



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2021/0030V

Heard via the Cloud Video Platform on 15 December 2021.

Before
Judge Stephen Cragg Q.C.

Tribunal Members
Roger Creedon
and
Paul Taylor

Between

CARDIFF AND VALE UNIVERSITY HEALTH BOARD

Appellant

- and -

(1) INFORMATION COMMISSIONER

First Respondent

(2) PARKINGEYE LIMITED

Second Respondent

The Appellant was represented by Rachel Jones

The Commissioner was represented by Eric Metcalfe

ParkingEye Limited was represented by Timothy Pitt-Payne QC

DECISION AND REASONS

DECISION

1. The appeal is allowed.

MODE OF HEARING

2. The proceedings were held via the Cloud Video Platform. The parties all joined remotely. The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.
3. The Tribunal considered an agreed open bundle of evidence comprising 261 pages, a closed bundle, an authorities bundle and skeleton arguments from the parties.

INTRODUCTION

4. On 28 February 2019, a requester made a request for information about parking enforcement at various hospitals to the Cardiff and Vale University Health Board (the Health Board), the relevant part of which, for the purposes of this appeal, reads:-

Under clause 5.5 of the contract with Parking Eye, [the Health Board] has the right to audit all of the contractor's records. Has [the Health Board] conducted any such audit, and if so, has that audit looked at the number of PCNs issued and the number of PCNs cancelled. If so, please provide the information gathered by auditors on the number of PCNs issued and the number of PCNs cancelled.

5. On 27 August 2019, the Commissioner accepted a complaint as to the Health Board’s handling of the request. On 28 September 2019, the Health Board completed its internal review focusing on the other parts of the request. On 11 February 2020, the Health Board wrote to the Commissioner to explain that, in further investigating the circumstances of the request, they had found information within the scope of the request received from ParkingEye relating to the number of PCNs issued/cancelled. That information amounted to information contained in a spreadsheet provided by ParkingEye to the Health Board regarding the number of parking charge notices (PCNs) issued at the Health Board’s car parks in the month of February 2019 and the number of PCNs cancelled in the same period. The Health Board argued that the disclosure of the information “would be prejudicial to the commercial interests of both ParkingEye and [the Health Board] itself”.

THE STATUTORY FRAMEWORK

6. Section 1(1)(b) FOIA provides for a general right of access to information held by public authorities, upon request. S.2(2) of FOIA provides that:

(2) In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that—

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

7. As stated above, the relevant exemption relied on by the Health Board is in section 43(2) FOIA which, materially, reads as follows:-

43.— Commercial interests.

(1) ...

(2) 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).

8. S.43(2) FOIA is not a provision conferring absolute exemption listed under s.2(3) FOIA. Therefore it is a qualified exemption, subject to the public interest assessment in s.2(2)(b).

9. In relation to the test for prejudice in s43(2) FOIA, in *Hogan v Information Commissioner* (EA/2005/0026, 17 October 2006)(upon which all the parties rely) it was stated as follows:-

28. The application of the ‘prejudice’ test should be considered as involving a number of steps.

29 First, there is a need to identify the applicable interest(s) within the relevant exemption...

30 Second, the nature of the ‘prejudice’ being claimed must be considered. An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and that the prejudice is, as Lord Falconer of Thoroton has stated, “real, actual or of substance” (Hansard HL, Vol. 162, April 20, 2000, col. 827). If the public authority is unable to discharge this burden satisfactorily, reliance on ‘prejudice’ should be rejected. There is therefore effectively a *de minimis* threshold which must be met. ..

31 When considering the existence of ‘prejudice’, the public authority needs to consider the issue from the perspective that the disclosure is being effectively made to the general public as a whole, rather than simply the individual applicant, since any disclosure may not be made subject to any conditions governing subsequent use.

32...

33 ...

34 A third step for the decision-maker concerns the likelihood of occurrence of prejudice. A differently constituted division of this Tribunal in *John Connor Press Associates Limited v Information Commissioner* (EA/2005/0005) interpreted the phrase “likely to prejudice” as meaning that the chance of prejudice being suffered should be more than a hypothetical or remote possibility; there must have been a real and significant risk. That Tribunal drew support from the decision of Mr. Justice Munby in *R (on the application of Lord) v Secretary of State for the Home Office* [2003] EWHC 2073 (Admin), where a comparable approach was taken to the construction of similar words in Data Protection Act 1998. Mr Justice Munby stated that ‘likely’: “connotes a degree of probability where there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there ‘may very well’ be prejudice to those interests, even if the risk falls short of being more probable than not.”

35 On the basis of these decisions there are two possible limbs on which a prejudice-based exemption might be engaged. Firstly, the occurrence of prejudice to the specified interest is more probable than not, and secondly there is a real and significant risk of prejudice, even if it cannot be said that the occurrence of prejudice is more probable than not. We consider that the difference between these two limbs may be relevant in considering the balance between competing public interests (considered later in this decision). In general terms, the greater the likelihood of

prejudice, the more likely that the balance of public interest will favour maintaining whatever qualified exemption is in question.

THE DECISION NOTICE

10. The Commissioner's decision notice is dated 21 December 2020 and sets out the Health Board's arguments in relation to ParkingEye as follows:-

15.Essentially, ParkingEye considers that disclosure of the withheld [information would] provide "a methodology for the calculation of the costs of operation", including the revenue and profitability of the contract. This would give its competitors a competitive advantage in any re-retendering of the contract in the future.

16. ParkingEye stated that it is regularly engaged in competitive tenders of similar contracts and the smallest margin can make a difference between a bid being successful. It considers that "Whilst it is unlikely all new business would be effected, if even 1 new client is compromised, this could prejudice profit of approximately £500k per annum and typically similar contracts have a 5 year term making the potential loss of a single contact worth a high percentage of our predicted EBITDA (Earnings before interest, taxes, depreciation and amortization)".

17. Parking Eye also considers that disclosing information concerning cancellations and earnings would cause "public perception and credibility issues for the parties". Disclosure could also damage the integrity of the car park management solution as a whole by creating a situation where car park users will submit falsified reasons why a PCN should be cancelled if for example it is made public that there is a policy of accepting an appeal for a particular reason.

18. Finally, ParkingEye pointed out that the withheld information is very subjective and could cause commercial prejudice if it is taken out of context. The withheld information shows a snapshot over a particular time period and "may not provide an accurate commercial view over a truly representative sample period". ParkingEye considers this could create an adverse public relations impact - for example cancellations could have been particularly high over one period because of a specific issue which was subsequently resolved. Affected individuals "may have been compensated or other actions may have been taken to mitigate or remediate, which would not be visible of [sic] from the statistics".

11. The Commissioner also said that the Health Board 'has provided somewhat limited representations to support its position that disclosure of the withheld information would prejudice its own commercial interests',

...and simply contends that: "Disadvantaging a supplier by disclosure of commercially prejudicial information is likely to damage the UHB's commercial

relationship with the supplier and deter other companies from contracting with the UHB in the future. This may also have the impact of discouraging competition in the sector, resulting in a smaller pool of bidders during subsequent tender processes. Ultimately, a detrimental impact on the UHB's bargaining position with suppliers would lead to less effective use of public funds in future."

20. The Health Board believes that the information would be current enough to be used by ParkingEye's competitors in future tender exercises. In addition, it also considers that disclosure may set a precedent which would prevent it from withholding similar information in response to any future requests for similar information, which may be received following any disclosure in this case.

12. The Commissioner applied the law to this set of evidence. She was satisfied that 'the potential prejudice described by the Health Board clearly relates to the interests which the exemption contained at section 43(2) FOIA is designed to protect' (paragraph 23).

13. The Commissioner accepted that 'disclosure of the withheld information could provide a methodology for the approximate revenue received over a period of time - in this case February 2019' (paragraph 25). This would be an incomplete picture, however, because of the different payment amounts for a PCN depending on when payment is made.

14. The Commissioner accepted that if the withheld information showed a high number of PCNs issued at a particular site, it would give an indication that a significant revenue had been generated. However, the withheld information only refers to one month in a five year contract and so a clear picture of profitability would not be shown:-

26...The Commissioner notes that ParkingEye itself has referred to the fact that the withheld information only shows a snapshot and may not give an accurate commercial view. ParkingEye has also referred to the fact that a particular issue may have affected the number of PCNs issued/paid/cancelled during a specific period, so again the withheld information would not be an accurate picture of the overall revenue or profitability of the contract over the contract period.

15. The key to the Commissioner's views on the effect that disclosure might have on ParkingEye's commercial interests is set out in as follows:-

27. If the potential revenue that could be obtained from the contract had the effect of encouraging new bidders in any future tender exercise, it is not clear to the Commissioner how this would prejudice ParkingEye's commercial interests as there is no reason to believe that any bidder would provide better value for money or a better service than ParkingEye as they would still have no knowledge of the current contract between the Health Board and ParkingEye. On the other hand, if the numbers of PCNs issued/cancelled/paid suggests that the contract was not

profitable and discouraged future bidders, whilst this may have an impact on the pool of bidders available to the Health Board, it would not have any effect on ParkingEye's commercial interests as there would be less competitors.

16. The Commissioner also rejected the argument that disclosure might mean that users might submit false claims for cancellation of PCNs if it became known that certain types of appeal were routinely accepted. The Commissioner noted that the information does not provide reasons for cancellation or reveal any policies or practices in place. The Commissioner concluded:-

31. The Commissioner considers that the Health Board has not demonstrated that the withheld information would either encourage more interest in companies bidding for future services or that any new bidder would have a competitive edge over ParkingEye in winning any new contracts. Neither has the Health Board demonstrated that disclosure of the withheld information would be likely to result in fewer companies choosing to bid for contracts in the future.

32. In summary the Commissioner considers that the Health Board has failed to explain any causal link between disclosure of the withheld information and the commercial prejudice claimed. As the Health Board has not sufficiently demonstrated that disclosure would, or would be likely to, prejudice any party's commercial interests, the Commissioner has concluded that section 43 is not engaged.

THE APPEAL AND RESPONSE

17. The Health Board appealed the decision notice by way of a notice of appeal dated 15 January 2020 [which should read 2021]. The grounds of appeal explained that:-

The Withheld Information as provided to the Commissioner was contained in a spreadsheet showing the following information in relation to each of the Health Board's car parks for the month of February 2019:

- the total number of PCNs issued;
- the number of PCNs paid;
- the percentage of PCNs paid;
- the number of PCNs cancelled; and
- the percentage of PCNs cancelled.

18. The Health Board explains:-

The Decision Notice required the Health Board to disclose the following items from the Withheld Information, within 35 days of the date of the Decision Notice:

- the number of PCNs issued in February 2019; and

- the Number of PCNs cancelled in February 2019.

...The Commissioner did not require disclosure of the remainder of the Withheld Information; the Appellant understands that this was because the Commissioner considered that the remainder of the Withheld Information was not within the scope of the request. ...

19. The essential grounds of appeal are as follows:-

In relation to the commercial interests of ParkingEye, the Commissioner ought to have accepted that disclosure would have the following effects:

- (1) Disclosure would provide competitors of ParkingEye with a methodology for calculating the costs of ParkingEye's operation, including the revenue and profitability of ParkingEye's contract with the Health Board.
- (2) Disclosure would cause public perception and credibility issues for ParkingEye. For instance, disclosure could damage the integrity of ParkingEye's management of the Health Board's car park, by giving a misleading impression as to the likelihood that any particular PCN would be enforced.
- 3) Disclosure would provide a misleading picture to the general public of ParkingEye's activities if the information were taken out of context.

For all these reasons, disclosure would or alternatively would be likely to prejudice the commercial interests of ParkingEye.

In relation to the commercial interests of the Health Board itself, the Commissioner ought to have accepted that disclosure would be likely to damage the Health Board's relationship with ParkingEye, and that this would or alternatively would be likely to prejudice the commercial interests of the Health Board.

20. The Health Board's appeal stated that the public interest assessment would also favour non-disclosure.

21. ParkingEye was made a party to the appeal on 23 February 2021.

22. The Commissioner's response (15 March 2021) to the appeal essentially supported the conclusions in the decision notice, but said that any further evidence would be considered.

23. ParkingEye's further response is dated 16 April 2021 and so post-dates the Commissioner's response. ParkingEye states that:-

ParkingEye is the largest supplier of Automatic Number Plate Recognition ("ANPR") systems on private car parks in the UK. It provides various ANPR

services on its customers' land, all of them including an enforcement process in relation to parking contraventions. In addition, ParkingEye leases and manages a limited number of sites.

ParkingEye frequently enters into competitive tendering processes for the provision such services. On average, ParkingEye works on about two tenders a month. The contracts that it secures by way of a competitive tendering process are typically about 3 years long; hence success or failure in a tendering exercise has a long-term impact on ParkingEye's business. In general, being able to compete effectively in tendering processes is of very considerable commercial importance to ParkingEye.

There are numerous other companies that regularly compete with ParkingEye in tendering. All of these companies would take considerable interest in any information that would provide them with an insight into ParkingEye's anticipated revenues from specific sites, or its business model.

24. ParkingEye explains that it has a contract with the Health Board over a number of sites following a tendering process. It explains that no parking tariffs are charged at any of the Hospitals. However, PCNs may be issued in respect of parking infringements. ParkingEye essentially repeats the information about its commercial interests as set out in the decision notice, but also says:-

This information would assist competitors in contract renewals where ParkingEye was tendering: (i) in relation to the Health Board; (ii) in relation to other NHS sites; and (iii) in relation to parking sites generally. The information would assist competitors in deciding the level at which to price their own bids so as to seek to undercut ParkingEye. The assistance provided to ParkingEye's competitors would in turn have an adverse effect on ParkingEye's own ability to attract external investment.

25. This would especially be the case, says ParkingEye, if this information could be combined with other information, for example from other FOIA requests. ParkingEye also says:-

If the information were to be disclosed, ParkingEye would need to consider how to manage the information flow that it provided to the Hospital Board. It would need to consider whether to fulfil its contractual obligations in a different way, or to seek to renegotiate those obligations. By inhibiting ParkingEye from sharing information with the Hospital Board in future, disclosure would or would be likely to prejudice the commercial interests of both parties.

26. There are two witness statements in the bundle. Philip Boynes has held the role of Chief Executive Officer at ParkingEye since 15th April 2015. He explained that ParkingEye:-

...is the largest supplier of Automatic Number Plate Recognition (ANPR) systems on private car parks in the UK. Our range of interchangeable ANPR services

consists of pay-on-site, pay-as-you-park, permit, manned and leasing solutions all with an effective enforcement process. We provide these car park management services on our customer's land. We also lease and manage a limited number of sites.

27. His witness statement provides general information about the benefits from ParkingEye services, details of the main competitors, and general reasons why the disclosure of information about the number of PCNs issued in February 2019 and the number of PCNs cancelled in February 2019, would be prejudicial to ParkingEye's business. Essentially he states that:-

(1) Should the aforementioned information be disclosed in line with the Request, this would enable our competitors to know our model and what we charge and could undercut our pricing structure. This would enable our competitors to calculate our revenues and margins which would allow them to enter any tender in an advantageous position, this applies to both a managed service model and a client share model, which are the two main pricing models found in the industry. This in turn could undermine any future tenders and our existing customer relationships.

(2) Disclosure would provide competitors of Parkingeye with a methodology for calculating the costs of Parkingeye's operation, including the revenue and profitability of Parkingeye's contract with the Health Board. This would or would be likely to adversely affect the commercial interests of Parkingeye both in relation to any future tendering exercise in relation to the Health Board, and in relation to future tendering exercises generally for other clients or potential clients.

28. He states that there are also concerns that disclosure would reveal ParkingEye's approach to matters like enforcement which could be exploited by some motorists. In relation to public interest issues he states that:-

There is a significant public interest in avoiding the kinds of prejudice to public interest that are referred to above. By contrast, disclosure of the Relevant Disputed Information would make little or no material contribution to any of the interests that are served by FOIA.

29. We also had a witness statement from Colin McMillan who is Head of Transport & Sustainable Travel at the Health Board. He describes the services provided by the Health Board at five hospital sites, the Health Board's problems with providing sufficient parking capacity, and the benefits that a good relationship with ParkingEye brings. He is concerned about the Health Board's bargaining position in the procurement process for parking services if this information is disclosed, and the fairness of such processes. There were similar concerns about the exploitation of the information by motorists who become

aware of cancellation ratios. In relation to the public interest, Mr McMillan states that the Health Board:-

...considers that the public interest in withholding the information is greater than the interests in disclosing it and thereby giving unfair commercial advantage to competitors of the supplier to which this information concerns. The UHB believes that disclosure of information in a manner which fails to protect the interests and relationships arising in a commercial context could have the effect of discouraging companies from dealing with the UHB because of fears that the disclosure of information could damage them commercially. In turn this could then jeopardise the UHB' s ability to compete fairly and pursue its function to bring forward development in the area and obtain value for money.

APPEAL HEARING

30. At the hearing Mr Boynes gave evidence and expanded upon the information in his witness statement. Mr Boynes came across as knowledgeable and experienced about the business in which he worked.
31. Mr Boynes was questioned for some time about the withheld information and whether its disclosure would in fact prejudice ParkingEye's commercial interests.
32. Mr Boynes provided a number of important points of evidence about the information. He explained that when parking enforcement commenced at a car park, there would be about a 60% drop in parking infractions. The contract had been in force for a number of months by the end of February 2019 and so by that time what Mr Boynes called the 'run rate' of PCNs had been established, by which we understood him to mean that the number of PCNs was at a steady rate by that time. Mr Boyne accepted that if the number of PCNs in one car park was in issue then the figure could be susceptible to fluctuation, but he pointed out that the information sought related to forty car parks over five of the Health Board's sites.
33. Mr Boyne accepted that PCNs could be paid at two rates: the 'full' rate of the PCN was £70, but if it was paid within two weeks this was reduced to £40. However, he explained that there was an industry-wide metric that around 82% of PCNs were paid within two weeks and therefore what he called a 'blended' total of revenue could be calculated. In relation to the cancellation of PCNs Mr Boynes explained that the percentage figure in the withheld material related to the number of PCNs issued in February 2019 that had

actually also been cancelled in February 2019. It did not include PCNs issued prior to February 2019 which were then cancelled in February 2019. It did not include cancellations of PCNs issued in February 2019 which were in fact cancelled after February 2019. Mr Boynes explained that the number of PCNs which were issued in February 2019 which were subsequently cancelled would grow as the months went past, as cancellations often took some time to process.

34. When it was put to him that, on that basis, there was no way that it could be ascertained how many of the February 2019 PCNs would ultimately be cancelled, Mr Boynes said that was not the case and that wide experience at many sites did in fact allow for extrapolation as to how many of the PCNs would eventually be cancelled.

35. The upshot of Mr Boyne's evidence was that a competitor with the same or similar knowledge of the industry would be able to ascertain the following from the disclosure of the requested information:-

- (a) The monthly level of PCNs issued across forty car-parks some months into a contract when the 'run-rate' had been established.
- (b) The revenue available from these PCNs applying the 'blended rate'.
- (c) The number of likely cancellations in total for February 2019, even though only the figures for those actually cancelled in February were available.

36. The possession of this information would be of great importance to a competitor, Mr Boynes said. In a retendering exercise a competitor would be able to calculate the revenue available to ParkingEye. With this information, a competitor would be able to make more accurate calculations of its own revenue if, for example, it had a tougher cancellation policy than ParkingEye, which might allow it to offer to share some profits with the Health Board or to offer more on-site services or staff. When asked about the comment in the papers from ParkingEye that the withheld information was nothing more than a 'snapshot' of the situation, Mr Boyne explained that although this would be true for a member of the public provided with the information, for a parking industry 'insider' who it would be possible to glean much more.

37. Mr Boynes' rejected the suggestion that ParkingEye was only opposed to disclosure because of the potential bad publicity it might bring to it as a private company collecting PCN fines under a contract with the Health Board.

38. Mr McMillan also gave evidence in line with the concerns set out in his witness statement.

39. The Commissioner maintained her position at the hearing that the exemption in s43(2) FOIA was not engaged. In relation to the public interest, the Commissioner made submissions to the effect that transparency and accountability issues favoured disclosure. Specifically, the Commissioner pointed to the public interest in access to hospitals, congestion, parking and the environment. The information withheld made a meaningful – if limited- contribution to the public debate as to how parking is managed on the Health Board's sites. Any bad publicity for the Health Board or ParkingEye was not an issue which weighed against the public interest in disclosure.

DISCUSSION

40. Mr Boynes' written statement provided only generalised arguments to the effect that competitors would be able to take advantage and prejudice ParkingEye's commercial interests, and effectively provided the same information available to the Commissioner when she produced her decision notice

41. On the basis of the written statement, the Tribunal shared the Commissioner's concern that there was no causal link between the potential disclosure of the information and the likelihood of prejudice to ParkingEye's commercial interests. It appeared that there was no way of calculating the revenue from the PCNs issued in February 2019 (because of the differential rates), and no way of calculating the total number of cancellations that would be issued in total for the PCNs issued in February 2019. The figures would indeed provide nothing more than a snapshot

42. However, Mr Boynes' oral evidence provided the information to indicate that this appearance was wrong. It is unfortunate that the level of specificity provided in oral evidence was not available earlier to the Tribunal and, especially, to the Commissioner. No explanation was given for this, and it seems to us that a lot of time, effort and expense could have been saved if it had been provided earlier. Mr Boynes did not provide any supporting documentation to back up his evidence about things like the 'run rate', the

'blended rate' or the ability to extrapolate the total number of cancellations from the February 2019 figure.

43. In the end we only have Mr Boynes' oral evidence. However, our impression was of a witness trying his best to assist the Tribunal with often detailed answers to the questions asked. He came across as a man of great experience and knowledge and has been the CEO of a major company in the parking industry. It was clear to us that he had a genuine belief that ParkingEye's commercial interests could be prejudiced by the disclosure of this information, and provided us with plausible ways in which this could be so. Our impression was not that ParkingEye was resisting disclosure because of potential bad publicity and we noted that it was, after all, part of the system that allowed free parking in the Health Board's car parks (other than of course for those served a PCN) for over six years.
44. We take on board that Mr Boynes was not an independent expert witness but was a witness for one of the parties to the appeal attempting to convince the Tribunal to reverse the Commissioner's decision that the information should be disclosed. We also take on board some continued misgivings that the disclosure of limited figures from one month could be as prejudicial to its commercial interests as claimed by ParkingEye.
45. On the balance of probabilities, however, and on the basis of our impression of Mr Boynes' oral evidence we accept that there is a causal link between the potential disclosure of the information and prejudice to ParkingEye's commercial interests.
46. It also seems to us, on the balance of probabilities, that that prejudice to ParkingEye's commercial interests is likely to occur. We accept that if this information had been disclosed when requested it would have enabled a competitor to have gained some insight into ParkingEye's business model to the potential disadvantage of ParkingEye and to the potential advantage of a competitor.
47. Those findings in relation to ParkingEye are sufficient for us to find that the exemption in s43(2) FOIA is engaged in this case. Our view is that evidence is a lot less persuasive that s43(2) FOIA is engaged in relation to the commercial interests of the Health Board. It does not seem to us, for example, that disclosure of the information would make the Health Board's task in maintaining the trust of would-be contractors more difficult, or in running the procurement process in the future. As the Commissioner said:-

It is not clear how disclosure of the Relevant Withheld Information would, or would be likely to, damage the UHB's relationship with ParkingEye and result in prejudice to the former. As the Upper Tribunal has considered in *DEFRA v IC & Anor* [2014] UKUT 526 (AAC), at §76: "[private] organisations engage with, or must be assumed to have engaged with, public authorities in the full knowledge that Parliament has passed the FOIA".

48. We are of the view that disclosure would be unlikely to lead to exploitation of the information by unscrupulous motorists. Nevertheless, given our conclusions in relation to ParkingEye we do not need to reach a final view on these issues.
49. Having found that the exemption is engaged, we do need to consider the public interest balance. We agree that there is a public interest in details of the parking system operated by the Health Board and ParkingEye being made public in the interests of transparency and accountability, especially on issues relating to parking at hospitals, congestion and the environment. However, we also note that parking at hospitals in Wales is free and so the controversial issues around charging for such parking do not arise. We do not have before us any public interest arguments from the original requester. We note that the information withheld is very limited, and accept Mr Boynes' argument that it really would present just a snapshot to anyone who did not have specialist knowledge of the parking industry.
50. There is an important countervailing public interest in protecting the commercial interests covered by the s43(2) FOIA exemption. In our view the very real risk to ParkingEye's commercial interests as described to us in evidence by Mr Boynes and which support non-disclosure, outweighs what we find to be a limited public interest in disclosure in this case.
51. On that basis, and for those reasons, this appeal is allowed and a decision notice substituted to the effect that the withheld information is exempt from disclosure pursuant to s43(2) FOIA.

Stephen Cragg QC

Judge of the First-tier Tribunal

Date: 27 January 2022. Promulgated: 28 January 2022.

