

Department for Environment, Food and Rural Affairs

Waste Infrastructure Delivery Programme (WIDP)
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London SW1P 2AL

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Our ref: RFI 4938

29 August 2012

REQUEST FOR INFORMATION: NORFOLK COUNTY COUNCIL WASTE PROJECT

Thank you for your request for copies of all written exchanges including emails, minutes of meetings, diary entries, and informal notes that relate to the proposed Norfolk Waste PFI contract between 3rd December 2011 and 19th July 2012 : -

A) Between DEFRA ministers or civil servants and representatives of Norfolk County Council

B) Between DEFRA ministers or civil servants and The Preferred Bidder (Cory Wheelabrator Ltd)

As you know, we have handled your request under the Environmental Information Regulations 2004 (EIRs).

Defra's Ministers or civil servants and Cory Wheelabrator (the preferred bidder).

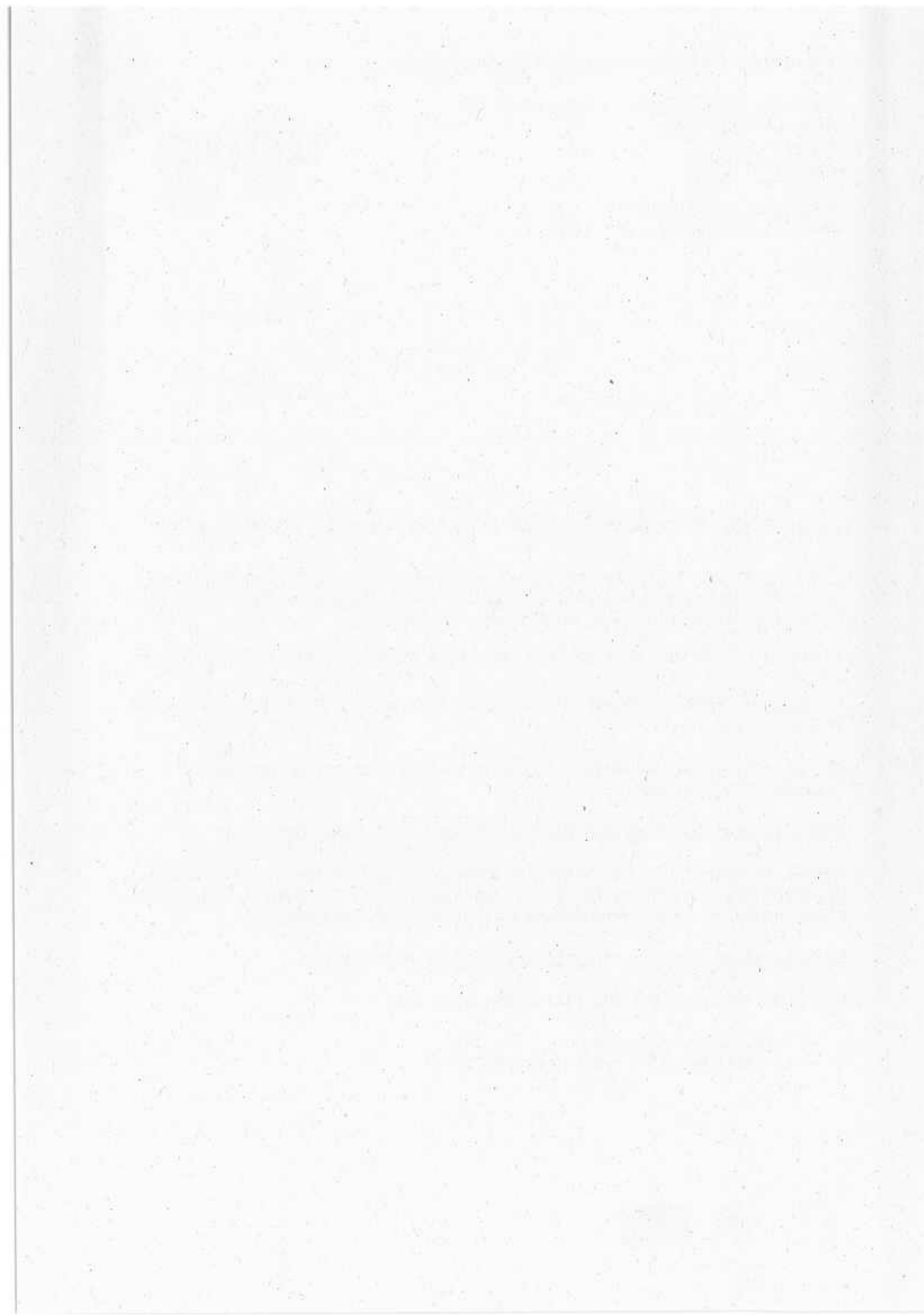
Neither Ministers nor Civil Servants have communicated with The Preferred Bidder, Cory Wheelabrator. Therefore, we restate our original response to your earlier requests that there has been no correspondence between Defra and Cory Wheelabrator.

