

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 March 2017

Public Authority: North Norfolk Academy Trust

Address: C/o Sheringham High School
Holt Road
Sheringham
Norfolk
NR26 8ND

Decision (including any steps ordered)

1. The complainant has requested information from North Norfolk Academy Trust ("NNAT") regarding meetings of NNAT in 2014, 2015 and 2016.
2. The Commissioner's decision is that NNAT has correctly applied sections 36 and 43(2) of the FOIA to the withheld information and has correctly applied section 40(2) to some of the withheld information. The Commissioner has also decided that section 21, which was initially applied, was not engaged and that section 22 is also not engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the withheld information in respect of which the Commissioner has decided that section 40(2) is not engaged.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 9 May 2016, the complainant wrote to NNAT and requested information in the following terms:
- "1. All signed minutes (or where unsigned for any reason, the unsigned minutes) of meetings of North Norfolk Academy Trust in 2014, 2015 and 2016. In the event that the minutes contain, for example, personal data, please provide these documents showing the 'top section' containing the date and attendees of the meetings etc. and the 'bottom section' showing the date and signing off section of the minutes, as well as the body of the minutes containing any redaction. Should you consider it necessary to make any redaction, please ensure that I am informed of the reason for each and every redaction.
 2. Dates of all meetings of the North Norfolk Academy Trust in 2014, 2015 and 2016, with corresponding venues of meetings.
 3. Names of all and any persons present at such meetings and their role or job title. Please identify the corresponding date of the meeting with the name of the attendees.
 4. All agendas for North Norfolk Academy Trust meetings in 2014, 2015 and 2016.
 5. Any document, report or other information, in whatever form, considered at any of the North Norfolk Academy Trust meetings in 2014, 2015 and 2016."
6. NNAT responded on 27 May 2016. It stated that it was withholding the requested information under section 12 of FOIA and asked the complainant to consider narrowing her request.
7. On the same date, the complainant provided the following refined version of her request to NNAT: -
- "All signed minutes (or where unsigned for any reason, the unsigned minutes) of meetings of North Norfolk Academy Trust in 2014, 2015 and 2016 and corresponding agendas."

8. NNAT responded on 27 June 2016. It refused to disclose the requested information, citing section 21 as a basis for non-disclosure.
9. The complainant requested an internal review of NNAT's decision on 30 June 2016. That internal review was sought on the grounds that:
 - 1) The link to the minutes on NNAT's website did not work at the time of the complainant's request, therefore the requested information was not "reasonably accessible" at the time of the request.
 - 2) The link was accessible on 27 June, the date of NNAT's response to the complainant, however the minutes had been heavily redacted, therefore the entirety of the requested information was not accessible to the complainant.
10. NNAT provided its response to the complainant's request for internal review on 26 July 2016. The complainant then made a complaint to the Commissioner.
11. Following a period of correspondence between the Commissioner and NNAT, NNAT accepted that it had incorrectly applied section 21 to the complainant's request as the information was not reasonably accessible to the complainant at the time of her request. It stated instead that section 22 of the FOIA applied to the requested information as there was an intention to publish the information in the future. NNAT then reconsidered the requested information and disclosed some further unredacted information to the complainant.

Scope of the case

12. The complainant contacted the Commissioner to complain about the way her request for information had been handled.
13. The Commissioner considers that section 21 was erroneously applied and this was accepted by NNAT. The Commissioner has considered whether section 22 of FOIA would have been the correct exemption to apply and has also considered the exemptions applied as a basis for the redactions contained in the published meeting minutes ("the withheld information"). The Commissioner refers to the redacted information as "the withheld information" as the complainant has now had access to the portion of the requested information which was published on the website.

Reasons for decision

Section 22 – information intended for future publication

12. Section 22(1) of FOIA states that information is exempt information if –
 - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
 - (b) the information was already held with a view to such publication at the time when the request for information was made, and
 - (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
13. The exemption will only be engaged if, and only if, the three conditions listed at (a) – (c) are satisfied. As a qualified exemption, section 22 of FOIA is also subject to the public interest test.
15. The Commissioner's guidance¹ on the exemption explains that for section 22 to apply, the public authority must, at the time of the request, hold the information and intend that it or 'any other person' will publish it in future. This means that the public authority must have a settled expectation that the information will be published at some future date (paragraph 5). Later on in the guidance (paragraph 9), the Commissioner explains that a general intention to publish some information is not sufficient to engage the exemption - it is not enough for the public authority to note that it will identify some, but not all, of the information within the scope of the request for future publication.
16. It is not disputed that the information was held by NNAT at the time of the request. However, the Commissioner does not accept that it was reasonable for the Academy to conclude there was a settled intention that the information would be published. Although the Articles of Association of NNAT provide for publication of the meeting minutes on the website and also making those minutes available for inspection at Academy premises, which in certain circumstances is considered to amount to publication, the Articles of Association contain the proviso that any matters contained in the minutes which the NNAT deems private or confidential shall not be published or made available for inspection.
17. In view of the above, the Commissioner does not consider that all three conditions (a)-(c) above were satisfied as, although NNAT held the information at the time of the request, it never had a settled intention to

publish it in its entirety. In any case, in its internal review response to the complainant, the NNAT states that it was not aware until “recently” of its obligations under the Articles of Association to publish the meeting minutes. Therefore, there is doubt as to whether, at the time of the request, there existed an intention to publish the meeting minutes in the future. Even if the NNAT was aware of its obligations under the Articles of Association at the time of the request, it could not have been certain of its intention to publish them in their entirety, given the proviso regarding private and confidential matters and the fact that the minutes, once published, contained significant redactions. Therefore, the Commissioner does not consider that section 22 of FOIA is engaged in relation to the requested information and NNAT would not have been correct to apply that exemption.

Exemptions applied to the withheld information

18. The Commissioner has decided that neither section 21 and 22 is engaged in relation to the requested information. In normal circumstances, when the Commissioner finds that an exemption has been incorrectly engaged, she will order disclosure of the requested information. However, in this case, the Commissioner cannot ignore the fact that, when the information was published it was in a redacted format and NNAT has cited several exemptions under the FOIA as reasons for the redactions.
19. The Commissioner considers that the correct approach would have been for NNAT to consider the requested information in its entirety and disclose a redacted version to the complainant, with explanations as to the redactions. Given that this approach should have been taken, and to avoid any further delays to the complainant, the Commissioner has approached this complaint as if that had been done and has considered the NNAT’s application of the below exemptions to the withheld information.

Section 36 of FOIA

20. Section 36 of FOIA states that information is exempt if, in the reasonable opinion of a qualified person, disclosure under the legislation:
 - (b) would, or would be likely to, inhibit –
 - (i) the free and provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
 - (c) would otherwise prejudice, or would be likely otherwise to

prejudice, the effective conduct of public affairs

21. Unlike other exemptions in FOIA, an exemption in section 36(2) can only be engaged where a public authority has consulted with a qualified person defined in the legislation and it is the qualified person's opinion that the harm stated in the exemption would, or would be likely to, arise through disclosure of the requested information.
22. To find that an exemption in section 36(2) is engaged, the Commissioner must be satisfied not only that the qualified person gave an opinion on the likelihood of prejudice occurring but also that the opinion was reasonable in the circumstances. In other words, the qualified person must have reasonably concluded that there is a link between disclosure and a real and significant risk of the prejudice that the relevant exemption is designed to protect against. A public authority may rely on more than one exemption in section 36(2) as long as the qualified person has offered a view on each of the exemptions cited and the arguments advanced correspond with the particular exemption. If a link is not made, the Commissioner will be unable to find that the opinion was reasonable with regard to that exemption.
23. In the current case, it was the reasonable opinion of the Board of Directors of NNAT that section 36 applied to some of the information contained in the meeting minutes. The Commissioner is satisfied that the Board of Directors, as the highest decision-making body within the NNAT, constitutes the "qualified person" for the purposes of section 36.
24. When considering whether section 36 is engaged, the Commissioner must determine whether the qualified person's opinion is a reasonable one. The Commissioner considered the relevant factors including:
 - Whether the prejudice relates to the specific subsections of section 36(2) that are being claimed. If the prejudice or inhibition is not related to the specific subsections, the opinion is unlikely to be reasonable.
 - The nature of the information and the timing of the request, for example, whether the request concerns an important ongoing issue on which there needs to be a free and frank exchange of views or provision of advice.
 - The qualified person's knowledge of, or involvement in, the issue.
25. When determining whether the opinion is a reasonable one, the Commissioner considers that if the opinion is in accordance with reason

and not irrational or absurd – that is if it is an opinion that a reasonable person could hold – then it is reasonable.

26. However, this is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion will not be deemed unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It would only be deemed unreasonable if it is an opinion that no reasonable person in the qualified person's position could hold. Therefore, the qualified person's opinion does not have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.
27. NNAT has informed the Commissioner that, during a Board meeting, the minutes are taken by the Clerk to the Directors. At the following meeting, those minutes are read and checked for accuracy. The Board then collectively discusses whether any part of the minutes require redaction and if so, the reasons for this. The Board considers the entirety of the information, discusses the applicability of exemptions under the FOIA, and reaches a consensus.
28. In this case, the discussions by the Board of Directors applied to the minutes of several meetings, so discussions regarding section 36, among other exemptions, were conducted on an ongoing basis. The Commissioner is satisfied that this constitutes an opinion being provided by the qualified person, who has signed a form to this effect. NNAT has not specified whether all subsections of section 36 were discussed, however, in the explanatory table of which exemptions applied to which part of the redacted information, the NNAT has recorded that discussions were held regarding the inhibition of free and frank advice been given or views exchanged for the purposes of deliberation. NNAT has applied all subsections of section 36 to some of the relevant parts of the withheld information, however it has solely applied section 36(2)(c) to other parts but has not specified how disclosure of the information withheld under that section would "otherwise prejudice the effective conduct of public affairs".

Section 36(2)(b)(i) and (ii)

29. The Commissioner's guidance on section 36 explains that information may be exempt under section 36(2)(b)(i) and section 36(2)(b)(ii) if its disclosure would, or would be likely to, inhibit the ability of public authority staff and others to express themselves openly, honestly and completely, or to explore extreme options, when providing advice or giving their views as part of the process of deliberation. The guidance says that the rationale for this is that inhibiting the provision

of advice or the exchange of views may impair the quality of decision making by the public authority. The exemptions are therefore about the processes that may be inhibited rather than what is necessarily in the information itself.

30. The qualified person can only apply the exemption on the basis that the inhibition to the free and frank provision of advice and the exchange either 'would' occur or would be 'likely' to occur. The term 'likely' to inhibit is interpreted as meaning that the chance of any inhibition to the free and frank exchange of views should be more than a hypothetical possibility; there must be a real and significant risk. The alternative limb of 'would' inhibit is interpreted as meaning that the qualified person considers it is more likely than not that the inhibition would occur.
31. In the opinion of the qualified person, disclosure of the information withheld under sections 36(2)(b)(i) and (ii) would be likely to inhibit free and frank deliberations by NNAT Directors regarding live and ongoing issues such as the NNAT's constitution, the vision and future of the NNAT and various strategies and processes being discussed in the meetings. The qualified person considers that the NNAT directors need a safe space in which to both freely and frankly deliberate and exchange views on these issues, and also to provide advice where appropriate. The qualified person considers that disclosure of the withheld information would be likely to inhibit these processes as individuals would be likely to be less free and frank if they thought that there was a risk of their views being disclosed to the public.
32. The Commissioner, having perused the information withheld under section 36, and having considered the NNAT's submissions regarding the application of the various subsections, has concluded that the qualified person's opinion is a reasonable one in the circumstances.

She also considers that all of the information withheld under section 36 is covered by either subsection 36(2)(b)(i) or 36(2)(b)(ii) and has therefore not considered NNAT's application of section 36(2)(c).

33. As the Commissioner is satisfied that sections 36(2)(b)(i) and (ii) are engaged in relation to the relevant withheld information, she has gone on to consider the public interest test.

