

Birmingham City Council has withheld some information in the agreement where it considers that the withheld information is exempt from disclosure under the Environmental Information Regulations, and that the withholding of the information is in the public interest.

Birmingham City Council considers that the agreement falls under environmental information as it as *“measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b)”* which includes *“the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas”*

Whilst Birmingham City Council considers that there is a strong public interest in the council being open and transparent, especially in respect in the use of public money, we are obliged to consider the impact of any disclosure on the contracted parties, as there is a strong public interest in the maintenance of valuable commercially sensitive and/or confidential information. Accordingly, Birmingham City Council is obliged to balance the two sides of the argument to determine whether or not the public interest lies in disclosing the information or is better served by withholding the same. However, the majority of the agreement is being made available.

The issue of commercially sensitive information and disclosure of such information into the public has recently been addressed by the Court of Appeal in the case of *Veolia ES Nottinghamshire Ltd v Nottinghamshire County Council and others* [2010] EWCA Civ 1214, which related to requests for a copy of the PFI Contract between Veolia and Nottinghamshire County Council under another piece of legislation.

The Court of Appeal decided that pricing data, including business case and financial model, together with profit rates and pricing data was worthy of protection and was therefore exempt from disclosure, as the release of such commercially sensitive information was a breach of the Veolia’s human rights under article 1 of the 1<sup>st</sup> protocol of the European Convention of Human Rights.

It should be noted that whilst the majority of the information has been/is being disclosed, some commercially sensitive or confidential information contained in the agreement and the schedules and appendices have been withheld, these primarily relate to pricing structures and pricing formula’ business models and pricing data. However, details of all payments of over £500 made to a contractor are released by Birmingham City Council on a monthly basis on our web site: [www.birmingham.gov.uk](http://www.birmingham.gov.uk).

In considering whether or not the information should be disclosed, Birmingham City Council is obliged to consider the impact the disclosure of the information would have on the successful tender.

For information to be deemed to be confidential, it must have the following characteristics, namely being:-

- The confidential information must not be in the public domain,
- The information must be worthy of protection by confidentiality, i.e. the information must not be useless nor trivial; and
- Thirdly, the public interest in the preservation of a confidence might be outweighed by a greater public interest favouring disclosure.

Whilst the agreement between Birmingham City Council and Service Provider sets out key information which the parties consider being explicitly confidential (schedule 31) confidential information can exist outside the scope of this schedule, if it meets the above criteria.

Under condition 12 of the Environmental Information Regulations 2004, information is deemed exempt from disclosure where the disclosure of that information would *“disclosure would adversely affect:*

*(e) the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;”*

In addition, information created by the Service Provider may also be exempt if Birmingham City Council considers that the disclosure of that information may prejudice the intellectual property rights of the Service Provider. This will only occur where Birmingham City Council considers that the approach or the information belonging to the Service Provider contained in the agreement would be likely to infringe their, the Service Provider's, intellectual property rights and that the detriment caused by the release outweighs the public interest in being open and transparent as to public agreements.

This exemption is set out in regulation 12(5)(c) of the EIR, which states that *“a public authority may refuse to disclose information to the extent that its disclosure would adversely affect:-*

*(c)intellectual property rights:”*

It is noted that there are a number of other Highways PFI procurement processes running in other local authorities, and Birmingham City Council understands that Amey plc, the successful tender and Service Provider, is or will be competing for some of those contracts. Accordingly, Birmingham City Council is mindful that the Service Provider may wish to re-use some of the information, such as their business model, in proposals for their other tenders, and that the disclosure of the agreement in its entirety, or of key information would have a detrimental impact on their ability to compete for these other contracts.

The presumption is that the public have a right to know what public funds are being spent on, and as such, Birmingham City Council has sought to disclose information except where it considers that the information is exempt under one or more of the exemptions set out in the Environmental Information Regulations and that the public interest lies in disclosure as opposed to withholding the information.