Defra's Ministers or civil servants and Norfolk County Council (NCC).

Please find attached to this letter the following documents:

- Mike Jackson emails.pdf
- Correspondence between Defra and NCC.pdf





The exceptions engaged

Regulation 12(4)(a) – information not held

Defra's Ministers and civil servants have not communicated with Cory Wheelabrator. The information is therefore exempt under regulation 12(4)(a) of the EIRs, which relates to information which is not held at the time when an applicant's request is received.

Regulation 12(4)(a) is a qualified exception, which usually means that a public authority is required to conduct a public interest test to determine whether or not information should be disclosed or withheld. However, the Information Commissioner, takes the view that a public interest test in cases where the information is not held would serve no useful purpose.

Regulations 12 (3) and 13(2)(a)(i) - named officials

As regards the names of officials, in accordance with our usual procedure (and your request) this personal data is being withheld as the information falls under the exception in regulations 12(3) and 13(2)(a)(i) of the EIRs, which relate to personal data relating to third parties.

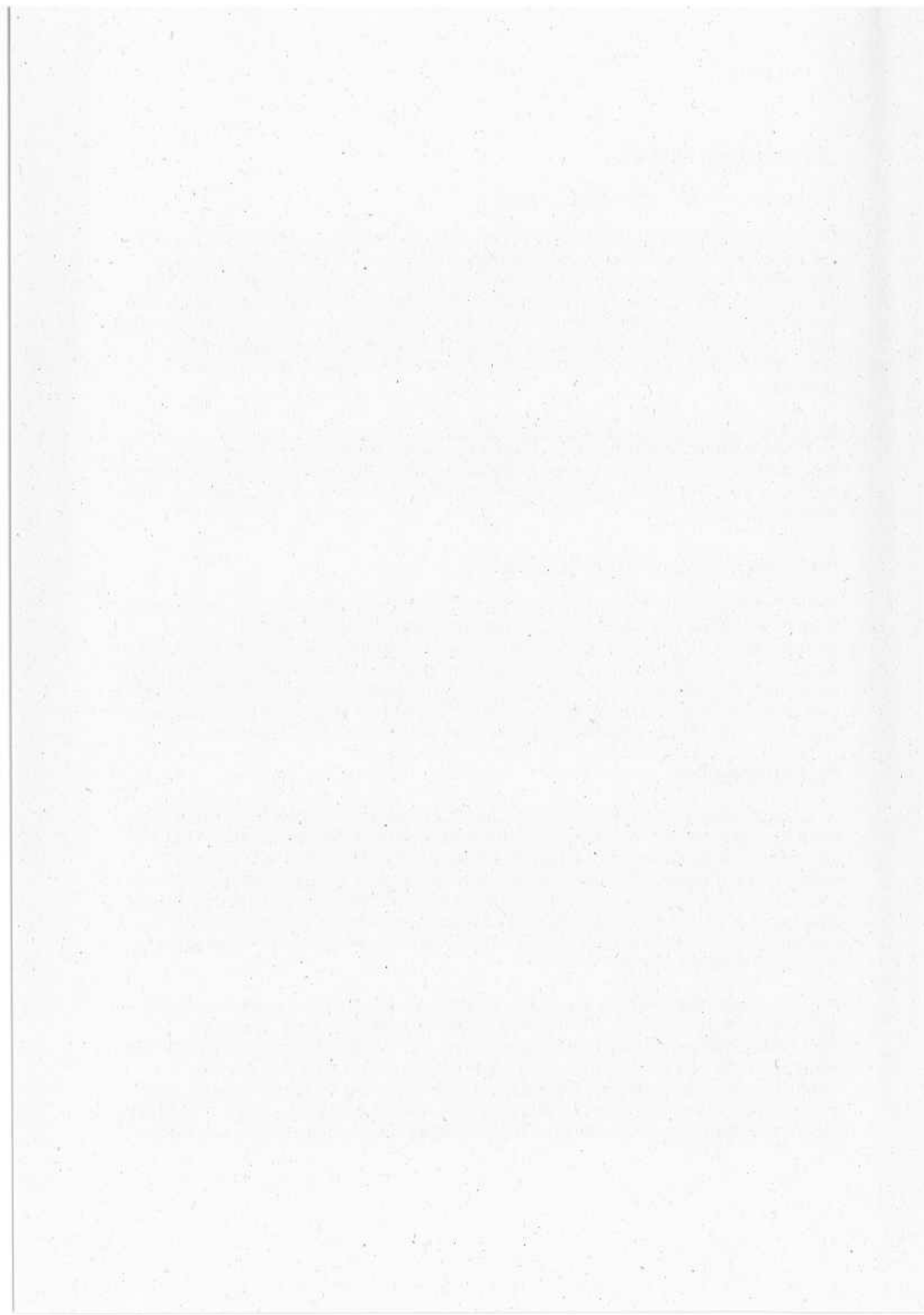
Regulation 12(5)(e) – commercial confidentiality

The information relates to financing arrangements in respect of the Council's contract with Cory Wheelabrator and other contract-related information i.e. financing deal considerations. It is therefore commercial information. This information is commercially sensitive and subject to contractual duties of confidentiality. It is information which is not trivial and not in the public domain and relates to the legitimate economic interests of both the County Council and Cory Wheelabrator. Disclosure of the information would inevitably breach confidentiality by placing confidential information in the public domain.

Public Interest Test

