

Request for price of successful tenderer (weekly license fee to operate and occupy Riverbank Market)

Legislation	Local Government Official Information and Meetings Act 1987, s 7(2)(i)
Agency	Hutt City Council
Ombudsman	Leo Donnelly
Case number(s)	414862
Date	August 2017

No need to withhold successful tender price—s 7(2)(i) does not apply—public interest in release to promote integrity and transparency of tender process

The Hutt City Council refused to disclose the weekly license fee paid to occupy and operate the Riverbank Market under section 7(2)(i) of the LGOIMA (negotiations), and the requester complained to the Ombudsman.

The Council considered that release of the fee would prejudice future tender negotiations when the license to occupy the market came up for renewal in 2019. It explained that the amount paid by the current operator was substantially higher than what previous operators had paid. Disclosure of that amount would deter other potential operators from tendering, as they would think they could not compete. This reduction in competition would remove its ability to negotiate on non-price components.

The Ombudsman noted the view of successive Ombudsman that there is generally no need to withhold total tender prices. He commented that the information at issue in this case was the successful tender price (broken down into weekly amounts).

The Ombudsman accepted that negotiations in this case were reasonably contemplated. He also accepted that *'limiting competition to a smaller group could be described as a "disadvantage" as contemplated by section 7(2)(i)'*. However, this prejudice was not so likely to occur that withholding was reasonably necessary. In fact, it could be avoided by providing clear information about how the tenders would be evaluated.

The Ombudsman stated:

Presumably, to increase interest in the tender process and encourage offers from alternative operators, the Council will make it clear that non-price components (such the operating history of the tenderer and their references) will be given significant consideration and price alone will not determine the Council's decision.

This would lessen the likelihood of a potential tenderer being discouraged by the current high weekly amount.

The Ombudsman also noted that the Council could release the amount with a contextual statement outlining the factors it would be considering during the tender process and advising that other operators should be encouraged to apply, even if they could not match the current fee.

The Ombudsman did not consider that section 7(2)(i) of the LGOIMA applied, and commented that even if it did, the need to withhold would be outweighed by the public interest in promoting integrity and transparency of the tender process. The Council agreed to release the amount after considering the Ombudsman's views and the complaint was resolved.

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