

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **21 November 2022**

Public Authority: **Lewisham Homes**
Address: **Laurence House**
Catford Road
SE6 4FN

Decision (including any steps ordered)

1. The complainant has requested Lewisham Homes (LH) to disclose all contracts, agreements and correspondence with Ace Security Services from 2017 onwards. LH disclosed some information but withheld the remainder under sections 40 and 43 of FOIA.
2. The Commissioner's decision is that LH is entitled to withhold the remaining withheld information under section 43 of FOIA. LH breached section 10 of FOIA by failing to respond to the complainant's request within 20 working days of receipt.
3. The Commissioner does not require any further action to be taken.

Request and response

4. On 16 December 2021, the complainant wrote to LH and requested information in the following terms:

"Under the Freedom of Information Act I respectfully request copies of any contracts or agreements between Lewisham Homes and Ace Security Services, from 2017.

I also request copies of any correspondence between Ace Security Services and Lewisham Homes relating to these agreements/contracts, their continuance or termination, either before or after 2017."

5. LH responded on 21 February 2022. It released some information and withheld the remainder under sections 40 and 43 of FOIA. LH upheld its position at internal review.

Scope of the case

6. The complainant contacted the Commissioner on 19 March 2022 to complain about the way their request for information had been handled. No complaint was made about LH's application of section 40 but the complainant is dissatisfied with LH's application of section 43 of FOIA. They believe the information is not commercially sensitive and can be disclosed.
7. The Commissioner has obtained a copy of the withheld information and further submissions from LH. He is satisfied that section 43 of FOIA applies to all remaining withheld information. The following section of this notice will explain why.

Reasons for decision

8. Section 43 states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of the public authority and/or a third party. It is subject to the public interest test.
9. LH argues that disclosure would be likely to damage the contractor's (Ace Security Services) commercial interests. It has provided evidence to the Commissioner that the arguments presented have come from the contractor itself.
10. The Commissioner agrees with LH and the contractor that the contractor operates in a small and highly competitive environment. The remaining withheld information is financial information and commercial negotiations relating to the contracts that were in place between the two parties. Although the contract may no longer be running and LH may have now introduced Traffic Management Orders, the remaining withheld information would still be very useful to the contractor's competitors. Pricing information and the specific commercial negotiations within the withheld information are not out of date and could be used by competitors to outbid the contractor during future bids and tendering exercises with other public authorities and organisations. This would place the contractor at a disadvantage and hinder its ability to secure future work at competitive rates.

11. In terms of the public interest test, the Commissioner agrees that although there is a public interest in openness, transparency and seeing how the parking contract was priced and negotiated, it is not in the public interest to disclose specific financial information and individually negotiated terms and costs that would be likely to damage the commercial operations of the contractor. It is in the public interest to maintain an open and fair market place where all can compete without bias for new contracts and customers and offer the best possible terms and conditions they can.
12. For the above reasons, the Commissioner is satisfied that section 43 of FOIA applies and the public interest rests in maintaining the exemption.

Procedural matters

13. LH did not respond to the complainant's request within 20 working days of receipt. It therefore breached section 10 of FOIA in this case.

Right of appeal

14. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. 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.
16. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF