

To: Information Commissioner  
Customer Services Team  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF  
[casework@ico.gsi.gov.uk](mailto:casework@ico.gsi.gov.uk)

## APPEAL – REQUEST UNDER FREEDOM OF INFORMATION

Dear Officer:

I am writing to appeal to the Information Commissioner Office the decision of Basildon District Council refusing the provision of information requested under the Freedom of Information Act regarding the specifics of the undertaking that is contained in the contract awarded to Constant and Co. (Bedford) Ltd. by Basildon District Council (BDC) for bailiff services for undertaking Enforcement Action at the Traveller and Gypsy sites of Dale Farm and Hovefields, in Crays Hill, Essex.

On 6 April 2010 I submitted a request to the Customer Services Manager/Communication of Basildon District Council, Mrs. Sue Marriott ([sue.marriott@basildon.gov.uk](mailto:sue.marriott@basildon.gov.uk)), under the Freedom of Information Act, demanding to have access to the information contained in the contract abovementioned. On 23 April I got a response from BDC saying that they had considered my request exempt from disclosure under Section 43 – Commercial Interest (a copy of the initial request and the Council's initial response are attached to this appeal).

On 6 of May I resubmitted my request to BDC for internal review, clarifying them that my request to have access to the specifics of the undertaking that is contained in the contract awarded to Constant and Co. (Bedford) Ltd. for bailiff services for undertaking enforcement Action at Dale Farm and Hovefields did not refer to any financial or administrative aspect of the contract. On 14 May I got a response from BDC saying that their decision remained the same as the details I requested are considered actual operational plans and are therefore exempt from disclosure under Section 31, 38 and 41 of the Freedom of Information Act (a copy of the complaint made to the Council's response are attached to this appeal).

The grounds for the present appeal are the following:

Access to the information on the specifics of the undertaking that is contained in the contract awarded to Constant and Co. (Bedford) Ltd. for bailiff services for undertaking Enforcement Action at Dale Farm and Hovefields is relevant to the affected communities and to the public in general because of their impact and effects on health and safety issues.

In order for the residents of Dale Farm, Hovefields and the surrounding communities to learn about the type, impact and extent of the health and safety effects that can result from the way in which Constant and Co. will conduct the undertaking to enforce notice, information is needed on

the contractual aspects of the specifics of the undertaking. The reasons given by Basildon District to not disclose the required information are not covered by the Freedom of Information Act.

1. Lack of explanation why the alleged exemptions apply – The refusal notice did not explained clearly why BDC is refusing to give the information, especially why the exemptions it alleges apply to the case. As the Council has informed that different exceptions apply to the information, it should have clearly explained which exceptions apply to which bits of information. The Council has not also explained how it has carried out the public-interest balancing exercise.

2. Exemption based on Section 31 – The structure of section 31 is quite complex, and the difference between its components needs to be carefully noted. The Council has not informed clearly which law enforcement interests which may be prejudiced by disclosure of the information required. It also requires a prejudice test to be applied, and it is a qualified exemption - before information may be withheld in reliance on it, the public interest balance must be considered. I do not see why the exercise by Basildon Council of certain functions related to the Enforcement Action envisaged to be taken against Dale Farm community would be prejudiced by disclosure of the required information. On the contrary, disclosing such information – the object of the contract with the bailiff company Constant and Co. – is relevant to the affected communities and to the public in general because of their possible impacts and effects on health and safety issues.

3. Exemption based on Section 38 – This section requires information to be exempt when it endangers physical, mental health and safety of any individual, and is subject to a public interest balance. Basildon Council, in its response following consideration through the internal review procedure has not explained how this balance was made. Furthermore, it is difficult to see how this would apply to the instant case as it is unlikely that the police or the bailiffs of the company Constant and Co. would be endangered by the information being made available. On the contrary, by making the information available it would mean legal channels were explored to protect the health and safety of the residents of Dale Farm and Hovefields, as well as of the bailiffs and third parties. On the contrary, the request for the Council to disclose such information – the object of the contract with the company Constant and Co. regarding the bailiff services for undertaking Enforcement Action at Dale Farm and Hovefields – is very relevant to the affected communities and to the public in general because of their possible impacts and effects on health and safety issues. According to the Health and Safety at Work Act 1974, which states that it is the duty of every employer to give persons (not being his employees) who may be affected by the way in which he conducts his undertaking, the prescribed information about aspects of his undertaking as might affect their health or safety (Art. 3(3)). Moreover, it is important to bear in mind that information about health and safety is not the same as information which endangers health and safety. Not all information relating to health and safety will be information whose disclosure would endanger health and safety.

4. Exemption based on Section 41 – This section applies to information that has been obtained from another person and whose disclosure to the public would constitute an actionable breach of confidence. It will only apply where a person would be able to bring a successful action for breach of confidence as a result of disclosure to the public. According to the Department for Constitutional Affairs, although Section 41 “is not subject to a public interest balance imposed by the FOI Act the courts have recognised that a person will not be successful in an action for breach of confidence if the public interest in disclosure outweighs the public interest in keeping the confidence. In obtaining information regarding the bailiff services for undertaking Enforcement Action at Dale Farm and Hovefields the safety of children as well as the other residents can be better protected as it is obvious that there is a possible health and safety risk to

the vulnerable Gypsies and Travellers whilst an eviction is taking place if guidelines on health and safety are not carried out. Section 3 of the Health and Safety at Work Act 1974 subsection 3 is express implying a duty: "it shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety". In the instant case it is 'reasonably practicable' for Basildon District Council to ensure that those not in their employment 'are not exposed to risks of their health and safety' by giving an outline of the risks involved and the precautions they advise the residents to take e.g. keep distance of 50 metres of heavy machines, such as bulldozers. This section actually requires the Council to act to avoid risks for the residents' health and safety and by doing so the Council would have to divulge information concerning the undertaking process of the Enforcement Action/eviction. This is a minimum to ensure the safety of the residents and the BDC have a duty to conform to this minimum. As has been discussed above there is a certain risk that health and safety could be compromised which satisfies the requirement 'to give to persons who may be affected.' Finally, the application of section 41 may require detailed consideration of the law of breach of confidence which, apparently, has not been taken by the Council.

5. Exemption based on Section 43 – This exempts information to be given when it would disadvantage a commercial body. It can be said to disadvantage the commercial body, which in this case is the bailiff company, if it would have to change its procedure. However in reality the procedure it uses should conform to health and safety standards otherwise it would be acting illegally. On the other hand, from the point of view of the company, the service it offers is contained almost exclusively in the operational procedure. If this procedure is done efficiently and cost effectively this is what gives the company its competitive advantage over its competitors and will wish to keep it a secret to prevent its competitors copying their procedure. In this case however, information regarding costs or any financial aspects of the contract was not required, but simply what services for undertaking Enforcement Action at Dale Farm and Hovefields will be taken and this can be seen by anyone party and by those experiencing the eviction, so to say it is confidential is unrealistic.

I would like the Commissioner to assess the arguments used by Basildon District Council to refuse the provision of the information requested and, if decided that the Council has not complied with its obligations, I require that an order for information to be disclosed within 35 days be issued.

There is a real urgency to get the information requested regarding the object of the contract established between the Council and the bailiff company, as Basildon District Council can take Enforcement Action at any time and evict the families from the land they current reside.

Sincerely,



Leticia Osorio  
 Director of the Essex Human Rights Clinic  
 University of Essex  
 Wivenhoe Park, Colchester  
 CO4 3SQ - United Kingdom.  
 Tel: +44.1206-87-4804  
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Mr. Bala Mahendran  
Chief Executive  
Basildon District Council  
[bala.mahendran@basildon.gov.uk](mailto:bala.mahendran@basildon.gov.uk)  
[www.basildon.gov.uk](http://www.basildon.gov.uk)

Ms Sue Marriott  
Basildon District Council  
St Martin's Square  
Basildon SS14 1DL 5 April 2010

### REQUEST UNDER FoI ACT

Dear Mr. Mahendran and Ms. Marriott,

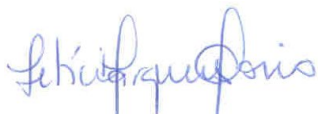
I am writing to request from you under the Freedom of Information Act a copy of any contractual or pre-contractual papers that relate to the specifics of the undertaking to be conducted by Constant & Co with regards to Dale Farm, Crays Hill, and Hovefields, Wickford.

Access to the information on the specifics of the undertaking that is contained in the contract awarded to Constant and Co. (Bedofrd) Ltd. by Basildon District Council for bailiff services for undertaking Enforcement Action at Dale Farm and Hovefields is relevant to the affected communities and to the public in general because of their impact and effects on health and safety issues. According to the Health and Safety at Work etc. Act 1974, it is the duty of every employer to give persons (not being his employees) who may be affected by the way in which he conducts his undertaking, the prescribed information about aspects of his undertaking as might affect their health or safety (Art. 3(3)).

In order for the residents of Dale Farm, Hovefields and the surrounding communities to learn about the type, impact and extent of the health and safety effects that can result from the way in which Constant and Co. will conduct the undertaking to enforce notice, information is needed on the contractual aspects of the specifics of the undertaking.

