



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

Tribunal Reference: EA/2014/0185
EA/2014/0186
EA/2014/0187

Appellant: David Humphrey

Respondent: The Information Commissioner

Judge: Peter Lane

Member: Andrew Whetnall

Member: John Randall

DECISION NOTICE

DECISION

A. Except as provided in paragraph B below, the Tribunal dismisses Mr Humphrey's appeals and upholds the Commissioner's decision notices dated 26 June 2014.

B. The Commissioner should have exercised his discretion differently as regards the disclosure of the information mentioned in paragraph (3) of the appellant's request of 21 January 2013 (total value of all contracts issued to FACT in 2007 to 2012 inclusive). The public authority must by 26 April 2015 supply that information or serve a notice under section 17(1) of the Freedom of Information Act 2000 in respect of that information.

REASONS FOR DECISION

1. The appellant is a taxi driver. He has concerns about contracts awarded by Cambridgeshire County Council to Fenland Association for Community Transport ("FACT"). He requested a range of information from the Council about the contracts awarded to FACT. The appellant also sought information relating to Huntingdonshire Association for Community Transport ("HACT"), an organisation whose relationship with the Council is regarded by the appellant as problematic.

2. The Council provided some of the requested information but withheld other information on the basis of sections 40(2) and 40(3) of the Freedom of Information Act 2000 ("FOIA"); as well as contending that certain other information was not held by it.

3. The parties to this appeal were content for it to be determined without an oral hearing. We are satisfied that, in all the circumstances, we can properly determine the issues in that way.

THE REQUESTS

First set (ICO case reference FS50511196, Tribunal case reference EA/2014/0185)

4. On 21 January 2013 the appellant wrote to the Council requesting information in the following terms:-

“Please find below my freedom of information request regarding Fenland Association for Community Transport (FACT Ltd) and all current contracts they hold with the CCC [the Council]

- (1) Please list each contract
 - (i) Contract number
 - (ii) Contract type (Home to sch, Social services, bus hire)
 - (iii) With or without driver
 - (iv) Date tendering process started
 - (v) Date/Time tendering process closed
 - (vi) Pick up postcodes or road and town name, drop off postcode or road and town name (OR) round mileage from FACT offices back to FACT offices
 - (vii) Return journey Yes/No
 - (viii) Live mileage
 - (ix) Number of passengers
 - (x) Escort required (plus cost if itemised in bill)
 - (xi) Date/Time Fact entered bid
 - (xii) Wheel chair vehicle required
 - (xiii) Next best quote name and price. Date/Time bid entered
 - (xiv) Reason for winning bid
- (2) If a contract carries several children on a home to school contract, and one of was absent would the daily charge remain the same?
- (3) Value of all contracts issued to FACT Ltd in each of the following years 2007, 2008, 2009, 2010, 2011, 2012.
- (4) Value of all grants paid to FACT Ltd from the CCC for each of the following years 2007, 2008, 2009, 2010, 2011, 2012.
- (5) Total back to base mileage and total live mileage covered for all contracts, and total value of the contracts (bus or car hire with driver) for 2011
- (6) Total mileage used and total value of all (van or car hire no driver) contracts for 2011.
- (7) In each year of 2011 and 2012 how many contracts did FACT bid on, and supply Contract Numbers
- (8) In each year of 2011 and 2012 how many winning bids did FACT Ltd make, and please supply contract numbers.”

Second set (ICO case reference FS50510473, Tribunal case reference EA/2014/0186)

5. On 19 March 2013 the appellant requested the following:-

“3.3. it states (FACT) shall accept Concessionary Fares passes when presented, and offer members a discount in line with the terms and

conditions as set down in the separate CCC Concessionary Fare Scheme agreement document.

[1] May I please have a copy of this agreement with FACT.

3.6 it states including transport requests throughout the CCC operated Cambridgeshire Brokerage Scheme (CaMBS)

[2] May I please have the figures for this transport for 2011 and 2012 in mileage and cost and purpose of transport. And in mileage, cost and number of passengers for the third quarter of 2011 & 2012.

3.7 it states 'it is the responsibility of (FACT) to ensure that all members meet the required eligibility criteria IE that all passengers thorough rural isolation or mobility difficulties, would have difficulty in accessing or using conventional means of transport...

