



The working assumptions set out here are designed to provide you with a guide to how requests for certain kinds of information should be treated within the different phases of procurement processes, and in the period immediately after a contract has been completed.

Information generated by and given to public authorities as part of the process of procuring goods and services from commercial suppliers is referred to as 'procurement information' throughout these working assumptions.

The question of whether 'procurement information' should be released in response to a request made under the Freedom of Information (FOI) Act or the Environmental Information Regulations (EIRs) will depend on what kind of information it is, and in what phase of the procurement process the information is requested.

These assumptions are not designed to be absolute rules on how every request for information should be handled. They are provided only as a guide to where the public interest is likely to fall within procurement phases.

Where information is requested that is not covered by the assumptions, or you think for any reason that the assumption should not apply, then the request must be referred to an FOI/EIR specialist.

Whenever information supplied to your public authority by a third party (e.g. a supplier) is requested, you should always seek their views about the sensitivity of the information in question. It may be that the third party is happy for you to release information which you had thought was sensitive. However, it is essential to remember that the final decision on the release or withholding of information rests with the public authority that holds the information. The views of third parties can inform your decision making, but they cannot bind you, and you may sometimes find your authority releasing information against the wishes of the third party that supplied it.

Because they are designed as a general guide to requests for procurement information, the working assumptions do not contain exhaustive lists of exemptions that could be used where the assumption is to withhold information. For some

procurement areas (such as in the area of law enforcement for example), different exemptions may be more appropriate to use than those suggested here. If you are unsure, you should refer the case to an FOI/EIR specialist. The exemptions most relevant to procurement information are S36 (effective conduct of public affairs) S41 (Information provided in confidence) and S43 (Commercial interests.)

S 43 (2) is likely to be particularly significant with regard to procurement information. This provides that information is exempt information if its disclosure would, or would be likely to prejudice the commercial interests of any person, crucially including the public authority holding it. It is important that where S43 (2) is engaged, public authorities consider both the potential commercial prejudice to themselves as well as the commercial prejudice to third parties - public authorities also have legitimate commercial interests to protect.

Throughout this working assumption there will be reference to disclosure of procurement information being potentially prejudicial to commercial interests. A commercial interest relates to a person's ability to successfully participate in a commercial activity and there are a number of ways in which disclosure of procurement information could be commercially prejudicial to both Departments and third parties. For example would disclosure

- Prejudice the ability of Departments to achieve value for money?
- Damage the business reputation of or the confidence that suppliers have in a Department or a third party?
- Weaken a Department's or third parties position in a competitive environment?
- Reveal the financial position of a third party in a way that is detrimental to their commercial interests?

For more detailed guidance on S43 please see DCA's detailed exemption guidance.

The detailed annexes discuss the specific prejudicial effects of disclosing different types of procurement related information.

S41, information provided in confidence, may also apply to some sensitive commercial information provided to public authorities by third parties / contractors. This exemption only applies where a breach of confidence would be "actionable." Where Departments hold information which might be subject to a duty of confidence

or where it is possible that disclosure might constitute an actionable breach of confidence then they should refer to the Clearing House and also consult their legal advisors. More detailed guidance on S41 is available in DCA's exemption guidance.

How the assumptions are set out

The procurement information working assumptions are broken down by procurement phase, in Annexes as follows:

- **One** - Requests for procurement information made after a contract has been let and during the delivery of the contract (Annex A)
- **Two** - Requests for procurement information made after requests for tender have been issued, but before the selection of the preferred bidder (Annex B)
- **Three** - Requests for procurement information made before invitations to bid have been issued (Annex C)
- **Four** - Requests for procurement information or for commercial market information made after a contract has been delivered, or made outside the procurement process. (Annex D)

Annex A

- **Requests for Procurement Information Made after a bidder has been selected and during delivery of the contract**

For the purposes of this Working Assumption, the public interest is generally in favour, once a procurement exercise has been completed, disclosing information contained in the categories set out in **section 1**.

Some information will remain sensitive for a certain amount of time, even after a contract is let and is being delivered. These categories of information are set out below **section 2**.

