

ANNEX A – FREEDOM OF INFORMATION ACT

GUIDANCE TO TENDERERS AND CONTRACTORS ON TFL'S POLICY FOR ACCESS TO INFORMATION

BACKGROUND

The Freedom of Information Act 2000 (FOIA) gives the public a legal right of access to information held by public authorities. The public now has a right to know about our work and it is our duty to operate with openness and transparency.

A person making a FOIA request is entitled to two things, unless an exemption applies. These are:

- a) To be informed whether we hold information of the description requested; and
- b) If so, to have that information communicated to him or her.

How does this affect you?

All information held by TfL is caught by the FOIA. The rules about disclosure apply regardless of where the information originated. This means that all the following types of information may be subject to disclosure:

- Information in any tender submitted to us;
- Information in any contract to which we are a party (including information generated under a contract or in the course of its performance);
- Information about costs, including invoices submitted to us;
- Correspondence and other papers generated in any dealing with the private sector whether before or after contract award; and
- This means TfL will be obliged by law to disclose such information unless an exemption applies.

The legal obligation to respond to requests from the public under the FOIA rests with TfL. TfL must therefore respond to requests as we see fit in our sole discretion. This Guidance explains our policy on the disclosure to the public of information about our private sector suppliers.

GENERAL RULES ON DISCLOSURE

In the absence of special circumstances:

- c) All Invitations to Tender published by TfL will be available to the public on request;
- d) Responses to tenders will be held in confidence until award;
- e) Information about the total value of bids will be made available to the public on request, but only in response to requests made after contract award.

Any person tendering for or contracting with TfL must notify TfL during the tendering or negotiating process of information that they consider being eligible for exemption from disclosure under the FOIA. Such notification must be made in the form of the Appendix to this Guidance Note. Such information must be referred to as reserved information.

Information not identified as reserved information in the way described above will be made available by TfL on request.

RESERVED INFORMATION

Information which you wish to put forward as reserved information must clearly describe, with supporting detail:

- f) The information itself, or the class(es) of information; and
- g) Why, in your opinion, that information is exempt from disclosure. Grounds for exemption may be one or more of the following:
 - The information is a trade secret;
 - The disclosure of the information would prejudice the commercial interests of any person or organisation;
 - The information will be disclosed by you to TfL, and the nature of the information, or the circumstances of its disclosure, or other circumstances, justify the acceptance by TfL of an obligation of confidence in relation to that information;
 - The information is personal data or otherwise relates to the private life of an individual and is therefore appropriate for protection; or
 - Any other specific exemption under the FOIA.

All decisions about disclosure of information will be made at the sole discretion of TfL. The exemption that applies to trade secrets and to information that would prejudice commercial interests if disclosed is a 'qualified' exemption under the FOIA. This means that TfL is required to consider whether, in all the circumstances prevailing at the time a request is received, the public interest in disclosure outweighs the public interest in upholding the exemption.

Information that is agreed by TfL to be reserved information will be listed in a document that will also:

- h) Specify which exemption(s) may apply to each piece or class of information; and
- i) Indicate when it is likely information can be made available, or (if this is the case) that it is unlikely ever to be made available.

TfL may disclose your justification for classifying information as reserved information.

Information that is exempt under the rules governing commercial matters will not normally be withheld for more than seven years after completion of the contract supply.

Information relating to the overall value, performance or completion of a contract will not be accepted as reserved information, although TfL may choose to withhold such information in appropriate cases, at its sole discretion.

You may designate unit prices or more detailed pricing information as reserved information.

OTHER GUIDANCE

Although TfL is not under any obligation to consult you in relation to requests for information made under the FOIA, we will endeavour to inform you of requests wherever it is reasonably practicable to do so.

Contracts with TfL may require you to supply information to us, or provide other assistance, pursuant to any FOIA request received by TfL.

You should be aware that TfL's decision on applying an exemption and, therefore, refusing a request for information by a member of the public may be challenged by way of appeal to the Information Commissioner. The Information Commissioner has the statutory power to direct that the information be disclosed.