Please note that the disclosure of the information in the agreement and schedules is for information only and that the information is protected by copyright belonging not just to Birmingham City Council but also to the Service Provider and the lawyers instructed on the parties to the contract's behalf.

## Withheld information

### Main agreement

Page P51 clause 7.12.4	<p>information withheld relates to the arrangements regarding liability for latent defects.</p> <p>Under item 9 of part 2 to schedule 31, the above information is deemed to be commercially sensitive and confidential, “as it sets out the limits of liability, sums insured and maxima deductible in the insurances” in respect of latent defects.</p> <p>Birmingham City Council considers that Regulation 12(5) is applicable (confidential information), and that whilst there is a strong prevailing public interest in disclosing information relating to public contracts, it considers that the disclosure of the information regarding determining liability for latent defects would prejudice the Service Provider’s ability to tender for and/or negotiate similar contracts.</p>
P52-3 Clause 7.14	<p>liability provisions for specific key assets</p> <p>Under item 9 of part 2 to schedule 31, the information is deemed to be commercially sensitive and confidential, “as it sets out the limits of liability, sums insured and maxima deductible in the insurances” in respect of latent defects.</p> <p>Birmingham City Council considers that Regulation 12(5)(e) is applicable (confidential information).</p> <p>Whilst Birmingham City Council considers that there is a strong prevailing public interest in disclosing information relating to public contracts, it considers that the public interests in disclosure is outweighed by the public interests in withholding this information</p> <p>Birmingham City Council also understands that this clause contains information provided in confidence to the Service Provider from third parties in respect of insurances, and as such, Birmingham City Council also considers that there is an inherent obligation on Birmingham City Council to respect that confidence, as it considers that the commercial harm that could arise from the disclosure of this confidential information far outweighs the public interest in disclosure.</p>
P54-64 Clause 8.4	<p>information withheld relates to general liability provisions for project network parts work</p> <p>Under item 9 of part 2 to schedule 31, the information is deemed to be commercially sensitive and confidential, “as it sets out the limits of liability, sums insured and maxima deductible in the insurances” in respect of project network part work.</p>

Birmingham City Council considers that Regulation 12(5)(e) is applicable (confidential information).

Whilst Birmingham City Council considers that there is a strong prevailing public interest in disclosing information relating to public contracts, it considers that the public interests in disclosure is outweighed by the public interests in withholding this information, as the information withheld sets out the provisions for responsibility for bearing liabilities between the parties.

P120

Excusing cause

The information withheld sets out the time periods upon which the discussions between the Council and the Service Provider must take place to determine whether an event is an excusing clause.

Under item 9 of part 2 of schedule 31, "information on the service provider's approach to the work services including design information, method statements and program analysis" is deemed to be confidential or commercially sensitive.

Birmingham City Council considers that only the time periods for consultation to discuss where an excusing clause event has occurred is commercially sensitive and confidential.

P127

Compensation event.

The information withheld sets out the basis upon which any level of compensation or allowances are set where a discovery of fossils, antiquities and other objects which has a material impact on the ability of the Service Provider to complete their works on time or where such discovery leads to increased costs for completion of the works. This information relates to information contained in the payment mechanism, which under item 6 of part 1 of schedule 31 of the agreement, is deemed commercially sensitive and confidential.

Birmingham City Council considers that Regulation 12(5)(e) is applicable (confidential information).

Whilst Birmingham City Council considers that there is a strong prevailing public interest in disclosing information relating to public contracts, it considers that the public interests in disclosure is outweighed by the public interests in withholding this information, as the approach taken by the parties is novel and disclosure of this information could prejudice any commercial advantage the Service Provider may have from using this approach.

P255

Revenue sharing.

The information withheld relates to the formulas setting out the basis upon which the levels upon which the revenue sharing provisions of this agreement between the Service Provider and Birmingham City Council operate, as well as the levels of revenue sharing.

