

**Access to Information Arrangements**

**Exclusion of access by the public to Council meetings**

Information Compliance Ref: LGA-674-14

Meeting/Decision: Cabinet

Date: 14<sup>th</sup> May 2014

Author: Richard Smith

Report/Appendix:

Award of Contracts for Supported Bus Services

Exempt Appendix A – Schedule of tenders received and recommended awards

Appendix B – Shopper Service Consultation - Schedule of responses received

Appendix C – Pre Tender Consultation - Schedule of responses received

Appendix A to the Report contains exempt information, according to the categories set out in the Local Government Act 1972 (amended Schedule 12A). The relevant exemption is set out below.

Stating the exemption:

- 3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).*

The public interest test has been applied, and it is concluded that the public interest in maintaining the exemption outweighs the public interest in disclosure at this time. It is therefore recommended that Appendix A to the Report be withheld from publication on the Council website. The paragraphs below set out the relevant public interest issues in this case.

**Public Interest Test – Evaluation of Tenders**

If a Decision Maker wishes to consider a Report / Appendix relating to a Single Member Decision in private, they must be satisfied on two matters.

Firstly, they must be satisfied that the information contained within the Report / Appendix falls within one of the accepted categories of exempt information under the Local Government Act 1972.

Paragraph 3 of the revised Schedule 12A of the 1972 Act exempts information which relates to the financial or business affairs of any particular person (including the authority holding that information). There is information set out in the Appendix which relates to the financial and business affairs of both the Council and the tenderers for supported bus services. The Council's Information Compliance Manager has confirmed that this information falls within the exemption under paragraph 3.

Secondly, it is necessary to weigh up the arguments for and against disclosure on public interest grounds.

#### Public interest factors for withholding:

The Appendix contains commercial information detailing the range of options open to the Council in respect of the supported bus services contract. It is important that the Council is able to protect its commercial position in this matter while the options are considered and progressed.

Negotiations with the various tenderers have not yet been finalised. It would prejudice the Council's commercial position to make information about the ongoing negotiations available, until such time as those negotiations are complete.

#### Public interest factors for disclosure:

The Council considers that most of the factors suggested by the Information Commissioner as being relevant to an assessment of public interest apply to this information. Disclosure would:-

- further public understanding of the issues involved;
- further public participation in the public debate of issues, in that disclosure would allow a more informed debate;
- promote accountability and transparency by the Council for the decisions it takes;
- promote accountability and transparency in the spending of public money;
- allow individuals and companies to understand decisions made by the Council affecting their lives and assist individuals to challenge those decisions;

#### Reasons why the public interest favours withholding the information:

The Council has a fiduciary duty to gain best value on behalf of tax payers in respect of its business transactions. Disclosure of this information would

prejudice the Council's bargaining position in respect of the contract and bid values, thereby introducing the possibility that the Council may not gain best value on behalf of taxpayers, and this is not in the public interest. It would also prejudice individual companies bargaining and economic positions whilst the tender process is ongoing.

The successful completion of this transaction will provide positive community outcomes. It is therefore in the public interest to ensure the Council has every chance of attaining a positive result in respect of the transaction.

The Appendix refers to unresolved issues about which the Council hasn't yet formed a final view - there is an important public interest in the Council being able to consider these issues in private.

It is important for public authorities to have some measure of 'private thinking space', and that they are able to share important information with Members tasked with representing the local community.

Once the contracts have been awarded, it is likely that this information will be less commercially sensitive than at the current time. Accordingly the Council will then be willing to consider disclosure of the information in response to any requests, and in line with its duties under Freedom of Information legislation.