



Tribunals Service
Information Tribunal

Information Tribunal Appeal Number: EA/2008/0097
Information Commissioner's Ref: FS 50181643

Freedom of Information Act 2000

Determined on the papers

Decision Promulgated on: 14 September 2009

BEFORE

INFORMATION TRIBUNAL DEPUTY CHAIRMAN

Anisa Dhanji

and

LAY MEMBERS

Paul Taylor and Malcolm Clarke

BETWEEN

FRED KEENE

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

THE CENTRAL OFFICE OF INFORMATION

Additional Party

Subject matter

Freedom of Information Act 2000 – section 43(2) - whether the exemption is engaged; whether disclosure would be likely to prejudice the commercial interests of the public authority or the businesses it dealt with

Cases

R (Lord) v Secretary of State for the Home Office [2003] EWHC 2073 (Admin)
John Connor Press Associates Limited v Information Commissioner (EA/2005/0005)

FREEDOM OF INFORMATION ACT 2000

SUBSTITUTED DECISION NOTICE

14 September 2009

Name of Public Authority: The Central Office of Information

Name of Complainant: Mr. Fred Keene

Nature of Complaint: The public authority has not complied with the Freedom of Information Act 2000 in relation to the Appellant's requests made on 16 January 2007 and 9 February 2007.

Date of Decision Notice Substituted: 3 December 2008

Action Required: Within 20 working days from the date of promulgation of the Tribunal's determination, the Public Authority must communicate the Disputed Information (as defined in paragraph 9 of the determination) to the Appellant.

Signed

Anisa Dhanji
Deputy Chairman

REASONS FOR DECISION

Introduction

1. This is an appeal by Mr. Fred Keene (“Appellant”), against a Decision Notice issued by the Information Commissioner (“Commissioner”), dated 3 December 2008. It relates to a request for information made by Mr. Keene under the Freedom of Information Act 2000 (“FOIA”) relating to the selection by the Central Office of Information (“COI”) of reprographic suppliers, following a tender exercise in 2005.
2. COI is the Government’s marketing and communications agency. It describes itself as a “Non-Ministerial Department, an Executive Agency and a Trading Fund”. An important part of its function relates to the procurement of communication-related services on behalf of various government departments, executive agencies, and publicly funded bodies.

The Request for Information

3. The Appellant made two requests for information, on 16 January 2007 and 9 February 2007, respectively. The information requested was specified in 13 numbered points.
4. COI responded on 9 February 2007 and 12 April 2007, respectively. It provided some of the information requested, but not all.
5. On 30 July 2007, the Appellant requested an internal review by COI of its handling of his requests. On 28 August 2007, COI replied stating that it had answered each of the 13 points as fully and comprehensively as it could as regards the information that it held. As regards the information it had declined to provide (the “Disputed Information”), COI cited the exemption in section 43 of FOIA (commercial interests).

The Disputed Information

6. It may be helpful, at this point, to say something more about the Disputed Information. In 2005, COI invited tenders from businesses interested in providing reprographic services. Each applicant was required to complete a “Press Production Roster Application Form”, and to submit it to COI by 20 June 2005. COI reviewed the applications received, and in respect of each applicant, COI completed a “Pre-Press Roster Evaluation Form” (“Evaluation Form”), in which it recorded its assessment of that applicant.
7. The Evaluation Form is a single A4 page divided in 4 sections. The first section is headed “Mandatory Requirements (pre-marking)” and sets out 6 mandatory requirements. It provides for the evaluator to indicate by a tick or a cross whether these have been met. The 6 requirements are as follows:

“All necessary information provided?”

Company large enough to meet our requirements?”

Availability of services meets mandatory requirements?”

Indemnity insurance in place?

Facilities (current & future plans) meet minimum requirements?

Disaster contingency plans meet minimum requirements?"

The second section is headed "Evaluation Criteria". It provides for the evaluator to give a score out of 10, for each applicant, by reference to 6 criteria, namely:

- "1. Company capabilities – including expertise, experience and facilities*
- 2. Staff expertise and experience*
- 3. Quality control systems, including disaster recovery*
- 4. Client list - including relevance to rostered advertising agencies*
- 5. Size of company - including turnover and staff numbers*
- 6. Company ethos – how well it matches our needs"*

The third section is headed "Mandatory requirements (post-marking & short-listed agencies only)" and requires a tick or cross in relation to the following criteria:

"Financially sound based on D & B reports?

Indemnity insurance at or above minimum levels?

Company willing to accept offered rates?"

However, in none of the Evaluation Forms before us, has this section been completed.

The final section of each Evaluation Form is headed "Comments & Notes". This provides a space on the form for the evaluator to make additional comments in respect of the applicant.

8. Two evaluators assessed each application, and each evaluator completed an Evaluation Form. In all, there were 14 applicants for that tender and therefore, there were 28 Evaluation Forms in total. The scores for all applicants were then summarised on a single page (the "Pre-Press Roster Summary"), setting out the applicants' scores by reference to the 6 criteria in the second section, as listed above.
9. At the time of the tender exercise in question, the Appellant was the owner of a business which provided reprographic services. It submitted an application, but was unsuccessful. In response to his FOIA requests referred to in paragraph 3 above, the Appellant was provided the two Evaluation Forms for his company, but not for the 13 others. He was also provided a redacted version of the Pre-Press Roster Summary, showing the names of all applicants, together with the scores for his company, but not for the other applicants. It is this un-redacted Pre-Press Roster

Summary and 26 Evaluation Forms for the 13 other applicants that the Appellant is seeking and which comprises the Disputed Information in this appeal.

The Complaint to the Commissioner

10. On 26 October 2007, the Appellant complained to the Commissioner about the way in which his request for information had been handled. The Commissioner undertook inquiries, following which, he issued a Decision Notice setting out his findings as follows:
 - a) COI had acted in accordance with FOIA in withholding the Disputed Information under section 43(2);
 - b) COI was in breach of section 1(1) in not confirming to the Appellant, in the refusal notice, the full scope of information it held in relation to his request;
 - c) COI was in breach of section 17(1) in not informing the Appellant, in its refusal notice, that the Disputed Information was being withheld on the basis of section 43; and
 - d) COI was in breach of section 17(1)(c) and 17(3)(b) in not informing the Appellant as to how the balance of the public interest under section 43 favoured the maintenance of the exemption.
11. The Commissioner did not require any steps to be taken.

The Appeal to the Tribunal

12. On 31 December 2008, the Appellant appealed to the Tribunal on the grounds that:
 - a) The Commissioner had erred in finding that the Disputed Information is likely to prejudice the commercial interests of COI and the companies to which the information relates; and/or
 - b) The Commissioner had erred in his application of the public interest test under section 2(2)(b); and/or
 - c) The Commissioner and COI had failed to take account of the FOIA (Civil Procurement) Policy and Guidance document published by the Office of Government Commerce relating to requests for civil procurement under FOIA.
13. After considering the Appellant's grounds of appeal, the Commissioner conceded that the Disputed Information did not engage section 43(2). In light of this, the Commissioner stated that he did not oppose the appeal. He considered that he did not himself have the power to withdraw his Decision Notice, but invited the Tribunal to exercise its powers under section 58(1) of FOIA to issue a substituted Decision Notice and to order that the Disputed Information be disclosed.
14. The Tribunal noted that had the Commissioner issued a Decision Notice in favour of the Appellant, COI would have been able to appeal to the Tribunal. However, if the Tribunal issued a substituted Decision Notice, an appeal by COI could only lie to the High Court.

15. In order that COI should not be deprived of a right of appeal to the Tribunal that it would otherwise have had, the Tribunal directed that COI be contacted to ascertain its position. COI notified the Tribunal that it wished to oppose the appeal. Following a directions hearing on 6 April 2009, COI was joined as a party to the appeal.

The Tribunal's Jurisdiction

16. The Tribunal's jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of FOIA. If the Tribunal considers that the Decision Notice is not in accordance with the law or, to the extent that it involved an exercise of discretion by the Commissioner, the Tribunal considers that he ought to have exercised his discretion differently, the Tribunal must allow the appeal or substitute such other notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.
17. Section 58(2) provides that on an appeal, the Tribunal may review any finding of fact on which the Decision Notice is based. In other words, the Tribunal may make different findings of fact from those made by the Commissioner, and indeed, as in this case, the Tribunal will often receive evidence that was not before the Commissioner.
18. At the request of the parties, and pursuant to Rule 16 of the Information Tribunal (Enforcement Appeals) Rules 2005, this appeal has been determined without an oral hearing. Having regard to the nature of the issues raised, the Tribunal was satisfied that the appeal could be properly determined without an oral hearing.

Issues

19. The key issue for determination by the Tribunal is whether the Disputed Information engages section 43(2) of FOIA. No other exemptions have been relied on. If section 43(2) is not engaged, the Appellant succeeds in his appeal and the Disputed Information must be disclosed.
20. If the Disputed Information does engage section 43(2), then the next step is to apply the public interest test as required by section 2(2) of FOIA to determine whether the public interest in maintaining the exemption outweighs the public interest in disclosing the Disputed Information. If it does, then the Disputed Information is exempt; if it does not, then it must be disclosed.
21. For completeness, we note that COI has not sought to challenge the Commissioner's findings that it was in breach of sections 1 and 17. These issues are therefore not before the Tribunal.

Evidence

22. We have considered all the documentary evidence received from the parties (even if not specifically referred to in this determination), including, in particular, the documents in the agreed bundle, the parties' written submissions and replies, and the further documents requested from the Additional Party during the course of the Tribunal's deliberations.

23. The Disputed Information has been provided to the Tribunal, but has been kept confidential from the Appellant since disclosure would, of course, defeat the purpose of this appeal.
24. The only witness evidence before us is that put forward by COI. The witnesses are Mr. Martin Humphreys and Ms. Debbie Morrison. Their statements are relatively brief. Mr. Humphreys says that he is the Deputy Director of Channel Integration Management at COI. He has been employed by COI since 1989, initially as a Campaign Manager, later as Head of Campaign Services, then as Group Head. He has held his current position since 2004. He explains the structure and function of COI. In particular, he explains that COI is a Trading Fund in accordance with the Government Trading Funds Act 1973 and that therefore, more than 50% of COI's revenue must consist of receipts in respect of goods and services that it provides. Its aim is to ensure value for money and it is able to negotiate substantial savings to the public purse because of its position within the market. Exhibited to Mr. Humphreys' statement is a document entitled "Framework Document". It is dated March 1998 and contains further information about COI.
25. As regards the Disputed Information, Mr. Humphreys says first, that the information provided to the Appellant in respect of his own company, has been provided only to the Appellant. It has not been treated as a disclosure under FOIA, and therefore, it has not been placed in the public domain.
26. He says that the Disputed Information contains markings, comments and notes showing the views of COI in relation to key aspects of the applicants' business and contains commercially sensitive information. Given the importance and credibility of COI in relation to tendering for the kinds of services in question, release of the Disputed Information would adversely affect the reputation of those applicants where COI reached negative conclusions. In turn, this is likely to adversely affect the amount of information some companies tendering for business would be willing to supply to COI in the future. In order for COI to reach fully informed decisions on the selection of suppliers, and to achieve its aims in relation to value for money, suppliers must be confident that information of the sort withheld from the Appellant is not routinely disclosed to competitors or to the world at large. Release of such information is likely to adversely affect COI's ability to achieve savings for the public purse in relation to a wide range of services it provides to government departments.
27. Ms. Morrison is the Director of Consultancy & Best Practice of the Incorporated Society of British Advertisers ("ISBA"). She joined that organisation in 1989. Ms. Morrison explains that ISBA is the representative body for British Advertisers and that 450 of the UK's foremost advertisers are members. It acts as "a united single voice" for British advertisers. She goes on to describe some of the particular projects that ISBA has been engaged in.
28. As regards her own expertise, she says that she has spent the last 20 years "working implicitly in a consultancy capacity with major blue chip advertisers guiding and advising them on all matters related to the management of communications and agency relationships". Her key expertise is "in helping advertisers in the search and selection (tendering) of new communications agency relationships and all associated suppliers, including production, formulation and negotiation of contracts between the two parties, negotiation of fees, industry practice and trends". She also

teaches communication agency contract law and is involved in developing best practice guidance for the industry, including “model agency contracts, best practice guides to finding new agencies, briefing, evaluation, judging, creative work, production de-coupling, etc.”. She is recognised as an industry expert on the “advertiser/agency relationship” and lectures at conferences around the world.

29. As regards the present appeal, Ms Morrison says that COI have a very high reputation amongst ISBA members, and indeed, in the industry as a whole, for being robust, transparent and fair both in the way it tenders for new suppliers, and how it subsequently handles those relationships. COI is seen as being at the pinnacle of best practice where tendering for businesses is concerned. She says that ISBA’s members would perceive a demand for full disclosure as a dangerous precedent and possibly as a criticism of the highly regarded, rigorous COI way of doing business. They would also perceive full disclosure as unnecessary, believing that the process of feedback to unsuccessful suppliers is already well covered under COI’s current practices, without having to disclose detailed confidential information on competitors.
30. In addition, she says that the “broader agency/supplier industry would be shocked and dismayed” by the thought that for every COI pitch in which they took part, the losing agencies/suppliers may be entitled to have full disclosure of the evaluation forms and scores. Given the high regard in which COI is held, if it were known to have reached an adverse view of an aspect of a business, that judgement would be very damaging, commercially, to the company concerned, and that would be the case even if the evaluation had taken place some four years ago, as in the case of the Disputed Information. She would also be concerned that if evaluators knew that adverse comments made about, or low scores given to a company would be published to the world at large, it would make them reluctant to record any negative assessment of that company in the evaluation forms, which would damage the evaluation process. She does not believe, therefore, that the public interest would be served by requiring disclosure.
31. Finally, she says that disclosure could have be damaging COI’s reputation by implying that it cannot be relied on to maintain appropriate confidentiality in relation to the many tenders it conducts and the sensitive information it receives. Also, companies may well be deterred from tendering for COI business if information about them and any negative assessment made about them, is likely to be published. If suppliers are reluctant to participate in tenders, it would have the effect of restricting the supply and market for COI business.

Findings and Reasons

Does the Disputed Information engage section 43 of FOIA?

32. Under section 1 of FOIA, any person who has made a request for information to a public authority is entitled to be informed if the public authority holds that information, and if it does, to be provided with that information.
33. Under section 2, the duty on a public authority to provide the information does not arise if the information is exempt under Part II of FOIA. The exemption may be absolute or qualified. If qualified, the duty to disclose does not arise if, in all the

circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

34. In the present case, COI has invoked the exemption contained in section 43(2) of FOIA. This is a qualified exemption. Section 43 provides as follows:

43 Commercial interests

- (1) *Information is exempt information if it constitutes a trade secret.*
- (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).*

35. The legislation does not require the public authority to show that disclosure will give rise to prejudice. The threshold is “would or would be likely to prejudice”. COI says that disclosure of the Disputed Information would be likely to prejudice the commercial interests of both COI and the businesses which had submitted tenders.
36. The expression “would be likely to prejudice” is found not only in section 43, but also in relation to various other prejudice-based exemptions in FOIA, and its interpretation has been considered in a number of previous decisions. In **R (Lord) v Secretary of State for the Home Office [2003] EWHC 2073 (Admin)**, when considering similar words in the 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.” In **John Connor Press Associates Limited v Information Commissioner (EA/2005/0005)**, a differently constituted Tribunal, taking guidance from Mr Justice Munby’s words, interpreted the phrase “likely to prejudice” in the context of section 43 to mean that “the chance of prejudice being suffered should be more than a hypothetical or remote possibility”. The Tribunal considered that there must be “a real and significant risk”.
37. With this threshold in mind, we turn to the question of whether disclosure of the Disputed Information would in fact be likely to prejudice the commercial interests of COI and/or of the businesses which submitted tenders. We agree with the Commissioner that by “prejudice”, what is meant is that disclosure of the information must have a detrimental effect on or be damaging in some way to the commercial interests of the party in question.
38. We will consider, first, the position of the businesses which submitted tenders. Some of the assessments of the applicants are positive, but what we are primarily concerned about here is the impact of any negative assessments, particularly a low score against the 6 criteria in the second section of the Evaluation Forms, or an adverse remark in the “Comments and Notes” section. COI says that low scores or negative comments made by COI about any of the applicants would prejudice the commercial interests of that applicant, because it would damage their reputation, and as a consequence, others may be less likely to do business with them. COI also says that its importance and credibility is such that any negative assessments

its evaluators make are likely to be taken as a reliable assessment of the businesses concerned.

39. We accept, based on Ms Morrison's evidence and the volume of business it is engaged in, that COI is a significant purchaser of a range of services, and that it is a very well – respected body. However, we have very little in the way of actual evidence about any commercial prejudice that would result for the applicants if the Disputed Information were to be disclosed. None of the businesses which submitted tenders are parties to this appeal, and there is no evidence before us from any of them as to whether they would suffer any prejudice, much less as to what prejudice they would suffer. We have not found Ms. Morrison's evidence particularly helpful in this regard. There is nothing in her evidence to suggest to that the businesses which submitted tenders are members of ISBA, nor that their interests are the same or similar to ISBA members, nor indeed that Ms Morrison's experience extends to reprographic suppliers.
40. In the absence of more helpful evidence, we are limited to our own consideration of the Disputed Information. We would note first, that the Evaluation Forms are not an assessment of the applicant's performance or the quality of their work. Also, they do not contain what might properly be regarded as commercially sensitive information; for example, they contain almost no price information or financial data except for limited references to turnover in the "Comments and Notes" section, but such information would, in any event, be publicly available from sources such as Companies House. The key part of the Evaluation Forms simply contain a score on the applicants, against certain criteria. A number of these criteria are clearly specific to COI. There is no evidence before us that as far as reprographic suppliers are concerned, COI's criteria are likely to be the same or similar to other buyers of such services such that any negative assessment by COI would have the prejudicial effect that is claimed. We also bear in mind that as at the date of the request, the Disputed Information was already two years old and the information on the basis of which the applicants were assessed (for example size of company and client list), may well have changed.
41. We have given careful consideration to the "Comments and Notes" section. On the whole, the comments made here are very brief. There are certain observations about turnover, number of staff and in some cases, whether the applicants will charge for weekend work. These are all entirely objective matters and do not reflect any negative assessment or opinion. In addition, there are some comments about the applicant's experience. Again, this is not expressed in adverse terms, but as a factual matter. There are in fact very few comments that could be regarded as reflecting an adverse opinion of the applicant by COI. The first is a comment that the quality control of a particular applicant was not very robust. The subsequent comment, however, indicates that this was made in relation to the frequency of file back-ups rather than more generally, and in that context, and having regard to the passage of time that had elapsed between the Evaluation Forms being completed and the request being made, and the speed of technological changes within most industries, we do not find that disclosure of this comment would be likely to prejudice the commercial interests of the applicant. The second is a comment that an applicant was not likely to be able to handle COI's business. However, it is clear from the context that that comment is made on the basis of the applicant's low

turnover and low numbers of staff. In that context, we consider that it is a factual rather than a negative opinion. The third is a comment that a company's application "was not great". That is, however, no more than an observation about that particular application form and not about the company's performance or the quality of their work in general. In short, we do not find that disclosure of these remarks would be likely prejudice the commercial interests of the applicants. It is also noteworthy that none of these comments have been singled out by the COI in its submissions to us.

42. As already noted, the prejudice must be "likely" in the sense set out at paragraph 36 above. For all the reasons set out above, we are not satisfied that COI has shown that disclosure of the Disputed Information pursuant to the request, would be likely to prejudice the commercial interests of the applicants.
43. We turn now to consider whether disclosure of the Disputed Information would be likely to prejudice COI's own commercial interests. COI say, and we accept, that its objective is to obtain value for money for its client departments and ultimately, for the public. We accept that if its ability to do so is adversely affected, that would amount to prejudice and section 43(2) would be engaged. We also note that COI is a Trading Fund, and we accept that it operates in a competitive commercial environment. However, we find its concerns about the prejudice it would be likely to suffer if the Disputed Information is disclosed, are not substantiated by the evidence, and we find that its concerns are likely to be unfounded.
44. First, we do not find it likely that businesses would provide less information if there was a risk that certain information might be disclosed. By its own evidence, COI is a significant purchaser of a range of services. COI clearly has standard conditions and established procedures to be followed by those tendering for its business. Any business wishing to be considered would need to follow those procedures and that would include providing the information required by COI.
45. We also do not see any merit in Ms Morrison's assertion that disclosure could damage COI's reputation by implying that it cannot be relied on to maintain appropriate confidentiality in relation to the many tenders it conducts and the sensitive information it receives. Any company tendering for COI business can be expected to be aware that COI, like other government departments, is subject to FOI and may be required to disclose certain information about the businesses it deals with. This is all the more so since, as we understand it, COI makes its obligation under FOIA clear in its invitations to tender. We note that it did not do so in respect of this tender. However, that does not mean that its obligations under FOIA would come as a surprise to the companies which submitted tenders, particularly given the publicity surrounding the coming into force of FOIA in 2005.
46. We also note that no evidence has been put forward from any COI supplier to the effect that possible disclosure pursuant to an FOIA request would deter it from tendering for COI business, nor that such disclosure, made in response to a FOIA request, would damage COI's standing or reputation such that it would not wish to submit tenders in the future. There is also no suggestion in COI's evidence that the coming into force of FOIA has had any adverse effect on the number of businesses willing to tender for its business.

47. Finally, we note that Ms Morrison also expresses concern that if evaluators knew that their comments or scores would be disclosed, they would be reluctant to record any negative assessments, and this would damage COI's evaluation process. There is no evidence before us to this effect from any evaluator, nor indeed from COI itself, and no reason, on the evidence before us, to find that evaluators would not continue to undertake their responsibilities professionally and impartially, notwithstanding the possibility that their evaluations might become public. Indeed, in light of the FOIA (Civil Procurement) Policy and Guidance document (which we will refer to in more detail below), it is reasonable to expect that the evaluators in the present case were aware that the Evaluation Forms might be subject to disclosure.
48. In short, we do not find that the evidence establishes that disclosure of the Disputed Information would be likely to prejudice COI's commercial interests. We find, therefore, that section 43(2) is not engaged and that the Disputed Information must be disclosed. It follows that we also find that the information already disclosed to the Appellant pursuant to his requests, should be treated as having been a disclosure under FOIA.
49. We stress, however, that we are not making any general findings about what COI must disclose on another occasion, in response to a different FOI request. We have simply set out our findings in relation to this information, in the context of this request.

The Public Interest Test

50. Having found that section 43(2) is not engaged, it is not necessary to go on to consider the public interest test in section 2(2)(b) of FOIA. However, for completeness we would say that even if section 43(2) was engaged, we would find, that in all the circumstances of the case, the public interest in maintaining the exemption does not outweigh the public interest in disclosing the information.
51. The public interest factors on both sides are set out in the Decision Notice at paragraph 37. With the exception of the second paragraph (iv), we agree with the factors the Commissioner has identified. The issue is what weight should be given to them. In our view, the factors which favour maintaining the exemption in the present case are not particularly strong, and we find that they are considerably outweighed by the very strong public interest in promoting transparency and accountability in relation to the tendering and procurement decisions of COI and its expenditure of public funds. There is no suggestion that COI have acted improperly. On the contrary, the evidence indicates that it is regarded as being fair and thorough. However, the public interest in disclosure of information is not diminished just because that information would show the public authority in a positive light.

Observations

52. As already noted, the Appellant has put forward, as one of the grounds of appeal, that the Commissioner and COI had failed to take account of the FOIA (Civil Procurement) Policy and Guidance document published by the Office of Government Commerce relating to requests for civil procurement under FOIA (the "OGC Guidance"). We do not regard this as a proper ground of appeal. While the

OGC Guidance is, no doubt, a very useful document, what is in issue in this appeal is compliance with FOIA, and not with any other set of rules.

53. Nevertheless, it may be helpful to say something about the OGC Guidance as far as is relevant to the issues in this appeal. The document states that its purpose is to provide policy and guidance on how requests for civil procurement related information under FOIA should be handled. It is aimed primarily at central government departments, and seeks to balance the government's commitment to greater openness and accountability in civil procurement with the need to ensure that competitiveness in the marketplace is not harmed. It contains, amongst other things, a number of working assumptions set out in an annex (Annex A) which provides an initial view for officials who are responsible for responding to FOIA requests, while at the same time emphasising the need to consider the circumstances of each individual case.
54. Several of the working assumptions cover procurement-related information. The assumption, as regards tender evaluation information, is that such information will generally be released in relation to both successful and unsuccessful bidders (including rankings), except where the information is sensitive or there are security concerns (section 4, points 2, 3 & 4). The OGC Guidance also indicates that tender information is only to be regarded as sensitive during the actual tender phase.
55. It would seem, therefore, that our decision that the Disputed Information should be disclosed, is consistent with the OGC Guidance. The tender phase was completed some two years before the request for information was made, and as already noted, we do not find that the Disputed Information can be regarded as being sensitive. There can also be no realistic argument that it raises any security concerns. We note that there has been no satisfactory explanation from COI as to what, in the circumstances of the present case, caused it to depart from the OGC Guidance.

Decision

56. The appeal is allowed.
57. Our decision is unanimous.

Signed

Date: 14 September 2009

Anisa Dhanji
Deputy Chairman