...[3] secondly as this is a requirement of the terms and conditions of this annual grant, will the CCC now confirm that this will be implemented immediately, both for new applicants and renewals alike...

...[4] 5.1 Please may I have a copy of the annual budget and action plan for 2013.

[5] Please may I have a copy of the 2011 financial report.

[6] Please could I have a copy of the Quartely [sic] service performance indicators (for 2011 and 2012), for each service operations as stated in section 3.1 to 3.5, 3.6 and 3.7 of the agreement.

This would include:

- (a) Total number of single passengers journeys undertaken (a passenger journey is defined as a one-way journey, therefore the outward and return parts of a return journey are counted as two single passengers)
- (b) Total miles travelled
- (c) Revenue received from each service operated
- (d) A breakdown number of individuals and group members by parish
- (e) Total number of group hire bookings including total number of passengers carried, mileage and revenue received
- (f) Total number of unmet requests and journeys not operated

[7] Please could I have a copy of all monitoring information as detailed in section 3.3 and 5.1 of this agreement, including those journeys made using bus passes."

Third set (ICO case reference FS50524922, Tribunal case reference EA/2014/0187)

6. On 10 October 2013 the appellant submitted the following request to the Council:-

"Could I please have a copy of HACT's [Huntingdon Association for Community Transport] and FACT's [Fenland Association for Community Transport] actual application for the Community Transport fund?"

Council's responses

7. So far as concerns the first set of requests, the Council responded on 18 February 2013 as follows:-

“With regards to request one it provided a spreadsheet which included the following information:

- (i) Contract number
- (ii) Contract type
- (iv) Date tendering process started
- (v) Date tendering process closed (but not the time the process ended)
- (xi) Date FACT entered bid (but not the time the bid was entered)
- (xii) Wheel chair vehicle required
- (xiii) Price of next best quote and date entered (but not the name of the bidder for that particular contract or the time bid was entered)”

8. The Council stated that it did not hold the information sought by (viii): live mileage. It said that the information sought by (vi) and (xi) was exempt from disclosure on the basis of section 40(2) of FOIA. The name of the next best bidder (xiii) for each contract was said to be exempt on the basis of section 43(2) of that Act.

9. As for request [2], the council stated that the daily charge remained the same whether or not all children travelled, unless it was made aware of a long term absence. The information sought by request [3] was withheld by the Council, relying on section 43(2). The information sought by request [4] was provided.

10. The Council stated that it did not hold the information sought by request [5]. So far as concerned request number [6] it explained that it did not hire cars or vans from FACT without drivers. As for request [7], the Council said that it withheld details of the contracts that FACT bid on but did not win, relying on section 43(2).

11. The Council's response to the appellant's second set of requests was made on 18 April 2013. The Council provided the information sought by request [1]. It said that it did not hold information about mileage and costs for CaNBS; but it did hold the number of enquiries received and the number of journeys undertaken and this information was provided. The Council said that request [3] was not a request for recorded information and would be responded to separately in due course. The Council said that it did not hold the information sought in requests [4] and [5], although relevant officers would have had sight of it. Council provided the information sought by requests [6](a) and (b) but did not hold other information. So far as concerns [6](e), the Council explained it did not hold the raw data. It provided the information sought by request [7].

12. Following the request and internal review, the Council concluded that, as regards request [2], none of 36 journeys were paid for by the Council. The Council did not hold the information falling within requests [4], [5], and [6](c), (d) and (f). The information sought by request [6](e) – full data included school journeys – was said to be exempt from disclosure on the basis of sections 41(1) and 43(2) of FOIA.

13. The Council responded to the appellant's third set of requests on 7 November 2013. He requested application forms: APP1, APP2 and APP3, together with a spreadsheet APP4, were provided, with redactions in APP1, APP3 and APP4.

Commissioner's decisions

14. The Commissioner's decision on the first set of requests was that:-

(a) Request [1](vi): the road names and postcodes of pick up addresses were exempt from disclosure on the basis of section 40(2);

(b) Request [1](ix): the number of passengers for each journey was exempt from disclosure on the basis of section 40(2);

(c) Request [1](viii): the name of the second best bidder for each contract was exempt from disclosure on the basis of section 43(2) and in all the circumstances of the case the public interest favoured maintaining the exemption;

(d) Request [3]: the total value of the contracts paid to FACT was exempt from disclosure on the basis of section 43(2) and in all the circumstances of the case the public interest favoured maintaining the exemption;

(e) Request [7]: a number of contracts and the contract reference numbers which FACT bid on but did not win were not exempt from disclosure on the basis of section 43(2);

(f) The Council did not hold information falling within the scope of requests [5] and [6].