Birmingham City Council considers that Regulation 12(5)(e) is applicable (confidential information)

Whilst Birmingham City Council considers that there is a strong prevailing public interest in disclosing information relating to public contracts, it considers that the public interests in disclosure is outweighed by the public interests in respect of clause 47, and only in relation to the key figures.

Under item 3 of part 1 of Schedule 31, clauses 46, 47 and 48 were deemed commercially sensitive. Birmingham City Council considers that only the redacted information in s.47 relating to the thresholds and levels of revenue sharing is commercially sensitive and confidential, as the disclosure of this information would prejudice the negotiating position of the Service Provider in respect of other similar contracts with other local authorities, and this would outweigh the public interest in the local authority being open and transparent in relation to this specific information.

P280  
Clauses 55.2.8  
55.2.9

limits on contractor's liabilities the information withheld sets out the Contractor's limits on liability for key events.

Under 9 of part 2 of schedule 31, the information is deemed to be commercially sensitive and confidential, "as it sets out the limits of liability, sums insured and maxima deductible in the insurances".

Birmingham City Council considers that Regulation 12(5)(e) is applicable (confidential information).

Whilst Birmingham City Council considers that there is a strong prevailing interest in disclosing information relating to public contracts, it considers that the public interest in disclosure is outweighed by the public interests in withholding this information, as the information withheld sets out eh provisions for responsibility for bearing liabilities between the parties.

P341  
Clause 57.13.2

limits on length of usage of temporary staff

Item 4 of part 1 of schedule 31 defines the entire clause as being commercially sensitive and confidential.

Birmingham City Council considers that Regulation 12(5)(e) is applicable (confidential information).

However, Birmingham City Council considers that the only information in the section which can be withheld is the limits on usage of temporary staff, on the basis that this is the only information in the section which if disclosed, could cause commercial harm, which if disclosed, could prejudice the negotiating position of the Service Provider in respect of subsequent contracts.

P353  
Clause 62.8

persistent breach

under item 4 of part 1 of schedule 31, the information contained in clause 62.8 is deemed to be commercially sensitive and confidential.

Birmingham City Council considers that Regulation 12(5)(e) is applicable (confidential information), but this is restricted only to the timescales and frequencies upon which “breaches” become “persistent breaches”, as it considers that the withheld information is the only information on the clause which, if disclosed, would cause commercial harm, and that the public interest in maintaining the confidence in relation to the specific timescales, and the potential detrimental impact of disclosure would outweigh the public interest in disclosure.

P363  
Clause 67.7

Re-tendering provisions

under item 4 of part 1 of schedule 31, the information contained in clause 67.7 is deemed to be commercially sensitive and confidential.

Birmingham City Council considers that Regulation 12(5)(e) is applicable (confidential information), and that the disclosure of this clause, which sets out key provisions which are applicable in respect of the retendering process, would be likely to prejudice the Service Provider’s negotiating position in respect of similar contracts.

P378 & 379  
Clauses 68.5  
& 68.6

retention fund provisions

under item 4 of part 1 of schedule 31, information contained in 68.5 and 68.6 are deemed to be commercially sensitive.

Birmingham City Council considers that only the information in the above clauses relating to financial values and notice periods are commercially sensitive and confidential, under regulation 12(5)(e), and as such, it considers that the detrimental impact of disclosure

on the service provider and in particular, the potential impact on its ability to successfully tender for similar contracts using this methodology and information would outweigh the public interest in disclosure.

P380  
Clause 69.1.2

Compensation provisions

Under item 4 of part 1 of schedule 31 of the agreement, the information in clause 69.1.2 is deemed to be commercially sensitive and confidential.