Public interest test

34. As section 36 is a qualified exemption it is subject to the public interest test. Having accepted the opinion of the qualified person that inhibition

would be likely to result from disclosure of the information, the Commissioner must then consider whether, in all the circumstances of the case, the public interest in maintaining either of the exemptions outweighs the public interest in disclosing the information.

35. When considering complaints about the application of section 36, where the Commissioner finds that the qualified person's opinion is reasonable, she will consider the weight of that opinion in applying the public interest test.

Public interest arguments in favour of disclosure

36. The Commissioner will always accord some weight to the fact that public authorities should aspire to high standards of openness and transparency, particularly where use of public funds is concerned. She will also accord weight to the fact that disclosure of information can serve to inform public debate and allow the public to understand public authorities' decision-making processes.
37. The complainant argues that, since the minutes she requested are the only documents which the public can view in order to examine decisions made by NNAT and the use of public funds, there is a strong public interest in disclosing these minutes.
38. The complainant also argues that, since the Articles of Association of NNAT provide a right for persons to inspect the minutes, NNAT must have contemplated from the outset the possibility of the public seeing them. She argues that this in itself is a strong public interest argument in favour of disclosure.

Public interest arguments in favour of maintaining the exemption

39. NNAT argues that Directors must have a safe space for considering issues relevant to their functions and should not be constrained from undertaking such discussions for fear of public disclosure.
40. The NNAT also considers that disclosure of the relevant withheld information would be likely to have a chilling effect on the Directors' discussions and would be likely to inhibit them from providing advice or exchanging views freely and frankly in future discussions.

Balance of the public interest arguments

41. When considering complaints about the application of section 36 in cases where the Commissioner finds that the qualified person's opinion is reasonable, she will also consider the weight of that opinion in applying the public interest test. She will consider the severity, extent and frequency of that inhibition in assessing whether the public interest test dictates disclosure.
42. When attributing weight to the 'chilling effect' arguments ie that disclosure of information would inhibit free and frank discussions in the future, and that the loss of frankness and candour would damage the quality of advice and deliberation and lead to poorer decision making, the Commissioner recognises that those in roles subject to public scrutiny are expected to be robust and impartial when providing advice.
43. The Commissioner considers that they should not be easily deterred from expressing their views by the possibility of any future disclosure. However, she also considers that chilling effect arguments cannot be dismissed out of hand. In this case, she accepts that NNAT should be able to hold free and frank discussions which include the provision of advice and the exchange of views for the purpose of deliberation, in order to enable strategic decisions to be made.
44. With regard to NNAT's 'safe space' argument, the Commissioner considers that this argument is more commonly applied to the development of government policy and as such relates to the application of section 35 of the FOIA. However, there may be a similar need for any public authority to have a safe space in which to develop ideas or make decisions and there is a real and significant possibility of this process being inhibited in the future if individuals discussing various matters do not feel that they are in a safe space to express opinions or provide advice.
45. The Commissioner accepts the general principle that the disclosure of information can aid transparency and accountability. However, she is aware that NNAT publishes its meeting minutes on its website, albeit with redactions and she considers that publication of these minutes to go some way towards aiding transparency and accountability.
46. The Commissioner notes the complainant's argument regarding the provision for inspection in NNAT's Articles of Association. However, she is aware that this right of inspection is not entirely unfettered – as provided for in the Articles of Association, it is subject to withholding any matters which NNAT's directors may consider to be private or confidential. Therefore, the Commissioner disagrees with the complainant's view that public disclosure was contemplated from the outset.

47. The Commissioner appreciates that the complainant might have valid reasons for accessing the information which are founded on genuine concerns, but in her view these are more in the nature of a personal or private interest. In considering where the balance of the public interest lies the Commissioner does not take into account the motivation of requestors except where this reflects a broader public interest. In this instance, the Commissioner is not aware of any broader public interest which would be served by the disclosure of the information, certainly not an interest which would counteract the public interest in NNAT's ability to conduct its affairs effectively.
48. The Commissioner has weighed the public interest in avoiding the inhibition of the free and frank provision of advice and exchange of views for the purposes of deliberation against the public interest in openness and transparency of NNAT and the complainant's arguments regarding disclosure. Her conclusion is that the public interest in avoiding this inhibition is a strong factor and considers that the public interest in maintaining the exemption outweighs the public interest in disclosure in all the circumstances of the case.