Section 1

Generally speaking, there is a public interest in disclosing information about public procurements to ensure:

- that there is transparency in the spending of public money;
- that public money is being used effectively, and that public authorities are getting value for money when purchasing goods and services;
- that authorities' procurement processes are conducted in an open and honest way.

Before a contract is let however, there are competing public interests in ensuring that the procurement process is fair, and that the commercial interests of potential suppliers and public authorities are not prejudiced by the release of information.

Once a contract has been awarded, many of the reasons for withholding information are no longer relevant, either because commercial interests would not be prejudiced, or because once a decision has been reached on the spending of public money, the balance of public interest shifts in favour of disclosure.

This section sets out the information which should be disclosed once a procurement competition has ended and the contract is being delivered.

Identity of unsuccessful bidders - disclose

Once the contract is awarded the identity of unsuccessful bidders can be disclosed, as there is no longer any risk to the commercial interests of the public authority from possible collusion of bidders.

Range of tender prices offered (except where there are only two unsuccessful bidders) – disclose

After a bidding process has concluded, the range of prices across all received tenders should be disclosed. There is a strong public interest in both the public and the market being able to see what prices were bid for work.

Where there are only two failed bidders, and revealing information would let competitors know their rivals' price (thus damaging their commercial interests), the public interest might weigh against disclosure, and the case should be referred to an FOI specialist.

The process used for assessing various bids; the evaluation criteria used to assess them, and the outcome of tender evaluation (there were bids made in the range x-y, four companies bid, Company A was successful, and its price was Z) – disclose

Once a procurement competition has completed, there is a strong public interest in demonstrating the criteria that were used to select the winning supplier. There is also a public interest in demonstrating that the process was fair, and that the best overall bidder was selected. However, caution may need to be exercised and the context the potential disclosure will need to be taken into account as there may be some S43(2) considerations. For example if a Department are likely to be engaging in a similar tendering exercise in the near future, it may be that disclosing the evaluation criteria and to a lesser extent the outcome of the tender evaluation, will alert future bidders to how they might make a successful tender, thereby reducing the ability of the Department to achieve VFM.

Identity of successful bidder, contract price and high level price breakdown (i.e. not the supplier's detailed pricing structure) - disclose

There is a strong public interest in showing who public money is being spent with, how much public money is being spent on a particular service or good, and how the supplier arrived at the price that is being charged. Care must be taken to ensure that no information is released which would allow the supplier's internal pricing structure to be deduced, prejudicing its commercial interests. Subject to this, the information should be released.

Information about the contract, and the management of the contract - disclose

There is a strong public interest in demonstrating how the goods or services bought with public money will be delivered, and how the contract will be run, its terms enforced, and how, if necessary, the contract will be terminated. This will involve the disclosure of:

- Service level agreements – once a contract is let, there is a public interest in knowing what standard of service the procuring authority is expecting to see delivered under the contract.
- Product/service verification procedures – similarly, there is a public interest in knowing that there are procedures in place to verify the quality of the products or services that are being delivered.

- Performance measurement procedures – there is a public interest in the public being able to assure themselves that there are rigorous procedures in place to accurately measure the performance of the supplier delivering the goods or services.
- Contract performance information – it is in the public interest to release information about how well a supplier is performing in the delivery of a contract where public money is being spent.
- Incentive mechanisms – there is a public interest in knowing that there are mechanisms within the contract which provide incentives which ensure that the supplier delivers the required standard of work, and that it is encouraged to exceed that required standard.
- Criteria for recovering sums – it is in the public interest to know that proper criteria and mechanisms are in place to recover sums of money from the supplier where this is necessary.
- Pricing mechanisms and invoicing arrangements – there is a public interest in the procuring authority demonstrating that cost-effective mechanisms are in place to cope with changes to the price paid caused by factors such as inflation, or a rise in the cost of raw materials.
- Payment mechanisms – these govern the way in which public money is paid to suppliers. There is a public interest in demonstrating that these mechanisms are sound and appropriate, and that the public authority is properly managing the payment process.
- Dispute resolution procedures – disputes between suppliers and public authorities do sometimes occur, and where they do there is a risk that public money will have to be spent resolving them. There is a public interest in knowing that proper procedures are in place to resolve disputes without jeopardising the project, or incurring avoidable costs.
- Contract management arrangements – as well as the detailed aspects of contract management set out here, there is a public interest in authorities demonstrating that they have sound processes in place to manage the contract.
- Project management information (i.e. majority of Prince 2 products, except risk logs and exception information) – the majority of public procurements are run using project management methods, and it is in the public interest to release this information to show how well specific projects are progressing or being run.

- Exit strategies and break options – It is in the public interest for authorities to demonstrate that there are sound procedures in place to bring contracts to an end where this proves necessary

Departments may wish to consider putting this information pro-actively into the public domain.

Section 2

Although the public interest favours the release of most information once a contract has been let, there will still be some information which it is necessary to withhold during the contract delivery phase, and for a short period of time after the contract is completed.

These categories of information are set out below.

Risk Assessments and Risk Logs - Withhold (s36(b)(i) of the FOI Act – Information whose release would be likely to prejudice the free and frank provision of advice).

Risk assessments of a procurement and logs of the risk to the project need to be unrestrained, frank, and totally candid, if they are to be effective. During a contract, the procuring authority needs to be able to report risks openly and honestly, and away from the gaze of the supplier. Inappropriate disclosure of such information might have an inhibiting effect on the frankness and candour of the risk assessment, or on the assessment of likelihood and impact of risks.

There is a strong public interest in public authorities being able to carry out and use frank risk assessments and maintain useful and candid risk logs while a contract is being run, if they are to effectively manage the client/contractor relationship, and successfully mitigate risks. This is likely to outweigh any public interest in releasing this kind of information during the running of the contract, or during the first year after the completion of the contract. The information should be withheld, citing section 36 of the FOI Act.

Supplier's Approach to the Work (the techniques, methods, systems etc, with which the supplier will work to): **withhold** citing s43(2) (prejudicial to commercial interests)

The supplier's approach to the work sets out in detail the way in which they will deliver the work for which they are contracted. The supplier's approach will show to the procuring authority the approach which the supplier will take, and contains commercially sensitive information which the company would not wish to put into the public domain.

Details of the supplier's approach might engage the 'trade secret' element of s43 (section 43(1)), where the approach is so specialised as to be a unique approach not

known about by competitors in the same field. You should consult with an FOI specialist before seeking to apply s43(1).

Disclosure of a supplier's approach might also reveal other information which could prejudice the supplier's commercial interests, and might engage s43 of the FOI Act. This would arise if revealing the information might weaken their competitive advantage. This would engage s43(2) of the FOI Act.

The public interest in applying the exemption and protecting the supplier's commercial interests is likely to outweigh other considerations in favour of releasing the information.

Financial Models: withhold citing s43(2) (prejudicial to commercial interests)

Financial models (detailing how the cash flow for the authority and supplier will be managed over the life of the contract) provide information which enables a detailed picture to be constructed of one part of a supplier's income over the life of the contract. Suppliers have a justifiable expectation that information relating to their cash flow will be protected, as knowledge of their financial risk exposure might prejudice their commercial interests.

Section 43 of the FOI Act should be applied, and the public interest in applying the exemption is likely to outweigh the public interest in releasing the information. It is possible that Section 41 might also be applicable in which case Departments should consult their legal advisors.

CVs: withhold citing s40 (personal information)

Bidders provide CVs to authorities to demonstrate that their staff have the skills required to do the job. It would not be fair to those individuals to disclose their personal information in response to an FOI request, and there is a public interest in protecting the privacy of the individuals concerned. Section 40(2)(b) (personal data) of the FOI Act should be applied unless anonymised CV information can be supplied, or the individuals concerned consent to the release.

Reference Site Information - withhold citing s43(2) (prejudicial to commercial interests)

Reference site information is gathered from other customers of the bidder who are prepared to provide references and/or allow site visits, to help the procuring authority assess the suitability of potential suppliers.

It is likely that reference site companies would be reluctant to agree to their use as examples if the information gathered were inappropriately disclosed. Reference sites are another factor in judging capability, and loss of the information would again damage the public authority's ability to make sound judgements, and hence harm its commercial interests.

