



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference:	EA/2013/0222
Appellant:	Jeanne Cornillon
Respondent:	The Information Commissioner
Judge:	NJ Warren
Member:	D Sivers
Member:	A Chafer
Hearing Date:	9 September 2014
Decision Date:	1 December 2014

DECISION NOTICE

1. This appeal fails.
2. Ms Cornillon is a tenant on a council estate in Lambeth that is being completely redeveloped under a PFI contract. On 20 May 2012 she asked the London Borough of Lambeth (“Lambeth”) for:-

“all the information I am entitled to about the Myatts Field North Estate PFI contract signed around May 4”.

Lambeth sent her a redacted version of the contract which runs to nearly 300 pages with another 742 pages of schedules. The information was supplied on a memory stick.

3. Lambeth originally dealt with the request under the Freedom of Information Act (FOIA) but it is not now in dispute that the appropriate regime for us to consider is the Environmental Information Regulations 2004 (EIR). The remaining disputed information consists of the redacted material. The relevant exception under EIR is Regulation 12(5)(e). This raises the question of whether disclosure of the disputed

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information would adversely affect “the confidentiality of commercial or industrial information where such confidentiality is provided by law to protect a legitimate economic interest”. The exception applies only if, in all the circumstances of the case, the public interest in maintaining it outweighs the public interest in disclosing the information. There is a presumption in favour of disclosure.

4. Ms Cornillon accepts (see paragraph 37 of her final statement) that there may be grounds for non-disclosure of very specific information, such as budgets where the information, if released, would give a contractor a competitive advantage over the PFI consortium in a tendering process for some sub-contracted work within the contract. However, she contested the extent of the redactions made by Lambeth by complaining to the Information Commissioner (ICO).
5. In the course of his investigation the ICO:-
 - (a) asked Lambeth to prepare a schedule of redactions and sent a copy of it to Ms Cornillon;
 - (b) asked Lambeth for a detailed explanation of the redactions;
 - (c) checked that the commercial companies involved agreed that the exception might apply;
 - (d) asked for and received from Lambeth three boxes of documents in order to compare the redacted and un-redacted versions.

In a decision notice dated 2 September 2013, the ICO accepted that Lambeth had applied the exception properly. He added that as the commercial sensitivity of the information faded he would expect Lambeth to provide tax payers with a clear overview of the financial commitments by which they would be bound for the next 25 years.

6. (The ICO also dealt with some redactions of personal data which are not relevant to this appeal).

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7. Ms Cornillon appealed against the decision notice to the Tribunal.
8. In the course of our work on this appeal we have considered a mountain of material. The “core bundle” amounts to 872 pages and comes in two volumes. The requested information runs to about 2,000 pages with about 285 redactions. There are also final submissions from the parties. That from the ICO runs to six pages; the one from Ms Cornillon has 34 pages. We propose to explain our decision in three ways.
9. First, we agree with and adopt the ICO’s reasoning in his decision notice.
10. Second, we wish to give a “big picture” finding about our overall conclusion.
11. Ms Cornillon’s blunt big picture submission, taken from paragraph 5.3 of her final statement is that:-

“... . The handling of the original request, the original internal review and the subsequent appeals had been characterised by a combination of obstructiveness and incompetence, an unfair bias in favour of the local authority which has resulted in significant and unnecessary delay and an enormous waste of my time.”
12. We reject that submission. No one reading the correspondence between the ICO and Lambeth could fail to be impressed by:-
 - (a) the concern of the ICO to investigate properly;
 - (b) the immense amount of work put in by Lambeth to create a schedule justifying in detail all the redactions.
13. The burden on staff at Lambeth must have been heavy but they have clearly taken very seriously their obligation to be transparent in connection with this sensitive development; they have not tried to take refuge, as they might have done, in claims that the scale of the redactions needed made the request “manifestly unreasonable”.
14. Having ourselves spent many hours reading through the documents we are satisfied, as was the ICO, that Lambeth has complied correctly with its obligations under EIR. Of

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course, with a request for information of this size, there will always be scope for human error. We cannot say even now that every error has been eradicated. In a task of this size certainty is impossible to achieve.

