

## Work sheet for dealing with public tender information



### Important note

This work sheet summarises guidance on dealing with public tender-related information, including responding to OIA / LGOIMA requests for such information. Detailed guidance is found in our guide: [The OIA and the public tender process](#).

#### Before an OIA request is received

<b>1. Proactive release</b>	<ul style="list-style-type: none"> <li>Before starting the public tender process, think about the information you will proactively release about that process, and when. This could include basic information about the tender process (such as a description of the goods, services or works, the length of the contract, service levels and performance measures, the decision making process and any evaluation criteria), the identities of tenderers, total prices tendered, and information about the evaluation of tenders, including tender scores.</li> </ul>
<b>2. Communication with potential tenderers</b>	<ul style="list-style-type: none"> <li>Let potential tenderers know about the agency's obligations under the OIA / LGOIMA, and the information that you will proactively release about the tender process. Invite them to identify any information they would not want to be released under the OIA / LGOIMA. Our guide <a href="#">The OIA and the public tender process</a> contains an example statement for inclusion in tender documents.</li> </ul>

#### After an OIA request is received

<b>3. Is the requester a tenderer?</b>	<ul style="list-style-type: none"> <li>If the requester is a tenderer, check whether any special rules apply.</li> <li>If they are an individual seeking personal information about themselves, the Privacy Act will apply.</li> <li>If they are a corporate entity seeking personal information about themselves, Part 4 of the OIA/LGOIMA will apply. Click <a href="#">here</a> for more guidance on Part 4 requests.</li> <li>If they want the rules for how the decision on the tender was or will be made, section 22 of the OIA / 21 of the LGOIMA will apply. Click <a href="#">here</a> for more guidance on section 22 requests.</li> <li>If they want the reasons for the decision not to award them the tender, section 23 of the OIA / 22 of the LGOIMA will apply. Click</li> </ul>
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	<p><a href="#">here</a> for more guidance on section 23 requests.</p> <ul style="list-style-type: none"> <li>• For any other requests, go to step 4.</li> </ul>
<p><b>4. Do any of the withholding grounds apply?</b></p>	<ul style="list-style-type: none"> <li>• The most common withholding grounds that apply to public tender-related information are: <ul style="list-style-type: none"> <li>- Unreasonable prejudice to a third party's commercial position (section 9(2)(b)(ii) OIA / 7(2)(b)(ii) LGOIMA)—see <a href="#">Commercial information work sheet</a>.</li> <li>- Confidentiality (section 9(2)(ba) OIA / 7(2)(c) LGOIMA)—see <a href="#">Confidentiality</a> practice guidelines.</li> <li>- Negotiations (section 9(2)(j) OIA / 7(2)(i) LGOIMA)—see <a href="#">Negotiations work sheet</a>.</li> </ul> </li> <li>• Guidance on other withholding grounds is available <a href="#">here</a>.</li> <li>• If you think it might be necessary to withhold some or all of the information in order to protect the interests of a third party, consider consulting that third party. Find detailed advice and template letters in our <a href="#">Consulting third parties</a> guide.</li> <li>• Note that the Ombudsman has developed general principles in relation to common types of public tender information including: <ul style="list-style-type: none"> <li>- Basic information about the tender process</li> <li>- Identities of tenderers</li> <li>- Tender submissions</li> <li>- Pricing information</li> <li>- Detailed plans submitted by tenderers</li> <li>- Evaluation of tenders, including tender scores</li> <li>- Evaluative material</li> <li>- Due diligence investigations</li> <li>- Negotiations with the preferred supplier</li> </ul> <p>For more information about these general principles see our guide <a href="#">The OIA and the public tender process</a>.</p> </li> <li>• If no withholding grounds apply, the information must be released. Otherwise, go to step 5.</li> </ul>

<b>5. Apply the public interest test</b>	<ul style="list-style-type: none"> <li>• Identify any public interest considerations in favour of disclosure, for example, transparency; accountability for the conduct and outcome of the tender process, and spending public money; accountability to tender participants; and promoting fairness and competition.</li> <li>• Are there any factors that strengthen the public interest in disclosure, such as the amount of public money involved, or any concerns about the conduct or outcome of the tender process?</li> <li>• Consider whether the public interest in disclosure outweighs the need to withhold.</li> <li>• See <a href="#">Public interest—A guide to the public interest test in section 9(1) of the OIA and section 7(1) of the LGOIMA</a> for more information.</li> <li>• Go to step 6.</li> </ul>
<b>6. Make a decision on the request</b>	<ul style="list-style-type: none"> <li>• If the public interest in disclosure outweighs the need to withhold, the information must be released. If it doesn't, then it is open to the agency to refuse the request.</li> <li>• Before refusing in full, consider partial release, release of summary information, or release of other information, in recognition of the public interest considerations discussed above.</li> <li>• See our <a href="#">Template letter 6: Letter communicating the decision on a request</a>.</li> </ul>