The information in question might also contain commercially sensitive information about the reference site, and the tendering company.

The public interest in applying the exemption is likely to outweigh the public interest in releasing the information. Section 43(2) of the FOI Act should be applied, unless, following consultation with the reference site companies, the public authority decides that the information is not commercially sensitive and can be released. It is possible that Section 41 might also be applicable in which case Departments should consult their legal advisors.

Suppliers Costing Mechanisms (both the general costing mechanisms that suppliers use, and the detailed costs on a particular contract): withhold citing s43(2) (prejudicial to commercial interests)

Disclosure of detailed price information could enable (at least) the following commercially prejudicial information to be deduced, to the detriment of the supplier:

- discounts negotiated with sub-contractors or equipment/material suppliers;
- day rates for supplier staff;
- discounts given by the supplier for some elements of the work;
- pricing strategy for certain work, material, services, etc.

Consideration must be given to protecting the legitimate commercial interests of bidders, so that bidders are not discouraged from providing sufficient information to enable sensible choices to be made, and are not discouraged from bidding for work altogether. Section 43 of the FOI Act should be applied, and the public interest in applying the exemption is likely to outweigh the public interest in releasing the

information. It is possible that Section 41 may also be applicable in which case Departments should consult their legal advisors.

Sums recovered under incentive clauses: withhold citing s43(2) (prejudicial to commercial interests)

Sums recovered under incentive clauses are indicative of some failure on the part of a supplier to perform against the terms of the contract. These sums may be substantial and their disclosure could have a negative impact on their market position. Disclosure might effectively increase the severity of the penalty imposed and so have a detrimental impact on the commercial interests of the supplier.

There is clearly a strong public interest in knowing how a supplier is performing on a particular contract, and the fact that sums have been recovered in relation to a particular contract should always be disclosed. The additional public interest in knowing exact sums does not outweigh the public interest in protecting the supplier's commercial interests. The information should be withheld during the period when that information may damage the supplier (i.e. until the company's accounts are published) citing s43(2) (prejudicial to commercial interests). After the company's accounts are published, the public interest balance is likely to favour of disclosure.

Generic Referral points

Working assumptions do not fit all situations. The referral points set out below describe specific situations where the working assumption should not be used. The fact that the assumption does not apply **does not mean you should automatically release the information**. In the circumstances set out below, the information request should be referred to a more senior member of staff, or a dedicated FOI practitioner, for them to consider::

The request states that the applicant is asking for internal review of an earlier decision to refuse to release information – working assumptions are only designed to be used on the first occasion that information is requested. Appeals against decisions to withhold information may need more careful consideration and should therefore be referred;

The information relates to a matter covered by the Environmental Information Regulations (EIRs). The EIRs have been closely aligned with the FOI Act to ensure that there are as few operational differences as possible. However, there are some differences between the two regimes, particularly in that some of the exceptions in

the EIRs are worded differently from the FOI Act exemptions, and all of the EIR exceptions are subject to the public interest test. If there is any doubt as to whether or not information is covered by the EIRs, the case should be referred. Further guidance on the EIRs can be found at:

<http://www.foi.gov.uk/guidance/exguide/sec39/chap02.htm> and

<http://www.defra.gov.uk/corporate/consult/envinfo/index.htm>

Specific Referral Points

- The request is for personal data or relates to a personnel matter;
- You think disclosing the information could constitute an actionable breach of contract;
- You think that an exemption applies to the information;
- This working assumption is only valid for this phase of the procurement process. If you are in an earlier phase of the process, you should refer to the appropriate assumption.

Annex B

Procurement information requested after requests for tender have been issued, but before the selection of the preferred bidder has been made.

This assumption covers the information likely to be held by and given to a public authority during the phase after a public authority has issued requests for tender, but before the bidding process is complete.

Financial plans (including budgets and cost estimates) – withhold citing s43(2) (prejudicial to commercial interests)

Inappropriate disclosure of budgetary information could result in prices shifting upwards to meet the budget, without any necessary increase in the quality of the services offered. The effect would be to reduce the value for money achieved and increase the cost of the procurement to the authority, prejudicing the public authority's commercial interests and engaging s43 of the FOI Act.