The only information withheld in this clause is information which sets out the formula to determine the payment Birmingham City Council would be liable to pay on termination of the agreement, which includes the mechanism to determine the price, Birmingham City Council would pay to purchase the assets from the Service Provider following a voluntary termination of the agreement, it considers that the detrimental impact on disclosure of this information would have on Service Provider's position pertaining to subsequent tenders would outweigh the public interest in disclosure. It should be noted that if any such payment was to be made, that payment would be listed in the details of all payments over £500 which Birmingham City Council is required to disclose.

P398-9  
Clause 70

Period For Dispute Resolution Process

Under item 4 of part 1 of Schedule 31, Clause 70 is deemed to be commercially sensitive and confidential, and thus potentially exempt under regulation 12(5)(e)

Birmingham City Council considers that the only information which is commercially sensitive in this section is the timescales and time periods involved for the dispute resolution process, and as such, it considers that the detrimental impact on disclosure of this information would have on the Service Provider's position pertaining to subsequent tenders would outweigh the public interest in disclosure.

P 436

mobile telephone numbers of individuals.

This information has been withheld under s.13 of the Environmental Information Regulations, which provides that personal data is exempt from disclosure. S.14 states that:-

**Personal data**

**13.—(1)** *To the extent that the information requested includes*

*personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.*

*(2) The first condition is—*

*(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene—*

*(i) any of the data protection principles; or*

*(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.*

Birmingham City Council considers that the mobile telephone numbers of officers, in conjunction with their names and addresses falls under the definition of personal data, as the disclosure of such information could give rise to intrusions into their private life, i.e. calls made outside work time, and accordingly, Birmingham City Council would be acting in breach of the non disclosure provisions of the Data Protection Act if it was to disclose the respective officers mobile telephone numbers.

## Schedules

### Schedule 1

P 17 authority default

The information withheld sets out the period between payment by the council being due and the date upon which the contractor can issue a written demand, which if not complied with within 20 business days, would give rise to an authority default.

This is withheld under condition 12(5)(e) of the Environmental Information Regulations 2004 which provides that information is exempt from disclosure where the disclosure of that information would adversely affect—

*“The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest;”*

Under schedule 31 and the definition set out in schedule 1, the withheld information is deemed to be commercially sensitive information and is deemed to be confidential in nature.

Whilst the parties accept that the public interest favours disclosure in the majority of the clause, Birmingham City Council considers that the period for payments, if disclosed, would give rise to commercial harm, and therefore are worthy of protection under the confidentiality provisions, and that the harm the disclosure of this specific time period would cause to the contractor would far outweigh the benefit to the public in disclosure, for the reasons set out above.

P 21 mobile telephone numbers of senior officers.

This information has been withheld under s.13 of the Environmental Information Regulations, which provides that personal data is exempt from disclosure. S.14 states that:-

**Personal data**

**13.—(1)** *To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.*

*(2) The first condition is—*

*(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene—*

*(i) any of the data protection principles; or*

*(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the*

*public interest in not disclosing the information outweighs the public interest in disclosing it.*

Birmingham City Council considers that the mobile telephone numbers of officers, in conjunction with their names and addresses falls under the definition of personal data, as the disclosure of such information could give rise to intrusions into their private life, i.e. calls made outside work time, and accordingly, Birmingham City Council would be acting in breach of the non disclosure provisions of the Data Protection Act if it was to disclose the respective officers mobile telephone numbers.

P 62                    The withheld information relates to a key asset where there are specific requirements for liability for any damages occurring to that key asset.

Under item 10 of part 2 of Schedule 31, information relating to limits of liability are deemed commercially sensitive and confidential.

Birmingham City Council considers that the details of the key asset should be withheld, as it considers that the public interest in disclosure is outweighed by the potential harm that could arise from disclosure of that specific key asset.

P 83 - 4                individual annual KS LD direct costs cap, individual Latent Defect and individual latent defect direct cost caps.

The information withheld sets out the formulas to determine the Service Provider's maximum liability for latent defects in key structures.

Under item 10 of part 2 of Schedule 31, information relating to limits of liability are deemed commercially sensitive and confidential.

