1. **Introduction**

1.1 The Act will require the University, if requested, to disclose information received in response to Invitations To Tender, both successful and unsuccessful, and also contracts. It is likely that the information sought will have been provided as “commercially in confidence”. However, it should be noted that the confidentiality may only apply for a limited period.

1.2 During the negotiation phase, potential suppliers will need to be made aware of the requirements of the Act. It is therefore essential that a suitable form of words be incorporated into all Invitation To Tender documents and final contracts.

2. **Guidance**

2.1 Representatives of the University must be cautious regarding contractual obligations entered into with respect to information provided by suppliers or potential suppliers. A supplier may seek to protect its position to ensure that information it provides to the University cannot be disclosed in response to a request for access. However, the University **MUST** comply with the Freedom of Information Act 2000 and cannot contract out of the obligations imposed upon it by the Act. The University may inadvertently do this if it contractually agrees that it will apply a particular exemption to certain information. Neither can the University guarantee that it will definitely apply specific exemptions under the Act in respect of certain classes of information as the Act requires the University to manage specific requests for information on a case by case basis.

2.2 To avoid potential problems it is in the best interests of both the University and the supplier to discuss the Act’s provisions in the early stages of the tendering or contractual negotiations. This will provide the best protection for both parties when agreeing contractual clauses.

2.3 It is possible that agreement could be reached with suppliers regarding certain parts of their tendering documents being treated either “in confidence” or as “commercially sensitive”. It is not appropriate to publish guidance for agreeing such arrangements within this Policy. Members of the University having responsibility for negotiating contracts and agreements with third parties should contact the University’s Purchasing Team who can provide draft wording and more detailed guidance on the implications of the Act with respect to negotiations and contractual arrangements.
Failure to comply with University Policy may lead to disciplinary action.

The official version of this document will be maintained on-line. Before referring to any printed copies please ensure that they are up-to-date.