As you know from your previous requests, the WIDP Programme Office is conscious that there is always a public interest in ensuring transparency in the dealings between Defra and the various participants in this project, ensuring accountability and best value for money and that the award of contracts, and other dealings, is a fair and transparent process. But there is also a strong public interest in ensuring that, for their part, those who have dealings with ourselves and the Councils can do so in the assurance that commercially confidential information will be protected where there is no overriding public interest in breaching confidence.

Placing commercially sensitive information in the public domain would cause harm to the legitimate economic interests of Cory Wheelabrator by undermining the company's competitive advantage. There is a strong public interest in maintaining the confidentiality of valuable commercial information, the disclosure of which would be anti-competitive. Information that would assist the Council in evaluating bids and finalising contracts would also, coming into the hands of competitors, erode a bidder's competitive edge, or even risk undermining their commercial viability. These risks are likely to deter bidders and inhibit



discussions currently and in the future, narrowing the choice for the Council. The public interest is in withholding such information.

In this circumstance, we have concluded that the information should be withheld.

I attach an annex giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter, please contact the WIDP Programme Office.

Yours sincerely

WIDP Programme Office

Email WIDP.programmeoffice@defra.gsi.gov.uk

Annex A

Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision within 40 working days of the date of this letter. Please write to Brendan Walsh, Head of Defra's Information Rights Team at Area1B, Ergon House, Horseferry Road, London, SW1P 2AL, (email: informationrights@defra.gsi.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF