

## Corporate Law Briefings

# The Freedom of Information Act and your trade secrets

### All in the ring

If a public body has dealt with you - corresponded with you, investigated you, issued you with a licence or contracted work to you - it'll have information about you. The Freedom of Information Act means anyone can ask to see that information, including your competitors, suppliers, customers and employees, unless you can claim confidentiality under one of the legal let-outs. [Click here](#) to see the latest list of public bodies that could be asked about you.

### Know your let-outs

There are two important exceptions, when your information won't be given out:

- Information can't be given out if you have legal rights to prevent it. For example, if you are a supplier to a public body, and your contract says it can't disclose information it has about you because of that relationship.
- 'Trade secrets', and information that would prejudice your commercial interests, can't be given out. So information about special equipment you use would probably be a trade secret - though not its state of repair.

Even if the let-outs apply, the public body can still disclose your information if it's in the public interest that it does - for example, where disclosure would show that it is spending public money wisely. So details of pricing in your tender for work from a public body might be kept secret during the tender, but not necessarily afterwards.

### Keep it out of the wrong hands

Protect your interests by knowing the information public bodies hold about you, and whether it will be disclosed:

- Double-check the information you have provided to public bodies in the past - is any of it sensitive? If 'yes', prepare contingency plans in case it is made public.
- Get the public bodies concerned to tell you if they are asked for information about you (they are encouraged by government guidelines to consult with you in case an exemption applies, though they don't have to).
- Ask them for a notice period before they reveal information about you, so you can plan to protect.
- Specifically appoint someone to make sure future information you give to public bodies is vetted and managed.
- Agree, when dealing with a public body, which information is commercially sensitive or a trade secret. Provide that information separately in a document or schedule clearly marked 'trade secrets'. Ask it to acknowledge that there is no public interest exception that will let them disclose that information.
- When you contract, or tender for work, with a public body, get specific agreement that information about you is confidential.

If in doubt, **take legal advice**.