Section 40(2) of FOIA

49. NNAT considers that a significant part of the withheld information is covered by section 40(2) of FOIA.
50. There are effectively two parts to section 40(2) of FOIA. Firstly, the exemption will only cover information that constitutes the personal data of a third party. Secondly, the engagement of the exemption requires that disclosure of the personal data would contravene a data protection principle in the Data Protection Act 1998 (DPA)
51. Personal data is defined by section 1 of the DPA as data which relates to a living individual who can be identified from that data, or from that data and other information. In other words, information will only be classified as personal data where it 'relates to' an 'identifiable' individual. The Commissioner's guidance, 'Determining what is personal data'³, explains that an individual is 'identified' if it is possible to distinguish that individual from other members of a group. In most cases an individual's name together with some other information will be sufficient to identify them.
52. While a name is the most common means of identifying someone, whether any potential identifier actually identifies an individual depends

- on the context. By itself, a name may not be sufficient to link information to a particular person – for example, the name 'John Smith' may not pick out the relevant one of the many individuals who have that name.
53. Equally, however, it may still be possible to link information to an individual in the absence of a name by giving specific contextual details that pick out the person. The risk of identification will likely increase where the context in which an individual is referenced relates to an event or incident that is particularly noteworthy or memorable.
 54. The Commissioner is satisfied that the information to which section 40(2) has been applied relates to identifiable individuals and therefore falls within the definition of personal data. It is therefore for the Commissioner to decide whether disclosure of the personal data would be in accordance with a data protection principle.
 55. For the purposes of a disclosure under FOIA, it is the first data protection principle which is likely to be relevant. In accordance with this principle, personal data can only be disclosed if it would be fair, lawful and meet one of the Schedule 2 conditions (and Schedule 3 conditions if the information represents sensitive personal data). If the release of the information would fail to satisfy any of these criteria, the information will be exempt under section 40(2) of FOIA.
 56. The starting point for the Commissioner is to consider whether disclosure would be fair to a data subject. The test of fairness will invariably reflect the tension that exists between, on the one hand, safeguarding the important privacy rights of an individual and, on the other, promoting transparency and accountability. A decision must therefore balance the consequences of any disclosure and the reasonable expectations of a data subject with general principles of accountability and transparency and any legitimate interest there may be in disclosure.
 57. Various factors may affect whether an individual should have a reasonable expectation that their personal data would be disclosed upon request. These will typically include whether the information relates to an individual's public or private life, the seniority of the individual and whether his or her role is public-facing. The Commissioner's guidance on section 40 explains that the expectations actually held by the individuals in a particular case do not necessarily determine whether disclosure would be fair. Instead, the public authority has to decide objectively what would be a reasonable expectation, ie would it be reasonable for the individuals concerned to expect that their personal data would not be disclosed?

58. The complainant has said that she has no issue with the redaction of personal information in this case where it relates to the names of pupils or parents, or teachers who are not directors or former directors of NNAT or members of the Senior Leadership Team. She has also informed the Commissioner that the names of governors are publicly known and indeed the Commissioner has verified this. Therefore, the Commissioner has only considered that part of the information redacted under section 40(2) which relates to the latter specified individuals.

Personal information regarding governors

59. Some of the information withheld under section 40(2) contains the names of governors. As the complainant has stated, and the Commissioner has clarified, that the names of governors are publicly known via the websites of the various schools in NNAT, the Commissioner considers that they would have a reasonable expectation that their names would be disclosed and would not have an expectation of privacy as far as their names and roles as governors were concerned. Some of the information withheld under section 40(2) refers to "a governor" or "several governors". Again, as governors' names are publicly known, the Commissioner considers that this information is already in the public domain and therefore section 40(2) is not engaged in relation to it, as disclosure would not contravene any of the data protection principles.

Personal information of directors or former directors of NNAT and members of the Senior Leadership Team

60. As the names of these individuals are also in the public domain, the Commissioner has considered the information withheld under section 40(2) which relates to them. Where the information refers to the individuals by names, or for example, "the Directors," the Commissioner has considered whether disclosure of that information would contravene any of the data protection principles.
61. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). However, not all information relating to an individuals' professional or public role is automatically suitable for disclosure.

62. The Commissioner considers the seniority of the data subject is an important factor when considering their reasonable expectations, and in her view, the more senior a person is, the less likely it will be unfair to disclose information about him or her acting in an official capacity.
63. The Commissioner also recognises that there is a widespread and general expectation that details of a person's employment, such as is contained within their HR (Human Resources) file should be considered confidential.
64. NNAT has explained to the Commissioner that, where names and other personal information of individuals have not been redacted from the minutes, this is where either the individual has explicitly consented to their data being disclosed or where the individual is of sufficient seniority and has a level of responsibility where they could reasonably expect their data to be disclosed in this manner. However, where difficult decisions regarding the various schools have to be made by the Board of NNAT it is sometimes necessary for the individuals to discuss senior members of staff, their job performance and role. It is necessary in these cases for the directors to express opinions regarding such issues. Although their roles are senior, and their opinions would constitute their personal data, they would not necessarily have a reasonable expectation that these would be disclosed to the public. Indeed, the Commissioner considers that such disclosure would be likely to cause distress, both to the directors and to the individuals under discussion. Whilst there would be a certain interest to the public in seeing how the Board of Directors operates and how they make decisions, the Commissioner does not consider that this would outweigh the likely distress caused and is therefore satisfied that it would be unfair to disclose some of the information which is the personal data of directors or former directors of NNAT or members of the Senior Leadership Team and would breach the first data protection principle.
65. In relation to further information referring to "the Directors" or naming directors or senior staff, the Commissioner does not consider that disclosure would be unfair, as the information is general and of the kind that such individuals, given their senior roles, would have a reasonable expectation of disclosure.
66. In relation to the remaining information which constitutes the personal information of such individuals, the Commissioner has considered this in the context of all of the other information contained in the meeting minutes. As the information is so intertwined with other information which has been redacted under other sections of FOIA, the Commissioner is satisfied that disclosure would not be possible without disclosing other such redacted information.

67. The Commissioner has outlined the information to be disclosed, in respect of which she does not consider section 40(2) of FOIA to be engaged, in a confidential annex to this Notice.

Section 43(2) of FOIA

68. Section 43(2) states that information is exempt if its disclosure would or would be likely to prejudice the commercial interests of any person. This can include the commercial interests of the public authority holding the information.

69. The term 'commercial interests' is not defined in the FOIA, however, the Commissioner has considered her awareness guidance on the application of section 43. This comments that:

"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services."

70. The information withheld under section 43(2) relates to discussions regarding the procurement of services and awarding of contracts to suppliers, which the Commissioner, having perused the withheld information, accepts falls under the scope of "commercial interests" as it relates to NNAT's ability to participate competitively in the procurement of services.
71. Having concluded that the information withheld under section 43(2) falls within the scope of the exemption the Commissioner has gone on to consider the prejudice which disclosure would cause and the relevant party or parties which would be affected.

Likelihood of prejudice

72. In Hogan and Oxford City Council¹ v the Information Commissioner at paragraph 33 the Tribunal said:

"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

¹ EA/2005/0026 and 0030

occurrence of prejudice is more probable than not."

73. With regard to would be likely to prejudice, the Information Tribunal in *John Connor Press Associates Limited v The Information Commissioner*² confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (Tribunal at paragraph 15).
74. With regard to the alternative limb of 'would prejudice', the Tribunal in the *Hogan* case commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).
75. The Commissioner has considered how any prejudice to commercial interests would be caused by the disclosure of the withheld information. This includes consideration of whether the prejudice claimed is "real, actual or of substance" and whether there is a causal link between disclosure and the prejudice occurring against which the exemption is designed to protect.

