

PART 2 – CONFIDENTIAL FACTS AND ADVICE

DMFD16

Title: Records Storage – Acceptance of Tender

Information may have to be disclosed in the event of a request under the Freedom of Information Act 2000. In the event of a request for confidential facts and advice, please consult the Information Governance team for advice.

This information is not for publication until the stated date, because:

The confidential appendix to report LFC-0071 contains costs and information that could reveal costs for a proposed commercial partner of the London Fire Commissioner. Publishing that information would prejudice or harm the commercial interests of the proposed commercial partner and would risk prejudicing the London Fire Commissioner's negotiating position and inhibit the London Fire Commissioner's ability to secure value for money on behalf of the public.

Date at which Part 2 will cease to be confidential or when confidentiality should be reviewed:

1 November 2019

Legal recommendation on the grounds of keeping the information confidential:

In the event of any request for access to the information contained in this document and/or its appendices under section 1 of the Freedom of Information Act 2000 ("the Act"), it is considered that access can be denied on the basis that it is covered by the exemption under section 43 of the Act as the disclosure of such information would prejudice:

- the commercial interest of The Document Warehouse Limited, the tendering party for the records storage services, as it includes their costing information provided during the tendering process (including cost) which could distort competition in the market; and
- the London Fire Commissioner's commercial interests as its release could have an adverse impact on the London Fire Commissioner's ability to secure best value on the services being procured.

Section 1 of the Act creates the general right of access, which provides that any person making a request for information to a public authority is entitled:

- to be informed in writing by the public authority whether it holds information of the description specified in the request; and
- if that is the case, to have that information communicated to him/her.

Part II of the Act contains a number of exemptions from disclosure for certain classes of information. Section 43 of the Act provides that information is exempt information if its disclosure under the Act would, or would be likely to prejudice the commercial interests of any person (including the public authority holding it).

The paragraph above states that the information is considered commercially sensitive as its release could detrimentally affect the commercial interest of the tendering party, The Document Warehouse Limited and could also detrimentally affect the ability of the London Fire Commissioner to negotiate the optimum terms when the services are procured which may impact upon the London Fire Commissioner's

ability to achieve the best value for money.

The section 43 exemption is a qualified exemption and its use is therefore, subject to a public interest assessment.

Public Interest Assessment

At present, on balance, it is considered that the public interest is best served if the information is not disclosed at this point. The eligibility of the exemption should be reassessed in the event of an FOI request for this information as the level of sensitivity will change over time and different circumstances may alter the arguments in favour of non-disclosure.

information Governance Adviser – I make the above recommendations that this information should be considered confidential at this time

Name: Robyn Lawrence, TfL Legal

Date: 16/11/18

Confidential decision and/or advice:

See LFC-0071's appendix as noted above.