15. We are also satisfied that Lambeth have done all that could reasonably be expected of them under Regulation 9(1) which contains the duty to provide advice and assistance to Ms Cornillon. It is a paradox that one of Ms Cornillon's complaints is the huge amount of material which has been disclosed, even though (see page 201) she declined an approach from the ICO to narrow her request. It is simply not possible for a public authority to give in respect of a request such as this, the sort of detailed advice and assistance which it might be able to provide for someone asking for a smaller specific piece of information. In particular, we do not accept that it was reasonable to expect Lambeth to go further than they did in providing secretarial support, indexing, or early explanations of each redaction.
16. Third, we turn to deal specifically with some of the points raised by Ms Cornillon in her final statement. In the rest of this decision paragraph numbers refer to the paragraphs in that statement.
17. We do not accept the assertion (paragraph 5.2) that schedule 4 of the project agreement contains nothing commercially sensitive. We are unclear as to how it came to be disclosed when it did. Perhaps the view was taken that over time the information contained in it was less sensitive. It may have been a simple oversight or copying error. Either way its disclosure is now academic as far as this Tribunal is concerned because the document is published on Lambeth's website.
18. We do not accept the assertion (paragraph 5.1) that the open bundle demonstrates that there are more parts of the PFI contract that have not been disclosed to Ms Cornillon. There are bound to be difficulties if you ask for, as Ms Cornillon did, "all the information I am entitled to about" a particular contract. The interpretation now placed upon her request by Ms Cornillon to include, for example, invoices, work sheets and "corporate information about different companies involved" makes the request unworkable. In our judgment the interpretation placed upon the request by Lambeth

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and the ICO is a reasonable one and it would be unreasonable to order Lambeth to take further steps.

19. Paragraph 10 refers to a letter Ms Cornillon wrote to the ICO dated 7 May 2013 complaining about repetition, the use of stock phrases, inaccuracies, inconsistencies and a lack of cross-referencing. In one part of her letter Ms Cornillon even complains about Lambeth mistakenly failing to redact when they should have done so. Requests for information on this scale usually do impose heavy burdens of redaction on public authorities. Inevitably errors will creep in and we do not consider that the ICO erred by not exploring these further. At paragraph 17, Ms Cornillon says that she expected the commissioner to obtain:-

“... a genuinely meaningful and nontechnical justification and explanation of each redaction without necessarily disclosing the actual information deemed confidential.”

Presumably Ms Cornillon also expects this to be achieved without the use of “explanatory stock phrases.” Her demands, in our judgment, are impossible to meet and are therefore unreasonable.

20. At paragraphs 27-36 Ms Cornillon discusses the extent of the redactions and complains of errors.
21. Taking a proportionate approach we have considered a sample of the redactions in the closed material with which we were provided to check that they were proper. It was true that some of the redactions originally proposed in the schedule dated 8 March 2013 appeared to us to be questionable. In respect of each one of these, however, we found that at some stage disclosure of that information had taken place. In no case, on checking the closed bundle, did we find an item which seemed to us to have been improperly redacted. The reason for later disclosure may have been error; change in circumstances; or a change of mind. Whichever it might be the issues are now academic and we were satisfied from the work we did that the scope of the redactions was proper.

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22. At paragraph 40 Ms Cornillon challenges the ICO reference to future PFI housing schemes asserting that there will not be any. Even if this is true, there will still no doubt be large building projects of some kind in respect of which there will be similar tenders.
23. At paragraphs 48-50 Ms Cornillon makes several criticisms of the redactions. We have already explained our own testing of the redactions. It seems to us that these criticisms overlook the “jigsaw” or “mosaic” effects (see page 126) of how a skilled competitor might interpret incomplete information.
24. Ms Cornillon also points to the fact that some of the private flats for sale are now complete and advertised for sale. We do not accept the assertion that it is therefore open to anyone to obtain the disputed information, or part of it, by calculation. Prices change over time. Moreover the ICO and Lambeth have both accepted that further disclosure can and should be made as time goes by. The ICO decision notice and this appeal have focused on what disclosure should have been made by Lambeth at about the time they completed their review.
25. Ms Cornillon also makes submissions about the conduct of the public interest test. She is very concerned about what she regards as underperformance of the PFI contract. However, the events to which she refers took place long afterwards. Release of the disputed information would not have helped mend a roof, fix a boiler or correct breaches of health and safety legislation. That work can be done without it. Nor do we accept that release of the disputed information would hold the contractors to account for failings. If a roof leaks or a boiler does not provide hot water, pointing to figures in a schedule will not improve the argument.
26. For these reasons our decision is that the ICO decision is correct.

NJ Warren

Chamber President

Dated 1 December 2014