Whilst Birmingham City Council accepts that there is a strong public interest in disclosure of the share of the liability for latent defects shared between the parties, it considers that the disclosure of the breakdown of liability, and the mechanisms and formula to calculate such the share would have a greater detrimental impact on the ability of the Service Provider to successfully tender for similar contracts than benefit to the public.

P 92 -3                Latent defect and LD Direct Costs Cap

Information withheld relates to liability for latent defects.

Under item 10 of part 2 of Schedule 31, information relating to limits of liability are deemed commercially sensitive and confidential.

Whilst Birmingham City Council accepts that there is a strong public interest in disclosure of the share of the liability for latent defects shared between the parties, it considers that the disclosure of the breakdown of liability, and the mechanisms and formula to calculate such the share would have a greater detrimental impact on the

ability of the Service Provider to successfully tender for similar contracts than benefit to the public.

#### Schedule 2 output specification

No information withheld

#### Schedule 3 Method statements

withheld completely

The method statements are the Service Provider's internal policies and procedures that they have developed to manage and handle the work involved under the agreement.

Accordingly, Birmingham City Council considers that the information is exempt from disclosure under regulation 12(5)(e) as Birmingham City Council considers that the disclosure of method statement would adversely affect—

*“The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest*

In addition, Birmingham City Council considers that the information created by the Service Provider is their Intellectual Property and that disclosure of the method statements would be likely to give rise to infringements of their Intellectual Property.

Regulation 12(5)(c) provides that *“a public authority may refuse to disclose information to the extent that its disclosure would adversely affect:-*

*(c)intellectual property rights:”*

Whilst Birmingham City Council accepts that there is a strong public interest in this being available, it considers that the information is the property of Service Provider, and that disclosure of their method statements would be likely to give rise to infringements of their intellectual property rights, and would be likely to cause them commercial harm if disclosed.

#### Schedule 4 Payment Mechanism

withheld completely

The method statements are Service Provider's internal policies and

procedures that they have developed to manage and handle the work involved under the agreement.

Accordingly, Birmingham City Council considers that the information is exempt from disclosure under regulation 12(5)(e) as Birmingham City Council considers that the disclosure of method statement would adversely affect—

*“The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.*

Whilst Birmingham City Council accepts that there is a strong public interest in this being available, it considers that the disclosure of the pricing mechanisms (the formulas upon which the charges for specific functions/services are based) and payment terms would be likely to cause them commercial harm if disclosed, and the harm would outweigh any benefit from disclosure, bearing in mind that details of all payments made to the Service Provider over £500 will be made public.

#### Schedule 5 Base Case

withheld completely

This is the business/financial model employed by Service Provider, and Birmingham City Council considers that the disclosure of this information would adversely affect—

*“The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest”*

Birmingham City Council considers that detriment caused to the Service Provider by the disclosure of their base case would outweigh the public interest in disclosure.

#### Schedule 6

Details of the level of insurance cover, the liability for any one incident and total maximum deductible cover.

Under item 1 of Part 1 of schedule 31, information about the sums insured and maxima deductible are deemed to be commercially sensitive and confidential.

Birmingham City Council considers that the disclosure of this information would have a net detrimental impact as the public interest in disclosure would be outweighed by the detriment to the Service Provider in respect of its ability to use this information and the formula behind it, in relation to other procurement contests for

similar contracts.

#### Schedule 7

No information withheld

#### Schedule 8

Due to last minute changes to the agreement, this schedule was rendered vacant and was not used.

#### Schedule 9

No information withheld

#### Schedule 10

No information withheld

#### Schedule 11

No information withheld

#### Schedule 12

Pricing formula and specific pricing

Under item 4 of Part 2 of Schedule 31, details of the prices for any services provided or procured by the service provider.

