

**BHFT 0555 IT Cabling – Tender**

**INFORMATION FOR TENDERERS**

**THE FREEDOM OF INFORMATION ACT (FOIA)**

Background

The FOIA came fully into force on 1 January 2005. Under the FOIA there are clear statutory rights for the public to request information held by bodies across the public sector. This could include information that you supply in your tender or subsequently (if you win the tender) as part of the contract.

The Act does allow for material to be exempt from disclosure if a third party (i.e. your company) has provided information under a duty of confidence i.e. in the expectation that the information will only be used or disclosed with the wishes of the third party as a confider.

However, this does not mean that all information marked “Commercial in Confidence” will be exempt from the Act. When providing information, you need to identify specific information which is to be regarded as confidential and the basis upon which the information is considered confidential.

The information provided will then help Berkshire Healthcare NHS Foundation Trust (BHFT) to consider whether the information should be released. Under the FOIA there is a test which considers the balance between public interest and possible prejudice to a commercial interest. Until the FOIA has more case history behind it is unclear exactly where the balance between commercial and public interest will lie.

Impact on Tendering Process

When submitting your tender, you should provide a schedule identifying which parts of your tender are confidential and giving a brief explanation on why it is confidential. For example:

|  |  |  |  |
| --- | --- | --- | --- |
| Page No. | Description | Status | Reason |
| 1 | Company Background | Open to disclosure | - |
| 3 | Product development information | Confidential | Prejudicial to company interests if released as it would give a competitive advantage to suppliers. |

This schedule will provide guidance to BHFT when responding to a request for information which covers your tender.

If you are unsure of the implications of the FOIA you are advised to contact your own legal advisors before you submit your tender.