

## Freedom of Information Act – in force from 1<sup>st</sup> January 2005

### Guidance for Suppliers

**“The Council undertakes to use its best endeavours to hold confidential any commercially sensitive information provided in the tender submitted, subject to the Council’s obligations under law, including the Freedom of Information Act 2000. If a tenderer considers that any of the information submitted in the tender should not be disclosed because of its commercial sensitivity or confidentiality, then this should be stated with the reasons for considering the information confidential or likely to prejudice commercial interests if disclosed to the public. The Council will then consult with the tenderer in considering any request received under the Freedom of Information Act 2000 before replying to such a request”.**

As you may be aware, the Freedom of Information Act applies to the activities of Wirral Council and will come fully into force from 1st January, 2005.

As a tenderer/contractor to the Council, you should be aware that the Council will have obligations and responsibilities under the Freedom of Information Act to provide on request access to recorded information held by it. One of the consequences of these new statutory responsibilities is that information that the Council holds about your organisation may be subject to disclosure, in response to a request, unless one of the various statutory exemptions applies.

As part of our duties under the Act, we may have to disclose information forming part of your tender or contract, to anyone who makes a request. We may also publish some of the information you give to us in our Publication Scheme required under the Act. It is not possible to “contract out” of the Act.

In certain circumstances, and in accordance with the Code of Practice issued under the Act, the Council may consider it appropriate to ask you for your views as to the release of any information before the Council makes its decision as to how to respond to a received request. In dealing with such requests for information under the Act, the Council will have to comply with a strict timetable and it would, therefore, expect a timely response to any such consultation within 5 working days.

If you consider that any of the information submitted/to be submitted in the Tender or Contract documents should not be disclosed because of its sensitivity, then that information should be specified in a schedule together with full reasons as to why you consider it to be likely to prejudice the commercial interest of your company or a trade secret or information, the disclosure of which would constitute an actionable breach of confidence, together with a reasonable timescale during which that information should not be disclosed.

As stated above, before releasing any information we will, if possible, consult you with regard to considering any request received under the Act and have regard to your comments or objections, before making a final decision in respect of the request.

I would stress that the Council will be required to determine whether the public interest in maintaining the exemption from disclosing the information outweighs the public interest in disclosing it, and that the person requesting the information has the right to appeal to the Information Commissioner who can order release of such information.

In summary, therefore, prospective tenderers/bidders/contractors should state in their submissions whether or not they consider that the information supplied, if disclosed to a third party, would be prejudicial to their commercial interests or constitutes a trade secret or is confidential and if so, the reasons for such a view, and the estimated timescale which they consider reasonable for “non-disclosure”.

I trust that this clarifies the position as far as the requirements of the Freedom of Information Act are concerned. If you wish to discuss this matter further please contact Corporate Procurement at [cpsu@wirral.gov.uk](mailto:cpsu@wirral.gov.uk).