Accordingly, Birmingham City Council considers that the information is exempt from disclosure under regulation 12(5)(e) as Birmingham City Council considers that the disclosure of method statement would adversely affect—

*“The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.*

Whilst Birmingham City Council accepts that there is a strong public interest in this being available, it considers that the disclosure of the pricing formula and specific pricing would be likely to cause them commercial harm if disclosed, and the harm would outweigh any benefit from disclosure, bearing in mind that details of all payments made to the Service Provider over £500 will be made public.

### Schedule 13

Part 2 Paragraph 1.2 of schedule 13 sets out the prices paid by the Service Provider for the transfer of key assets to the Service Provider, and is deemed commercially sensitive and confidential under schedule 31 (item 8 of Part 1).

Birmingham City Council considers that disclosure of the pricing data would prejudice the negotiating position of the service provider if tendering for similar contracts with other local authorities, and this would outweigh the public interest in disclosure.

Birmingham City Council considers that the information is exempt from disclosure under regulation 12(5)(e) as Birmingham City Council considers that the disclosure of method statement would adversely affect—

*“The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.*

Whilst Birmingham City Council accepts that there is a strong public interest in this being available, it considers that the disclosure of the prices paid for the assets solely utilised for the provision of services for Highways would be likely to prejudice the Service Provider’s ability to negotiate or promote similar arrangements in other similar contracts.

### Schedule 14

Pages 9 to 16

Information as to the level of reduction of charges the service provider would be liable for as a result of delays in performing key activities.

Birmingham City Council considers that this information falls under the criteria set out in item 4 part 2 of schedule 31, in so far as the reduction of charges would affect the pricing of items from the service provider.

Birmingham City Council considers that the information is exempt from disclosure under regulation 12(5)(e) as Birmingham City Council considers that the disclosure of method statement would adversely affect—

*“The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.*

Whilst Birmingham City Council accepts that there is a strong public interest in this being available, it considers that the disclosure of the scale of reductions of charges for delays on the part of the Service Provider would be likely to prejudice the Service Provider’s ability to

negotiate or promote similar arrangements in other similar contracts.

#### Schedule 15

No information withheld

#### Schedule 16

No information withheld

#### Schedule 17

The information withheld is pricing data relating to one specific service.

Under Item 4 of part 2 of Schedule 31, in so far as the disclosure of the Service Provider's prices falls under "details of the prices for any services provided by the Service Provider ..."

Birmingham City Council considers that the information is exempt from disclosure under regulation 12(5)(e) as Birmingham City Council considers that the disclosure of method statement would adversely affect—

*"The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.*

Whilst Birmingham City Council accepts that there is a strong public interest in this being available, it considers that the disclosure of the Service Provider's pricing data would be likely to prejudice the Service Provider's ability to negotiate or promote similar arrangements in other similar contracts.

#### Schedule 18

Change protocol

The information withheld relates to

- a) low value, medium value or high value change rates; and
- b) pricing data and rates.

Under item 6 of part 2 of schedule 31, information as to the costing

mechanisms of the Service Provider are deemed to be commercially sensitive and confidential.

Birmingham City Council considers that the withheld information in both categories are commercially fall under the remit of Regulation 12(5)(e) and as such, are commercially sensitive and confidential.

Whilst Birmingham City Council considers that the rates are commercially sensitive, in so far as disclosure of the rates would be likely to prejudice the Service Provider's ability to negotiate or promote similar arrangements in other similar contracts.

#### Schedule 19

The information withheld relates to the service provider's costs and accruals.

Under item 6 of part 2 of schedule 31, information as to the costing mechanisms of the Service Provider are deemed to be commercially sensitive and confidential.

Birmingham City Council considers that the withheld information in both categories are commercially fall under the remit of Regulation 12(5)(e) and as such, are commercially sensitive and confidential.

Whilst Birmingham City Council considers that this information is commercially sensitive and confidential, in so far as disclosure of the rates would be likely to prejudice the Service Provider's ability to negotiate or promote similar arrangements in other similar contracts.