The public interest in public authorities being able to get the best possible value for money in procurements is likely to outweigh most other public interest considerations.

Management information about value and benefits– withhold citing s43(2) (prejudicial to commercial interests)

Analyses of the value that a procurement is expected to provide to the authority, and of the benefits that the authority should gain from the procurement, will include costs, and details that would enable costs to be deduced. Release of this information might reveal information about the internal pricing structure of potential suppliers and prejudice the commercial interests of the supplier - engaging s43 of the FOI Act (commercial interests). It might also risk prejudice to the frankness and candour of analyses if officials knew that information could be inappropriately released into the public domain. This would engage section 36(2)(b)(i) of the Act.

There is a public value in protecting the commercial interests of suppliers in relation to their internal pricing structures, and in protecting the ability of authorities to have frank assessments of the value that a procurement is expected to yield for the authority, and of the benefits which should flow from the procurement. These public

interests are likely to outweigh public interest considerations which favour the release of the information, and the exemptions should be applied.

Information received from tenderers in response to bid invitation and prior to selection of preferred bidder – withhold citing s43(2) (prejudicial to commercial interests)

Whilst tenders are still being received and evaluated, through to confirmation of the preferred bid, disclosure of information received from tenderers could prejudice the commercial interests of both the bidders and the contracting authority, and engage s43 of the FOI Act. The public interest in withholding the information is likely to outweigh the public interest in the release of the information.

The ability of bidders to see opposing tenders (even with information removed) whilst tenders are still being received and evaluated could lead to a cycle of re-submitted tenders as each bidder seeks to refine their offer. Refinement will not necessarily be equivalent to improvement, as the bidder's objective would be to provide the best comparative tender, not the best possible tender. This would be detrimental to the public authority's commercial interests, and therefore the public interest in withholding this information is likely to be strong. The information should be withheld, and s43 of the FOI Act should be cited.

Knowledge of other bidders' identity could also enable collaboration between bidders, leading to the strong possibility of collusion detrimental to the public authority's commercial interests, for example bidders' might collectively increase their tender prices citing market changes or could pull out of the tendering process following agreements with other bidders. Again, the public interest in applying s43 of the FOI Act is likely to outweigh the competing public interests in releasing information.

There are significant considerations around protecting the legitimate commercial interests of bidders, so that, for fear of their commercial information being inappropriately released, bidders are not discouraged from providing sufficient information to enable sensible choices to be made, and are not discouraged from bidding for work altogether. It is in the public interest for bidders to provide detailed tender information without risk of disclosure, to ensure that they can provide a competitive tender detailing the expertise they offer a procurement project. For example, should a technique a bidder intended to make use of risk being disclosed they would be discouraged from detailing the benefits of the technique in their bid, undermining the ability of the public authority to make a fully informed choice. Section

43 of the FOI Act should be applied, and the public interest in applying the exemption is likely to outweigh the public interest in releasing the information.

Generic Referral Points

Working assumptions do not fit all situations. Please see generic referral points at Annex A which set out the specific situations where the working assumption should not be used. The fact that the assumption does not apply **does not mean you should automatically release the information.** In the circumstances set out below, the information request should be referred to a more senior member of staff, or a dedicated FOI practitioner, for them to consider:

Specific Referral Points

This working assumption is only valid for this phase of the procurement process. If you are in an earlier or later phase of the process, you should refer to the appropriate assumption.

Annex C

- **Procurement Information requested Prior to issue of bid invitations**

Public authorities hold a range of information, which, if released prior to the issue of bid invitations, could prejudice the successful running of the procurement process and the release of which is likely to be contrary to the public interest. The categories of information which the public interest is likely to favour withholding are set out below.

Business Case (outline, strategic outline or full) and Procurement Programme/Project Briefs and Plans (defined as programmes or projects with a specific procurement or procurements as one of their principal outputs); Vision and strategy information; Benefit realisation plans –

Withhold under s36 (prejudicial to the effective conduct of public affairs), and s43 (commercial interests).

