



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2009-00882

Keyword: Finance

Subject: NEW RESOURCE CONTRACT

Request and Answer:

I have today decided to disclose records in answer to questions numbered 1, 4, 5 and 6 in full.

In relation to questions numbered 2 and 3 of your request, based on information received from our Legal Services Department, the following applies;

We must consider firstly whether we can comply with Section (1)(1)(a) of the Act which is our duty to confirm whether or not the information requested is held and secondly we must comply with Section (1)(1)(b), which is the provision of such information. However, when a qualified exemption applies either to the confirmation or denial or the information provision and the public interest test is engaged, the Act allows the time for response to be longer than 20 working days, if the balance of such public interest test is undetermined.

In this case we have not yet reached a decision on where the balance of public interest lies in respect of either of the above obligations. We estimate that it will take an additional 14 working days to take a decision on where the balance lies.

The specific exemption which applies in relation to your request is: Section 43(2) of the FOIA 2000 on the grounds that its disclosure under the Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

Again we apologise for the delays experienced in responding to your request in full.

Question 1

What is the name of the company that was actually awarded this contract?

Answer

The contract has been awarded to Resource (NI) Ltd whose tender had been submitted under the name of Resource Grafton.

Question 2

How much was this contract worth?

Answer

Delayed pending a decision on the balance of the public interest as outlined above. (SEE UPDATE BELOW)

Question 3

How much is this contract worth annually?

Answer

Delayed pending a decision on the balance of the public interest as outlined above. (SEE UPDATE BELOW)

Question 4

Did this said company have a security licence when it applied for this tender?

Answer

Yes

Question 5

Did this said company have a security licence when it was awarded this tender?

Answer

Yes

Question 6

What was the name of the company who previously held this tender?

Answer

Federal Security Services Limited

Question 7

What is the current status of the tendering process in relation to this contract?

Answer

Delayed pending legal advice. (SEE UPDATE BELOW)

UPDATE:

I have today decided to:

- fully exempt records in answer to questions numbered 2 and 3 pursuant to the provisions of Section 43(2) of the Act.
- disclose records in answer to question number 7 in full; and
- note that the answers to questions 1, 4,5 and 6 have already been supplied

Section 17 of the Freedom of Information Act 2000 requires the Police Service of Northern Ireland, when refusing to provide such information (because the information is exempt) to provide you the applicant with a notice which:

- (a) states that fact,
- (b) specifies the exemption in question and
- (c) states (if not otherwise apparent) why the exemption applies.

Answers 2 & 3

The exemption, as well as the factors the PSNI considered when deciding where the public interest lies, with regard to questions 2 and 3 are listed below:

Section 43(2), Commercial Interests. This is a prejudice based exemption, which means that the public authority must demonstrate that it is satisfied that to release the information would damage someone's commercial interests. It is also a qualified exemption, which means that the public authority must consider the balance of the public interest in releasing the information against the public interest in withholding it.

HARM TEST

This contract was awarded following a procurement process in which tenders are invited from interested parties. As one means of ensuring fairness in the process, each party does not know the details of any of the other parties tenders. To release the details of the tender of any party to the process during the course of the process would disadvantage the party whose details were released as the other parties would be aware that they would have to place a more competitive tender in order to win the contract. This particular process has been completed but is subject to litigation. If, on foot of this litigation the contract is declared invalid, it will be necessary to recommence a tendering process, thus the company who's tender previously won the contract, would be disadvantaged in the same way as it would have been had the disclosure been made during the course of the process.

PUBLIC INTEREST TEST

Factors Favouring Release

Use of public Funds

It has already been quoted in the press that this is a multi million pound contract. Regardless of the actual value of the contract, public money will be spent and there is bound to be a public interest in ensuring that the money is spent correctly and that the PSNI, and therefore the tax payer gets value for money.

Accountability for Decision Making

Where a tendering process is undertaken by any organisation, it naturally follows that there will be a decision at the end of it as to who the contract should be awarded to. There is an obvious public interest that whatever decision is made, not only that it is the correct decision but also that it is made for the right reasons.

Improper Actions of Public Officials

Again where a significant sum of money is to be spent by a public authority, there is a public interest in ensuring that all public officials involved in the process have acted with honesty and with integrity and that their actions have not been influenced by any factors which should not be taken into consideration.

Factors Favouring Retention

Timing of Request

As previously outlined, where a request such as this is received during the course of a tendering process it would not be in the public interest to release any information which would be likely to undermine the tendering process, i.e., giving any of the parties to the process a commercial advantage over any other party. This particular process has been completed but is subject to litigation. The commercial advantage would still therefore be likely to be gained against the company who initially won the contract.

Balancing Test

The timing of this request is very relevant. There are factors which in general terms favour release of this information, however on the face of it, there does not appear to be anything contained in the data which make any of these factors more specifically relevant. At this time release would not be in the public interest, as it would, without doubt harm the process if tenders are required to be re-invited. The likelihood of this happening is impossible to determine, but it would be fair to say that it is more than a remote possibility. No release of information should be made under FOI that will give one person a commercial advantage over another and the exemption under S43 (2) of the Act caters for this situation. My decision therefore is not to release answers to questions 2 and 3 at this time. If however the request was to be resubmitted on final and full completion of the tendering process, a different decision may be reached.

Answer 7

Tender process complete.

If you have any queries regarding your request or the decision please do not hesitate to contact me on 028 9070 0164. When contacting the Freedom of Information Team, please quote the reference number listed at the beginning of this email.

If you are dissatisfied in any way with the handling of your request, you have the right to request a review. You should do this as soon as possible, or in any case within two months of the date of issue of this letter. In the event that you require a review to be undertaken, you can do so by writing to the Head of Freedom of Information, PSNI Headquarters, 65 Knock Road, Belfast, BT5 6LE or by emailing foi@psni.pnn.police.uk

If following an internal review, carried out by an independent decision maker, you were to remain dissatisfied in any way with the handling of the request you may make a complaint, under Section 50 of the Freedom of Information Act, to the Information Commissioner's Office and ask that they investigate whether the PSNI has complied with the terms of the Freedom of Information Act. You can write to the Information Commissioner at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. In most circumstances the Information Commissioner will not investigate a complaint unless an internal review procedure has been carried out, however the Commissioner has the option to investigate the matter at his discretion.

Please be advised that PSNI replies under Freedom of Information may be released into the public domain via our website @ <http://www.psni.police.uk/>

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.