



# FOI Request DN415013 Procurement Feedback

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|--------------------------------|---------------------|
| <b>Reference</b>               | RSN19876            |
| <b>Request Stage</b>           | Request             |
| <b>Date Received</b>           | 20/02/2020          |
| <b>Date Responded</b>          | 18/03/2020          |
| <b>Disclosure</b>              | Withheld            |
| <b>Exemptions / Exceptions</b> | S.14(1) - Vexatious |
| <b>Supporting Documents</b>    | N/A                 |

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## Request

Further Questions in relation to Merseytravel's response, dated 15th January 2020 to my FOI request dated 16th December 2019.

Previous Question:

Q3 Which of these people have had previous experience working within a commercial bus operation?

Answer: The information requested is the personal data of the individual officers involved in the procurement process.

Please note that personal information of individuals is exempt under Section 40(2) of the Freedom of Information Act 2000 as disclosure would allow the possibility of the identification of a living individual(s), thereby breaching the General Data Protection Regulation and/or the Data Protection Act 2018.

I believe that there would be no expectation that information regarding their previous experience that is not an essential element of their job description would be disclosed to a third party, and therefore I do not regard disclosure as constituting the 'fair and lawful' processing of personal data. As a result, disclosure would breach the First Principle of the General Data Protection Regulation (Article 5(1)(a)).

As you state at A8, you have previously been awarded contracts by Merseytravel and, as far as we are aware, have not raised any queries as to the suitability of those decisions or the relevant experience of the officers who made them.

I am therefore of the opinion that the information would not provide any greater understanding of the subject matter, and there is therefore no overriding legitimate interest in its disclosure. The personal information in question has therefore been withheld in accordance with Section 40(2) of the Freedom of Information Act 2000.

Further Question:

Q3a The Bus Services Department are, as far as I am aware, generally involved with tenders and contracts for bus services, where it is not essential that they have had previous commercial bus operation experience. However, as this tender was primarily of an engineering nature, significant knowledge of bus allocation and fleet management would be necessary in order to evaluate the submitted tenders in sufficient detail to be able to score the submissions correctly.

Whilst I accept that the previous information requested was for personal information of individuals and therefore exempt under the FOI Act, there is no legal reason why you cannot answer the following question: -

Therefore, please confirm if any of the staff, either at the same level as the Bus Network Performance Manager, or below, who were involved with the evaluation of this tender, have had any significant commercial bus operational experience which included bus allocation and fleet management?

Where you comment on my previous contracts with Merseytravel, the relevant experience of the officers who then made the decisions was not in question. Both [NAME REDACTED] and [NAME REDACTED] had worked for Merseytravel's predecessor Merseyside PTE, who ran all the bus services in Merseyside prior to 1986.

The Bus Services Manager, [NAME REDACTED], and subsequently [NAME REDACTED], who were both involved with the contracts that I was awarded were also from commercial bus operations backgrounds.

Therefore, as the officers involved in the previous contracts that I was awarded had had significant bus operational experience, there was no reason to query the suitability of those decisions or the relevant experience of the officers who made them.

However, it is my understanding, from my own knowledge, and that of relevant industry professionals within the Merseyside bus operational region, that within the Bus Services Division there is very little, if any commercial bus operational experience at the level of personnel who would have been involved in the evaluation of this tender.

Previous Question:

Q6c In the Bus Network Performance Manager comments to 2.4 -Resources, he stated that I did not provide any credentials of the other 3 staff listed as a resource. Please advise whether the successful bidder provided details of all their staff that may be deployed on this contract?

Answer: Yes.

Further Question:

Q6a Please confirm how many staff the successful bidder provided comprehensive details for?

Previous Question:

Section 2.6 – Added Value.

One of the key elements of this contract was that the service provider was to give: -  
“Access to a subscription service designed to keep Merseytravel's operation up to date with the latest transport laws and regulations. Potentially this could have included, but not limited to a dedicated website containing useful tools and resources, email service, and free telephone access to support”.

My earlier question No 9, to the procurement team was whether the successful bidder had offered these key elements of the contract.

The answer that I was given was that: -

“The subscription service did not form any part of the evaluation and was therefore not considered in anyway”.

Q1 Why were these key elements not included in the evaluation?

Answer: The tender required a subscription service to be included, but it was not considered necessary to evaluate the precise method of how the service would be provided.

As stated previously by the procurement team,  
“The subscription service did not form any part of the evaluation and was therefore not considered in anyway”.

Your answer is evasive, not relevant to the question, and therefore does not answer the question that I asked in any shape or form.

Furthermore, it does not correlate with the previous answer that the procurement team provided.

Therefore, I have expanded on the previous question so that you may find it easier to provide accurate, and relevant answers to the questions being asked: -

Further Questions:

Q1a Why were these key elements not included in the evaluation?

Q1b Why were they not scored in the evaluation?

Q1c Did the other bidder offer a minimum subscription service in any shape or form?