Prior to the release of bid invitation documentation, authorities may explore numerous options to meet their needs. Plans will shift as situations develop. Lists of options will be subject to frequent re-drafting. Some options may involve controversial decisions involving staff changes or re-locations of facilities. Business cases and programme plans may be reviewed and rejected or radically altered. This process of refinement must be unencumbered, free, and frank if the authority is ultimately to decide on the most advantageous procurement route.

There is a reasonable risk of the frankness and candour of such discussions and considerations being compromised if the business cases are placed in the public domain at this stage of the procurement process. The public interest in maintaining such frankness and candour is likely to outweigh public interest considerations in the release of the information. S36 of the FOI Act should be cited.

There is also a risk that such harm to frankness and candour of discussion and advice could compromise the ability of the public authority to achieve value for money, and thus compromise its commercial interests. S43 of the FOI Act should be cited in these cases.

Department's should be aware that these arguments may continue to apply at other stages in the procurement process, if for example similar procurement exercises are planned in the near future. Premature disclosure might also close off options that has been discussed for one procurement exercise and then dismissed.

It should also be noted that Gateway reviews could come within the description “procurement risk information” - Please see separate Working Assumption for handling requests for Gateway Reviews.

Financial plans (including budgets and costs estimates) – withhold citing s43(2) (prejudicial to commercial interests)

Disclosure of budgetary information could result in prices shifting upwards to meet the budget, without any necessary increase in the quality of the services offered. The effect would be to reduce the value for money achieved and increase the cost of the procurement to the authority, prejudicing the public authority’s commercial interests. The strong public interest in public authorities being able to get the best possible value for money in procurements is likely to outweigh most other public interest considerations, and the exemption under s43(2) of the Act should be cited.

Requirements documentation – withhold citing s43 (2) (prejudicial to commercial interests)

Disclosure of bid requirements information in advance of the formal tendering exercise would potentially favour some bidders over others, and prejudice the commercial interests of companies who wish to bid but are not aware of the requirements as early as a competitor. S43 (2) should be cited.

Procurement risk information – Withhold under s36(b)(i) of the FOI Act – (information whose release would be likely to prejudice the free and frank provision of advice).

Risk assessments of a procurement need to be frank and candid if they are to be effective. Under consideration should be risks arising from any perceived shortcomings within the authority itself, or those posed by the available choice of bidders. Inappropriate disclosure of such information would have an inhibiting effect on the frankness and candour of the risk assessment. The strong public interest in public authorities being able to carry out and use robust risk assessments is likely to outweigh any public interest in releasing this kind of information at this stage in the procurement process. The information should be withheld, citing section 36 of the FOI Act.

Generic Referral Points

Working assumptions do not fit all situations. Please see generic referral points at Annex A which set out specific situations where the working assumption should not be used. The fact that the assumption does not apply **does not mean you should automatically release the information**. In the circumstances set out below, the information request should be referred to a more senior member of staff, or a dedicated FOI practitioner, for them to consider:

Specific Referral Points

- Cases where the authority may release forward-planning information, either to test concept feasibility or to assist in managing the market to meet future needs, or cases where it has release budgetary information to the market to (for example) promote investment planning, should always be referred. Both of these processes will be done as part of a managed process, with information released at the appropriate time to the appropriate audience, and FOI requests received outside this process should always be referred.
- This working assumption is only valid for this phase of the procurement process. If you are in an earlier or later phase of the process, you should refer to the appropriate assumption.

Annex D

- **Requests for procurement information or for commercial market information made after a contract has been delivered, or made outside the procurement process.**

Section 1 –

Specific information on particular companies derived from different procurements – withhold under s43 of the FOI Act (Commercial interests)

Section 2 –

Lessons learned information from a specific procurement – withhold under s36(b)(i) of the FOI Act – information the release of which would prejudice the free and frank provision of advice.

Section 3 –

Information derived from different procurements which assesses the performance of different sectors of suppliers (for example, information about the performance of the consultancy sector) – release

Section 1 –

Specific information on particular companies derived from different procurements

Authorities compile information on companies from knowledge gained across several procurements, possibly across several authorities. The information is often a combination of fact and opinion (e.g. subjective information drawn from ‘lessons learnt’ reports).