15. The Commissioner required the Council to take steps to ensure the provision of information falling within the scope of request [7] that had not been previously disclosed.

(a) The Commissioner's decision as regards to the outstanding matters in the second set of requests was that:-

(b) The Council did not hold information falling within the scope of requests [4], [5] and [6](c), (d) and (f);

16. The information falling within the scope of request [6](e) was not exempt from disclosure on the basis of section 43(2) and the Commissioner required the Council to take steps to provide it.

17. The Commissioner's decision regarding the third set of requests was that the information redacted from documents APP1 and APP4 was exempt from disclosure on the basis of section 43(2) and in all the circumstances of the case the public interest favoured maintaining the exemption. The information redacted from APP3, however, was not exempt from disclosure on the basis of section 43(2) and the Commissioner required the Council to take steps to provide it.

FINDINGS

18. Our unanimous findings are as follows.

First set of requests: [1](vi) and (ix): Road names/postcodes of pick up addresses/number of passengers for each journey.

19. Section 40(1) to (4) of the FOIA reads as follows:-

“40 Personal information.

- (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if—
 - (a) it constitutes personal data which do not fall within subsection (1), and
 - (b) either the first or the second condition below is satisfied.
- (3) The first condition is—
 - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the M1Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the M2Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.
- (4) The second condition is that by virtue of any provision of Part IV of the M3Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).”

20. The appellant contends that the exemption in section 40(2) is not engaged. He said that, in another information request in February 2013, he had been sent details which included the road and town name of each pick up and drop off location. This was an alternative, which should have been acted upon by the Council in the present case.

21. On the basis of the evidence, the Tribunal is entirely satisfied that disclosure of the information (whether postcodes or road names) could be used, alongside other information publicly available – especially to locals – to identify where vulnerable children and those with learning and/or physical disabilities live and where they attend school. The same is true of other children using FACT transport services. As a result of information already disclosed by the Council (the breakdown by contract of the name of the pick up town and corresponding name of the destination school), the consequence of disclosing the presently requested information would enable the public to identify which school a particular child attended.

22. We are satisfied that disclosure of the information would be unfair and in breach of the first data protection principle; namely, that:-

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

23. On the facts, no issue regarding Schedules 2 or 3 arises. In determining whether disclosure would amount to processing the relevant data “fairly”, it is relevant to have regard to the reasonable expectations of the individual as to what would happen to their personal data. There is nothing to suggest that the individuals in question have consented to use of their data in this way; or, indeed, that they could reasonably have expected the data to be made public in the manner envisaged by the appellant. Indeed, they would have, we find, a reasonable expectation that their data would not be used in this way. We have had regard to the appellant’s concerns to expose what is believed to be malpractice on the part of the Council as regards the awarding of contracts to FACT and the public interest issues that this raises. However, the balance falls firmly to be struck in favour of the individuals. Disclosure would amount to a significant infringement of the privacy of service users. It would in all the circumstances be unfair and violate the first data protection principle.

24. We make the same findings in relation to request [1](iv): passenger numbers. Given the evidence, which we accept, that the contracts with which we are concerned provide a service to a very small number of individuals, in some cases only one or two pupils, releasing these numbers, alongside information already disclosed, would make it easy for individuals to be identified.

Second set of requests: [4], [5] and [6](c), (d) and (f)

25. The issue to be decided here is whether, on the balance of probabilities, the Council holds the requested information. We find that it does not.

26. Request [4] was for a copy of FACT’s annual budget and action plan for 2013. Request [5] was for a copy of its 2011 financial report. Request [6](c), (d) and (f) was for information regarding revenue received from each service operated; a breakdown of individuals and group members by parish; and the total number of unmet requests and journeys not operated.

27. The appellant has argued that it is illogical for the council to retain some of the information provided to it by FACT as part of the monitoring process, but not other documentation which had also been supplied for the same purpose. He highlighted the terms and conditions of the agreement between FACT and the Council, which stated that the Council “must receive” annual financial reports by the end of September for the previous financial year. The appellant therefore contended that this documentation had to be received, rather than merely seen by a relevant officer.