Q1d Did the other bidder offer the addition of a dedicated website containing useful tools and resources, email service, and free telephone access to support, irrespective of the precise method of how this service would be provided?

Previous Question:

1) Why did Merseytravel decide after the closing date of the tender submission, that they did not want a service that was one of the key elements of the tender, particularly when I was offering all those key elements free of charge, and my financial price was the lowest bid?

Answer: Merseytravel’s position did not change after the closing date.

Further Question:

One of the key elements of this contract was that the service provider was to give: -

“Access to a subscription service designed to keep Merseytravel’s operation up to date with the latest transport laws and regulations. Potentially this could have included, but not limited to a dedicated website containing useful tools and resources, email service, and free telephone access to support”.

It is therefore beyond reasonable doubt that this aspect would, and should have been included in the evaluation process, and scored accordingly.

However, the procurement team, in answer to my previous question, No 9, as to whether the successful bidder had offered these key elements of the contract.

The answer that I was given was that: -

“The subscription service did not form any part of the evaluation and was therefore not considered in anyway”.

The logical interpretation of this statement is that it was excluded from the evaluation, and that no bidder was given any benefit in the scoring from offering this service!

Merseytravel obviously changed their view on this essential requirement, and it is irresponsible of you to say otherwise, stating that: Merseytravel's position did not change after the closing date.

The facts speak for themselves, Merseytravel did, without any doubt, change their position on this essential requirement, otherwise I would have expected to have received some benefit in the scoring, which it has been clearly stated by the procurement team, that I did not receive any scoring benefit.

Therefore, please answer the questions accurately and factually:

Q2a Why did Merseytravel decide after the closing date of the tender submission, that the subscription service was not going to form any part of the evaluation and was therefore not considered in any way, particularly when I offered all those key elements free of charge, combined with the fact that my financial price was the lower of the two submitted bids?

It is totally illogical not to have considered my proposal, free of charge, especially considering that my financial bid was already lower than Merseytravel's preferred bidder.

Q2b How do you explain that?

Q2c Even if the successful bidder offered you a competitive alternative, their financial bid was higher, therefore overall my combined bid offered better value for money, giving you all that you asked for, at a lower price than the successful bidder.

How can you justify that, as a public service, supposedly acting in the best interests of the poll tax payers in the Merseyside conurbation, when you are tasked with providing best value to the people that you serve?

Previous Question:

A) The closing date for the tender submission was originally Friday, 26.7.19, at 1000hrs.

This was subsequently extended, late in the afternoon of Thursday, 25.7.19, to Monday 29.7.19 at 1000hrs.

Questions:

1) Who authorised this extension?

Answer: Procurement

2) What was their reason, or reasons for this extension?

The Procurement department recommended the extension as the main evaluator was unexpectedly unavailable to begin scoring the submissions. The decision was made that it would be beneficial for the bidders to have extra time to work on their submissions as the evaluation would not have been able to start until the evaluator's return.

Further questions:

Q2a) Please confirm if the Bus Network Performance Manager was the main evaluator?

Q2b) If not the Bus Network Performance Manager, then who had the responsibility of being the main evaluator?

Q2c) Please confirm when the main evaluator returned to work?

Q2d) On what date and time was the extension approved?

Q2e) How many expressions of interest had Merseytravel received prior to the extension being notified late on Thursday afternoon, 25.7.19?

Q2f) How many tenders had been submitted prior to the extension being notified late on Thursday afternoon, 25.7.19?

Q2g) How many expressions of interest had been logged at the original closing date and time?

Q2h) How many bids had been submitted at the original closing date and time?

Q2i) At what date and time did the other bidder submit their bid?

Q2f) How many other tenders have the Procurement Dept recommended an extension to, purely for the benefit of the bidders, when it is almost certain that the evaluation of any tender would not have taken place immediately after the initial Friday closing date, or the following Monday?

Q2g) When is a closing date not a closing date, irrespective of how many bidders there have been?

Q2h) As my bid was submitted the day prior to the original closing date, and you have confirmed in your previous answer to Q3, that:

"We do not set a minimum of required responses however; by going out to open market, we have more than satisfied our constitutional requirements".

As such, why was there any need to give an extension to the closing date, when my submission was available for main evaluator to begin scoring, immediately upon their return?

Q2i) Please confirm whether the two tender bids were evaluated immediately on the return of the main evaluator?

Q2j) If not, then please confirm when the evaluation of the tender submissions was initiated?

Previous Question:

B) Revised Quantities:

Questions:

1) What was the reason, or reasons for reducing the quantities required?

Upon review of the submitted bids, it was apparent that the required quantities were not suitable, and were therefore revised by the Bus team. All bidders were given the opportunity to amend their submission in light of this change.

Further Question:

Q1a) Please qualify what was not suitable with the original required quantities, when the Bus team are supposed to be the professionals in these matters?

Again, this is another reason why I have questioned the suitability and relevant experience of the officers concerned when dealing with a bespoke engineering tender!