The data are used both for market assessment purposes and maintaining a general awareness of performance across a wide front. This allows authorities to plan the direction of future procurements and provides a valuable input to the assessment of risks associated with those procurements. This also allows the shaping of strategies for managing those risks and informs contractual negotiations to ensure appropriate controls are put in place. These benefits will often contribute to the achievement of value for money in future procurements, and generally reduce the risk of project failure.

The information may indicate poor performance on the part of companies which could be misleading where an understanding of the wider context is not available to the intended users of the data. It could also give an advantage to competitors, and make companies reluctant to bid for public work if they feel that assessments of their work could be made public.

Inappropriate release of the information could therefore damage the relationship between authority and companies, which would prejudice the authority’s commercial interests, and it could prejudice the commercial interests of the supplier concerned. The information should be withheld, and section 43 (Commercial interests) of the Freedom of Information Act cited.

The potential for inappropriate release, and the risk to relationship with commercial suppliers, could also make officials reluctant to be as free and frank in their assessments of companies as they need to be. This would mean that the information held by the authority would not be as useful as it would be had a more frank assessment been provided. This information should therefore be withheld under s36(2)(b)(i) of the FOI Act (free and frank advice)

Requests for this type of information should be discussed with the third party or company concerned, and their view will be helpful in making a judgement as to whether or not to release the information. If, after consulting with the third party, you

feel that the information requested is not commercially sensitive, and that no harm would be caused to the frankness of future assessments, then it should be released.

Section 2 –

Lessons Learned Information: withhold under s36(b)(i) of the FOI Act – (Information whose release would be likely to prejudice the free and frank provision of advice - unless information can be aggregated and anonymised).

Lessons learned reports provide a valuable source of information for future procurements, both within and across authorities. The reports allow a greater appreciation of the risks associated with dealing with particular suppliers, use of specific equipment, management challenges within the authority and so on. Use of the information allows those risks to be more effectively managed and assists the authority effectively to deliver future procurement projects.

Whilst there is public interest in how public authorities are taking measures to ensure that previous failings in procurement and delivery do not rematerialise, to be effective, it is important that the reports accurately reflect what happened on the project, even where that information might be difficult for the authority, individuals, or suppliers. Release of the information too soon after the completion of a contract could lead to officials being reluctant to be as frank as they need to be for the lessons learned report to be effective. The public interest in public authorities being able to carry out and use frank and candid lessons learnt assessments is likely to outweigh any public interest in releasing this kind of information during the first two years after completion of the report. The information should be withheld, citing section 36(2)(b)(i) of the FOI Act, unless anonymised information, which does not identify the supplier in question, or attribute comments or opinions to individuals, can be supplied

Generic Referral Points (for Annex D – sections 1 & 2)

Working assumptions do not fit all situations. Please see generic referral points at Annex A which set out specific situations where the working assumption should not be used. The fact that the assumption does not apply **does not mean you should automatically release the information**. In the circumstances set out below, the information request should be referred to a more senior member of staff, or a dedicated FOI practitioner, for them to consider:

Specific Referral points (For Annex D – Sections 1 & 2)

- The information is more than two years old.

Section 3 –

Information derived from different procurements which assesses the performance of different sectors of suppliers (for example, information about the performance of the consultancy sector)

Some of the information that public authorities gather during procurements is often aggregated together to build up a picture of how a particular sector is performing, how much work companies in that sector are bidding for, and about the general 'health' of the sector in question.

While there are strong public interests in withholding aggregated information about individual companies, the balance of the public interest is different in respect of aggregated information about sectors.

There are strong public interests in the market, and the public, having as much information as possible about the performance of market sectors, and these considerations are likely to outweigh any considerations about withholding the information.

Specific Referral Points

Working assumptions do not fit all situations. The referral points set out below describe specific situations where the working assumption should not be used. The fact that the assumption does not apply **does not mean you should automatically release the information**. In the circumstance set out below, the information request should be referred to a more senior member of staff, or a dedicated FOI practitioner, for them to consider:

- Where performance of specific suppliers may be deduced from the aggregated information (eg where very few suppliers service a particular market);