28. Whilst we agree with the Commissioner, to an extent, that the appellant’s concerns are understandable, we find on the balance of probabilities that the relevant

information is not, in fact, held by the Council. The Commissioner has required the Council to explain what searches were carried out, which has elicited the evidence that officers with monitoring responsibility had searched the manual files where the information might be held. They were the only members of staff with a business need to have this information, as a result of which their searches would have been more likely than not to have identified it, were it to be held. An electronic search was unnecessary, given that the information was provided in “hard” form. The Commissioner also pressed the Council to explain how it monitored FACTs obligations under the grant funding agreement, with a view to understanding why the information sought was not held in that connection. We are satisfied, however, on the evidence that the structure of management committee meetings is not such as to make it more likely than not that the relevant information would be held by the Council.

29. We find ourselves in agreement with the Commissioner that in deciding the question on the balance of probabilities, it is material that the Council have provided the appellant with a wide range of other information which he has sought. Overall, the history of the Council’s actions regarding information requests from the appellant indicates that, in reality, it does not hold the relevant information.

30. We make the same findings in relation to request [6](c), (d) and (f). In this regard we note in particular that the appellant provided the Commissioner with a copy of a letter he had received in response to a separate FOI request made to another public authority. This letter, from FACT, explained that under a service level agreement it provided the Council with quarterly performance indicators which would indicate the number of passenger journeys, total miles travelled, total number of group hire bookings and total number of unmet requests and journeys not operated. This letter is dated in 2012. On the basis of it, the Commissioner asked the Council to explain what searches have been carried out to locate this information, which elicited the response that performance indicators had been taken from previous generic agreements no longer used by the Council. The Council therefore had no business need to record the information. Searches had been carried out on the only electronic system where it was considered the information in question might be held. This was because the relevant information, as opposed to the matters set out above, was only submitted to the Council in electronic format. The search, however, revealed nothing.

31. We find on the balance of probabilities that, in all the circumstances, the Council had no need to retain the data requested in request [6](c), (d) and (f), relating as it did to obsolete performance agreements. Again, the Council’s searches were, we find, as much as could reasonably be expected, against the backdrop of the Council’s record (mentioned above) in supplying the appellant with a significant amount of requested information.

First set of requests: [5] and [6] (total live mileage and total back to base mileage for each of FACT’s contracts 2011; total mileage used and total value of all van or car hire with no driver contracts for 2011)

32. The Council has provided the appellant with live daily mileage, where that is recorded on the contract specification. The Council stated, however, that it did not hold information regarding base mileage. The Council has explained to the Commissioner that total back to base mileage is simply not required by the Council as such and is not provided by the operators. We can see nothing in the materials, including the appellant’s

submission, to suggest that the Council's response is unlikely to be true. In all the circumstances, we find on the balance of probabilities, that this information is not held.

33. As for request [6] the Council has explained both to the appellant and the Commissioner that it does not hire cars or vans from FACT without drivers. Accordingly, it does not have this information. On the balance of probabilities, we find that the Council does not hold it.

Commercial interests exception

34. Section 43(2) of the FOIA provides:-

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)”

35. Since this is a qualified exception, we must be satisfied that, even if section 43(2) is satisfied, in all the circumstances of the case the public interest is in favour of maintaining the exemption.

36. In the first set of requests, the Commissioner decided these issues in favour of the Council, as regards requests [1](xiii): the name of the second best bidder for each contract; and in relation to request [3]: the total value of the contracts paid to FACT.

(1) Second best bidders

37. As regards the second best bidders, the Council submits that disclosure of their names would be likely to prejudice their commercial interests, as disclosure would assist an attempt by competitors to build a detailed picture of how these operators bid for contracts. This was particularly the case, given that as part of the response, the Council had already disclosed the daily rate proposed by the second best bidder for each contract. The Council contend that bidders enter the tendering process with the expectation that their tender evaluation scores would not be disclosed if their bid was unsuccessful. Disclosing the identity of unsuccessful bidders would be likely to deter organisations from submitting tenders in the future because they would be concerned about the Council disclosing information about their bids under FOIA. That would make it more difficult for the Council to operate a competitive tendering process and thus also affect the Council's own commercial interests.