The nature of the prejudice

76. NNAT has stated that disclosure of the withheld information would be likely to be prejudicial to the commercial interests of its suppliers. The Commissioner is therefore satisfied that NNAT is applying the limb "would be likely to prejudice" and she has considered NNAT's submissions accordingly.

Nature of the prejudice – third party suppliers

77. In relation to the third party suppliers' commercial interests, NNAT told the complainant that disclosure to the public of the suppliers' product details and quotes for services including pricing is considered by the Board to be likely to be prejudicial to those suppliers' commercial interests.
78. When claiming that disclosure would be likely to prejudice the commercial interests of a third party, the Commissioner expects a public authority to consult the third party for its view. In this case, there is written evidence that NNAT has consulted with relevant third

² EA/2005/0005

parties either at the time of the request or during her investigation. NNAT has provided the Commissioner with written confirmation from three suppliers about the genuine concerns they would have about the negative impact that disclosure could have on their businesses.

79. The Commissioner recognises that suppliers compete by offering something different from their rivals. She accepts that, in a competitive market, that difference may be the price at which goods or services can be delivered and that disclosure of those details to rival suppliers would be likely to allow them to replicate product details or undercut prices in order to win tenders. This means that there is clearly a real and significant risk of prejudice to the suppliers' commercial interests occurring as a result of disclosure of those details to the public.

Nature of the prejudice – NNAT itself

80. It is worth noting that the written submissions from the three suppliers all state that, if they had thought that information regarding their product details and pricing might be disclosed into the public domain, they would not have provided a quote to NNAT in the first place.
81. NNAT has explained to the Commissioner that, whilst Academy schools (in particular, Multi Academy Trusts comprising several schools) are considered to be public authorities, they are expected by the Secretary of State for Education to compete with each other for admissions to their main school and sixth forms to provide parents with choice for their children's education. They are also expected to compete for member schools to join the Trusts to create hubs of excellence and achieve best value for money through the successful negotiation of contracts and procurement.
82. The Commissioner accepts that the risk that suppliers would not be prepared to tender for the NNAT's business poses a real and significant risk of prejudice to the commercial interests of NNAT.
83. The Commissioner accepts that disclosure of the information withheld under section 43(2) of FOIA would pose a real and significant risk of prejudice to the commercial interests of both NNAT and the suppliers. As she considers that the exemption under section 43(2) is engaged, she has gone on to consider the public interest arguments for and against disclosure of the relevant withheld information.

Public interest arguments in favour of disclosure

84. The Commissioner recognises that the public interest in disclosure will always attract some weight because of the importance of the concepts of transparency and accountability where public funds are involved. The importance of schools in society also means that invariably there will be greater scrutiny of issues and decisions that affect how they operate.
85. The Commissioner recognises that there would be some public interest in discussions regarding commercial suppliers, as there would be a public interest in knowing that the NNAT was constantly striving to get the best value for public money.

Public interest arguments in favour of maintaining the exemption at section 43(2)

86. The Commissioner accepts that disclosure of the information would be likely to cause prejudice both to the suppliers' ability to compete in a commercial market and to the NNAT's ability to achieve the best value for money through the successful negotiation of contracts and procurement, as it would be likely to prevent suppliers from providing quotes to the NNAT. The Commissioner does not consider that such prejudice would be in the public interest.

Balance of public interest arguments

87. The Commissioner has observed that the information to which section 43(2) has been applied constitutes part of a wide range of issues which were discussed at Board of Governors' meetings. The Commissioner is satisfied that the information is now, and was at the time of the request, commercially sensitive.
88. The Commissioner considers that accountability and transparency are important and that disclosure would allow public scrutiny of how the NNAT's funding was being used with regard to the negotiation of contracts and procurement. However, she also recognises that such disclosure would be likely to cause severe prejudice to the NNAT's ability to use such funding to obtain best value for money.
89. On balance, the Commissioner has found that the severity of the prejudice she has accepted would be likely to occur is such that the public interest lies in maintaining the exemption.

Right of appeal

90. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

91. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
92. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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