#### Schedule 20

No information withheld

#### Schedule 21

No information withheld

#### Schedule 22

mobile telephone numbers of liaison officers.

This information has been withheld under s.13 of the Environmental Information Regulations, which provides that personal data is exempt from disclosure.

***Personal data***

***13.—(1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as***

*respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.*

*(2) The first condition is—*

*(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene—*

*(i) any of the data protection principles; or*

*(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.*

Birmingham City Council considers that the mobile telephone numbers of officers, in conjunction with their names and addresses falls under the definition of personal data, as the disclosure of such information could give rise to intrusions into their private life, i.e. calls made outside work time, and accordingly, Birmingham City Council would be acting in breach of the non disclosure provisions of the Data Protection Act if it was to disclose the respective individual mobile telephone numbers.

#### Schedule 23

Pages 23 to 25 Beneficiaries of statutory powers.

The table setting out statutory functions and the beneficiaries of such functions is legally privileged, as it sets out the legal advice in respect of statutory functions to which fees are payable.

Accordingly, Birmingham City Council considers that the information is exempt from disclosure under regulation 12(5)(e) as Birmingham City Council considers that the disclosure of method statement would adversely affect—

*“The confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest.*

The confidentiality in discussion is legal advice privilege.

Whilst Birmingham City Council accepts that there is a strong public interest in this being available, it considers that the public interest in maintaining legal privilege in this matter outweighs any benefit from disclosure.

#### Schedule 24

No information withheld.

#### Schedule 25

Pages 4 and 5 The withheld information relates to the formula and rates agreed between the parties in respect of the pensions to staff transferred to the Service Provider.

Under schedule 31 of the agreement and the definition set out in schedule 1, the withheld information is deemed to be commercially sensitive information and confidential in nature. Whilst the parties accept that the public interest favours disclosure in the majority of the definition, they consider that the period for payments, if disclosed, would give rise to commercial harm, and therefore are worthy of protection under the confidentiality provisions. Birmingham City Council and the Service Provider consider that the harm the disclosure of the specific pension contribution rates and would prejudice the contractor's commercial position in respect of tendering/negotiating for similar contracts with other public authorities, and as such, Birmingham City Council considers that this detriment would far outweigh the benefit to the public in disclosure.

#### Schedule 26

Due to the volume of the data, it is not possible to place electronic copies on the website. However, arrangements can be made for inspection.

#### Schedule 27

No information withheld.

#### Schedule 28

No information withheld.

#### Schedule 29

No information withheld.

#### Schedule 30

No information withheld.

#### Schedule 31

No information withheld.

## Schedule 32

The information withheld is personal data (information which if disclosed, would be sufficient to allow the identification of the individuals concerned).

This information has been withheld under s.13 of the Environmental Information Regulations, which provides that personal data is exempt from disclosure.

### **Personal data**

**13.**—(1) *To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.*

(2) *The first condition is—*

*(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene—*

*(i) any of the data protection principles; or*

*(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.*

Birmingham City Council considers that the disclosure of information which could allow the identification of officers under the definition of personal data and accordingly, Birmingham City Council would be acting in breach of the non disclosure provisions of the Data Protection Act if it was to disclose the respective individual mobile telephone numbers.

## Schedule 33

Due to the size of the Plans, it is not possible to place electronic copies of the plans on the website. These are available for inspection.

## Schedule 34

Schedule Not used

## Schedule 35

Due to the volume of the data, it is not possible to place electronic copies on the website. However, arrangements can be made for inspection.

#### Schedule 36

Key time periods are withheld

Under item 9 part 2 of schedule 31, information on the service provider's approach to the work/services are deemed commercially sensitive/confidential.

Birmingham City Council considers that only the time limits are worthy of protection, as it sets out the disclosure of the timescales which could prejudice the operation of obtaining consents for attaching network parts, as such timescales affect payment terms.