38. The appellant, by contrast, pointed to the Council's regulations, which informed bidders that they should state if any of the information supplied by them was confidential or commercially sensitive or should not be disclosed in response to a request for information made to the Council. Accordingly, the appellant argues that unless the Council could present documentation from each individual bidder regarding specific information that had been withheld, giving a valid reason for doing so, there were no grounds for withholding the information.

39. In further submissions, the appellant states that there were some 25 contracts involved, concerning dozens of companies. Thus any given company “may have come second once, maybe twice possibly even three times!”. Accordingly, the appellant

contends that to suggest that any realistic strategy can be formulated from a data sample of this kind would be “completely nonsensical”.

40. At this point, it is necessary to say a little more about the appellant’s concerns. He regards this and the other data he has sought as important, in that as his “campaign [has] developed more and more evidence has come to light of the real possibility of fraud and corruption (even the independent police complaint commission is warning us to have serious concerns about the police investigation especially regarding potential corruption within the Councils)”. The appellant then goes on to mount an argument based on allegations regarding a transport manager with the Council and complaints about the activities of Councillors. The appellant considers that the public interest favours “the possibility of exposing even more evidence of potential corruption and/or fraud of public funds!”

41. It is not this Tribunal’s function to act as an investigative body into allegations of corruption or other criminal and other wrongdoing on the part of public authorities. That is the function of the police, whose powers of investigation are, of course, not reliant on freedom of information legislation. But, having said this, it is possible that information that is objectively capable of raising suspicions – such as a 100% success rate for FACT’s contract tenders – could tilt the balance in favour of disclosure, despite the effect disclosure would have on commercial interests, including those of a third party untainted by such suspicions. We have approached the issue of disclosure with that possibility in mind but have not identified anything that assists the appellant.

42. We are unpersuaded by the appellant’s argument that revealing the identities of the second best bidders would, in the circumstances, produce nothing meaningful for potential commercial rivals of those bidders. It is speculation to assume how many of those second best bidders may have been the same organisation. In any event, we agree with the Commissioner that, in the circumstances, revealing their identities would indeed provide a direct insight into their approach for tendering for such contracts. There is thus a causal relationship between the disclosure of the withheld information and the commercial interests of the second best bidders. The chance of prejudice occurring must, we find, be in this case more than a hypothetical possibility. Whilst we know what the appellant says about the Council’s regulations regarding tendering, there is no evidence to indicate that the second best bidders are, in the circumstances, content to have their identities revealed (given that the daily rates have been disclosed). In any event, in the circumstances we find that the Council’s own commercial interests could be damaged by revealing the information, regardless of the views of the second best bidders, in that this could potentially deter other bodies from submitting future bids to the Council.

43. In this regard, we disagree with the Commissioner so far as concerns his view that the behaviour of future bidders must be somewhat speculative. We find it likely that future bidders could be discouraged from bidding if they became aware that such information regarding their bids could be disclosed to rivals. In any event, the issue is immaterial since we find that there is clear prejudice to the commercial interests of the existing second best bidders.

44. In all the circumstances, we find that the public interest in disclosure of information regarding the bidding process and awarding of contracts by the Council Transport Services, strong though it is, does not outweigh the prejudice to the commercial

interests of the second best bidders. Both in relation to the second best bidders and, we find, as a general matter, the appellant has failed to demonstrate that revealing the requested information serves a public interest which is so great as to outweigh any relevant countervailing factor. This is particularly the case here, where the issue of the second best bidders is necessarily somewhat tangential to the apparent complaints regarding the relationship between the Council and FACT (and HACT).

(2) Total value of contracts paid to FACT

45. In the course of its deliberations on this issue, the Tribunal became concerned whether the striking of the public interest on this issue might be affected by the apparent disclosure to the appellant of the daily values of the FACT contracts meant that the annual value had, in effect, been disclosed. The Tribunal accordingly issued the following direction:

“1. The Tribunal notes that one of the issues in these appeals is whether Cambridgeshire County Council is entitled to rely on section 43(2) of the Freedom of Information Act 2000 in order to refuse to disclose the value of all contracts issued to FACT in the years 2007 to 2012 inclusive (see first set of requests, 21 January 2013, item [3]).

2. It appears from the “closed” documentation supplied to the Tribunal that, as regards the “Current FACT contracts for Home to School Transport” (Appendix 1), the daily value of FACT contracts has been disclosed for certain routes (the figures are not marked as being redacted). It is unclear whether the aggregate of these daily values (based on the number of days in school terms) comprises the annual value of the current contract. If it does, then the annual value for the current contract would appear to have been (indirectly) disclosed. This may affect the case for not disclosing the total contract values for the relevant years.