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## Response

Thank you for your request made under the Freedom of Information Act. For reference, I have summarised the history of your correspondence and requests on this matter below.

- 12 questions submitted to the Procurement department, responded to on 15<sup>th</sup> November
- Two further questions submitted as FOI requests on 18<sup>th</sup> November, responded to on 9<sup>th</sup> December
- A second FOI request consisting of 19 questions on 16<sup>th</sup> December, responded to on 15<sup>th</sup> January
- A third FOI request containing 24 additional questions on 19<sup>th</sup> February

This is a total of 57 questions submitted to Merseytravel in around three months. All responses by Merseytravel have prompted further, normally lengthier, additional enquiries.

Section 1(1) of the Freedom of Information Act provides the right to access information held by a public body, however this is a qualified right and there are occasions where an authority can legitimately refuse to answer an enquiry. One of these occasions falls under Section 14(1) of the Act, which states

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious

The definition of vexatiousness was determined in the Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013) case, in which the Tribunal stated that it was to mean the '...manifestly unjustified, inappropriate or improper use of a formal procedure.'

The Information Commissioner has published guidance on dealing with vexatious request, which can be viewed at [this link](#). The guidance contains examples of indicators that might show that a request is vexatious [p.7], with some relevant ones provided below.

- Burden on the authority - The effort required to meet the request will be so grossly oppressive in terms of the strain on time and resources, that the authority cannot reasonably be expected to comply, no matter how legitimate the subject matter or valid the intentions of the requester
- Personal grudges - For whatever reason, the requester is targeting their correspondence towards a particular employee or office holder against whom they have some personal enmity
- Disproportionate effort - The matter being pursued by the requester is relatively trivial and the authority would have to expend a disproportionate amount of resources in order to meet their request.

In terms of the burden place on Merseytravel by your requests, you have entered into extensive correspondence with the organisation, which has occupied an inordinate amount of officer time. With regard to personal grudges, you have repeatedly made statements regarding the experience, qualifications and competence of the Bus Network Performance Manager, the Bus department and the Procurement team who were involved in deciding the outcome of the tender evaluation.

The disproportionate effort aspect is addressed further on in the Commissioner's guidance, which asks at p.14 'does the request have a value or serious purpose in terms of the objective public interest in the information sought?'. The guidance continues

It may be helpful to view this as a balancing exercise where the serious purpose and value of the request are weighed against the detrimental effect on the authority, as summarised below.

|  |   |   |
|--|---|---|
| <ul style="list-style-type: none"> <li>• Serious purpose</li> <li>• Requester's aims and legitimate motivation</li> <li>• Wider public interest and objective value</li> </ul> | V | <ul style="list-style-type: none"> <li>• Detrimental impact on the public authority</li> <li>• Evidence that the requester is abusing the right of access to information</li> </ul> |
|--|---|---|

Your aim, seemingly, is to have the outcome of the procurement overturned. There is no evident wider public interest in the requester information; the interest is purely private in that you are dissatisfied that your business were not awarded a contract through an open and competitive tendering exercise.

Our 15<sup>th</sup> January response made reference to the fact that you have been successful in previous tendering exercises, and did not raise any queries at the time of the suitability or qualifications of the officers involved in those decisions. In your most recent request you refer to this, and state that the experience of previous officers was, in your view, satisfactory. It does, however, appear more than coincidental that your concerns have been voiced in the context of your company not being award this contract, and it would seem extremely unlikely that you would have embarked on this series of requests had you been successful.

The appropriate avenue to explore any issues with the procurement process would be a formal legal challenge to the decision, not through a series of voluminous FOI

requests. As was stated to you in Mrs Watling's 11<sup>th</sup> December email, 'as with any requests made under the Freedom of Information Act, an internal review is entirely separate to, and will not impact upon, the procurement process.' Submitting such requests in the manner you have done is an abuse of right of access to information.

It is clear, in Merseytravel's opinion, that no matter the response we provide to your requests, it will simply result in further enquiries being sent and a continued burden being placed on the organisation. What serious motive there may have been in your initial enquiries has been exhausted in the subsequent lengthy exchanges.

In addition, I am informed by the Bus department that, for reasons entirely unrelated to the perceived issues aired in your correspondence, the tender in question will be re-advertised in the coming months. This further diminishes any wider public interest argument for your request to be fulfilled.

For these reasons, Merseytravel is refusing to provide a response to the questions contained in your 19<sup>th</sup> February request in accordance with Section 14(1) of the Act.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review, which should be addressed to:

Mrs Julie Watling  
Legal, Democratic Services & Procurement Manager  
Merseytravel  
PO Box 1976  
Liverpool  
L69 3HN  
[julie.watling@merseytravel.gov.uk](mailto:julie.watling@merseytravel.gov.uk)

If you are not content with the result of your internal review, you also have the right to complain to the Information Commissioner, whose address is

The Information Commissioner's Office,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire SK9 5AF  
[www.ico.gov.uk](http://www.ico.gov.uk)