Considering that the Cabinet of Basildon District Council has decided on 10 December 2009 to delegate the authority to agree the details of the contract to the Head of Community and Environment in consultation with the Manager of Legal and Corporate Governance, we require that this email is referred to these bodies too, in case you consider it necessary.

Sincerely,



Leticia Osorio  
Essex Human Rights Clinic/ Case-Coordinator  
School of Law, University of Essex  
Wivenhoe Park, Colchester  
CO4 3SQ - United Kingdom.  
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Ms Leticia Osorio  
School Of Law University Of Essex  
Wivenhoe Park Colchester  
Essex  
CO4 3SQ

Date 23 April 2010  
Please ask for Sue Marriott (BDC)  
Department Service Advice  
Tel. No 01268 294402  
E-Mail freedomofinfo@basildon.gov.uk  
Ref 3301760

Dear Ms Osorio

I refer to your Freedom of Information request submitted on 6<sup>th</sup> April 2010

We consider that the information/part of the information you have requested is exempt from disclosure under the Freedom of Information Act, so although we hold the information we shall not be providing it to you.

The exemption we are applying is

Section 43 - Commercial interest

We are applying this exemption/these exemptions because disclosure would prejudice the interest of the contractor.

If you are unhappy with the service you have received in relation to your request and wish to make a complaint or request a review of our decision you should write to:

Lee Washbrook  
Manager Customer Services  
St Martins Square  
Basildon SS14 1DL

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a decision. Generally the ICO cannot make a decision unless you have exhausted the complaints procedure first. The ICO can be contacted at The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SKP 5AF

If you have any queries about this letter please contact me. Please remember to quote the reference number above in any future communications.

If you would be kind enough to give us your opinion of the service you have received from us in connection with this matter, we would be grateful if you could complete the survey which can be reached by the link below:

<http://crtviewpoint.mvisit.net/OnlineSurvey/default.aspx?session=4bddcf08-7c29-4ced-9cc7-2868f5445c21>

Thank you very much.

Yours sincerely

**Basildon District Council**  
St. Martins Square  
Basildon Essex SS14 1DL  
Tel: 01268 533333  
[www.basildon.gov.uk](http://www.basildon.gov.uk)

Dear Mr. Mahendran and Ms. Marriot,

In response to your correspondence of 23 April in which you considered that my Freedom of Information request submitted on 6 April 2010 is exempt from disclosure under the FoI Act because such disclosure would prejudice the interest of the contractor, according to Section 43 - Commercial Interest, I would like to clarify the content and grounds of my request.

My request to Basildon District Council based on the FoI Act to provide information on the specifics of the undertaking that is contained in the contract awarded to Constant and Co. (Bedofrd) Ltd. by Basildon District Council for bailiff services for undertaking Enforcement Action at Dale Farm and Hovefields DOES NOT refer to any financial or administrative aspect of the contract.

My request refers exclusively to the specific aspects of the undertaking, i.e., to the OBJECT of the contract, which indicates how, when and under which conditions the contractors will carry out bailiff services for undertaking Enforcement Action at Dale Farm and Hovefields.

Such information is relevant to the affected communities and to the public in general because of their possible impacts and effects on health and safety issues, according to the Health and Safety at Work Act 1974, which states that it is the duty of every employer to give persons (not being his employees) who may be affected by the way in which he conducts his undertaking, the prescribed information about aspects of his undertaking as might affect their health or safety (Art. 3(3)).

I would like to require that you to take into consideration this request as urgent as possible.

Sincerely,

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Leticia Osorio  
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Ms Leticia Osorio  
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CO4 3SQ

14 May 2010

**Ref: 3301760**

Dear Ms Osorio

**Contract with Constant & Co (Dale Farm/Hovefileds)**

I refer to your email of 6 May where you asked for a review to be carried out regarding the Council's decision not to release information in relation to your Freedom of Information Act request.

I can advise that I have reviewed this matter and the decision remains the same. In your letter you refer to an undertaking and I assume that you are referring to the undertaking that the Council gave the Courts. This undertaking is not referred to in the contract.

The details you are requesting are actual operational plans and are therefore exempt from disclosure under Section 31, 38 and 41 of the Freedom of Information Act.

You have now exhausted your right of appeal within the Council. Should you wish to pursue this matter further you will need to contact the Information Commissioners Office. The ICO can be contacted at The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SKP 5AF

Yours sincerely,

Lee Washbrook  
Manager Customer Services & Office Facilities

**Service Advice Centre**  
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Basildon | Essex | SS14 1DL  
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