be responded to within 20 working days. Should a public authority require further time to consider the public interest test in respect of a qualified exemption, it should inform the applicant of this within the statutory 20 working days and state which exemption has been applied. The authority may not extend the time for compliance in order to decide whether any exemption is engaged, it may only consider the public interest in respect of an exemption that it has concluded is engaged.
100. The Commissioner also notes that the Council explained to the complainant during correspondence prior to the Council's formal refusal notice, that the response had been delayed as the complainant emailed his request to a Councillor and not the Council itself. The Commissioner would remind the Council that the statutory 20 working day time for compliance starts from the day after the date of receipt by the public authority. Since the request was forwarded by the Councillor to the Council clerk on the day it was received, no delay was incurred by the complainant contacting the Councillor rather than the Council.

Right of appeal

101. 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@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

102. 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.

103. 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

Sarah O’Cathain
Senior Case Officer
Information Commissioner’s Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF