

FOIA s.43 – Qualified exemption: Commercial interests/trade secrets

John Connor Press Associates Limited v IC

EA/2005/0005

25th January 2006

Cases:

R (on the application of Lord) v Secretary of State for the Home Office [2003] EWHC 2073 (Admin)

Facts

The Appellant requested information about the financial terms of a contract between a museum and an artist for the creation and display of sculptural work. The request was refused on the grounds that the commercial interests of the museum might be prejudiced by disclosure because it might affect other comparable negotiations and that, accordingly, the qualified exemption in s.43 FOIA was engaged. At the time of the request the museum was in negotiations with another artist. The information was released once those negotiations had been concluded.

The IC considered that disclosure of the information at the time of the request would have been likely to have prejudiced the museum's commercial interests and that the public interest in maintaining the exemption outweighed the public interest in disclosure.

Findings

The Tribunal accepted that the commercial interests of a public authority might be prejudiced if information in relation to one transaction were to become available to a counterparty in negotiations on a subsequent transactions. Whether they were or not would depend on the nature of the information and the degree of similarity between the two transactions. It interpreted the expression "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 (drawing support for that view from the words of Mr Justice Munby in *R (on the application of Lord) v Secretary of State for the Home Office* [2003] EWHC 2073 (Admin), a case in which the same expression had been construed under the Data Protection Act 1998).

On the facts the non-financial information, which the museum had agreed to release had disclosed the core elements of the contract with the first artist. The museum's commercial interests would not have been prejudiced by the disclosure of the financial details, which it had withheld. In addition, the subject matter and nature of the contract with the other artist was so different that the information would not have undermined the museum's negotiating position on that transaction had it been disclosed.

Conclusion

The s.43 exemption had not been engaged and it was not necessary to proceed to consider the public interest balance under s.2(2)(b). The appeal was therefore allowed, but no further action was necessary as the information had been disclosed.