3. The Commissioner is directed to respond in writing to the Tribunal on this issue (copying to the appellant) not later than **13 March 2015**. Any written response that the appellant wishes to make must be submitted to the Tribunal (and copied to the Commissioner) not later than **27 March 2015**.”

46. On 13 March, the Commissioner responded to the direction. Having inquired of the Council, the Commissioner was informed that it had, in fact, dealt with a request from the appellant regarding the daily values at around the same time that the appellant submitted the material request on 21 January 2013. The Council advised that it initially refused to disclose the information about the contract values but, following an internal review, it decided to do so, publishing them on the Council’s disclosure log, it seems on 6 February 2013. On 18 February 2013, the Council disclosed the length of the relevant contract.

47. Importantly, on 4 March 2013, an official of the Council emailed the appellant, informing him of the number of days by which the daily price needed to be multiplied, in order to arrive at the annual total. This information, however, post-dated the Council’s response to the request with which the Tribunal is concerned and appears to have been supplied to the appellant only rather than the world at large, in response to an information request.

48. In his response of 16 March to the directions, the appellant essentially complained about faulty electronic web links, which he indicated had hampered his ability to see what the Council had posted on its website.

49. We are concerned with the correctness of the Commissioner's decision as regards the total value of contracts paid to FACT, as at the date of the Council's response in February 2013. As matters stood at that time, there was a case for saying that the public interest test supported the exemption. We are aware of the appellant's contentions that in reality it is FACT which is enjoying unfair advantages, as regards its relationship with the Council. There is, however, no evidence before us to show on balance that FACT, albeit that it operates as a not-for-profit organisation, does not have commercial interests which could be damaged by disclosure. Plainly, despite their charitable status, both FACT and HACT can have commercial interests, not least in relation to securing funding via grant applications, which may be threatened if their commercial strategies are revealed to rivals.

50. However, the fact that the Council disclosed the daily values and that, on 4 March 2013, it emailed to say how the annual total could be calculated, casts important light on how the public interest test fell to be applied, as at the date of the Council's response on 18 February 2013. We do not consider the fact that the final element of the information may not have been supplied to the world at large counts for very much, particularly given what the Council must know of the appellant's campaign and the use to which he may well have seen fit to put the information. Overall, the Council's actions seem to us to be indicative of the fact that there was, in truth, no great strength in the contention that disclosing the total value of the contracts paid to FACT would do such damage to FACT's commercial interests as to outweigh the public interest in securing as much transparency as possible regarding the Council's dealings with FACT.

51. The Tribunal accordingly finds that, on this issue, the balance falls to be struck in favour of the disclosure of the information, in the public interest.

Third set of requests: redactions from documents APP1 and APP4

52. Pursuant to rule 13, we have seen in unredacted form the application form (APP1) submitted by HACT and that organisation's spreadsheet or "trial balance at 31/03/2012". We have dealt above with the not-for-profit aspect of FACT and HACT. Besides contending that HACT could not be damaged commercially because of its status, the appellant asserted that each funding bid was unrelated to any future bid and thus could not be used to prejudice any organisation's future bids for funding. He also contended that HACT's application form stated that it did not duplicate any similar service. The appellant said that since the application was for a grant, what was sought by HACT was a "gift" rather than a commercial activity.

53. We do not accept those submissions. As well as reiterating what we have said earlier, we find that the redacted information concerning HACT's total revenue costs and capital costs (APP1) and its trial balance/spreadsheet (APP4) relate to HACT's overall activities rather than operations that are specific to the grant application. We agree with the Commissioner that it would be reasonable to assume the disclosure of this information could well be used by bidders for future funding to inform their own bids, by establishing how HACT had allocated its internal costs, and used that information to inform its own activities and future bids, to the commercial detriment of HACT.

54. We reiterate what we have earlier said regarding the public interest. So far as the redacted material in APP1 and APP4 is concerned, this has only a tangential bearing on the appellant's concerns.

Summary

55. We conclude that the Commissioner's decision-making in these appeals was in substance correct, save in relation to the total value of the FACT contracts. The appeals are, therefore, allowed in part.

**Peter Lane
Chamber President**

Dated

26 March 2015