

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 7 November 2019

**Public Authority:** Gloucestershire County Council  
**Address:** Shire Hall  
Westgate Street  
Gloucester  
GL1 2TG

#### **Decision (including any steps ordered)**

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1. The complainant has requested certain information held by Gloucestershire County Council (the council) relating to the management of parking services in the Gloucestershire area.
2. Whilst the council provided the complainant with some information in response, it applied section 14(2) and section 43(2) of the FOIA to part of the request.
3. The Commissioner's decision is that the council was not correct to have applied section 14(2) to any part of the complainant's request. However, she is satisfied that section 43(2) is engaged, and that the council is not obliged to provide any further information in response to the request.
4. The Commissioner does not require the council to take any steps as a result of this decision notice.

## Background

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5. In 2013 the council awarded a four year Parking Management Services Framework contract to APCOA. In 2016<sup>1</sup> it was agreed to extend the contract for a further two years and this took effect from April 2018. The current arrangement expires on 31 March 2020 and the council has confirmed that the tendering process for the new contract is already underway.
6. The complainant originally contacted the Commissioner on 2 February 2018 to raise concerns about the way the council had handled a number of his information requests. These primarily related to the parking management services provided by APCOA on behalf of the council.
7. The complainant subsequently sent the Commissioner copies of five different sets of communication that he had sent to the council between 1 August 2016 and 2 February 2018, each of which had been dealt with as a separate request for information.
8. On 15 March 2018 the Commissioner advised the complainant that as he had not exhausted the council's internal review process in respect of any of his requests, she was not able to take any further action at that time.
9. On 8 October 2018 the complainant contacted the Commissioner again about the council's handling of his request of 2 February 2018. On this occasion he also provided the council's internal review response which had upheld the original decision to withhold certain information.
10. On 26 October 2018, the Commissioner confirmed to the complainant that he had now provided sufficient information for her to be able to investigate the council's handling of his request dated 2 February 2018. However, prior to the commencement of this investigation, the complainant contacted the Commissioner on a number of further occasions, raising additional concerns about the handling of other requests that he had submitted to the council.
11. On 8 March 2019, the Commissioner contacted the complainant to apologise for the delay in considering the matters of concern that he had raised. She advised that, having considered his latest correspondence, she was mindful that he may now want her to focus on council's

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<sup>1</sup> <http://glostext.gloucestershire.gov.uk/mgDecisionDetails.aspx?IId=19649>

handling of his most recent requests, rather than his request of 2 February 2018. As a result, the Commissioner asked the complainant to confirm what requests, and concerns, he now wanted her to investigate.

12. On 13 March 2019 the complainant advised the Commissioner that the '*issue has moved on*'. He stated that the council was now refusing to disclose the financial arrangements between itself and APCOA, and that it had '*labelled*' him as vexatious.
13. It was still not entirely clear to the Commissioner what precise concerns the complainant wanted her to investigate and she asked him again to provide such clarification. She also reiterated what supporting information he would need to provide in order for her to be able to consider the council's handling of any of his more recent requests.
14. On 20 March 2019 the complainant provided the Commissioner with a copy of an internal review response he had received from the council dated 6 February. This was in connection to a request that he had made on 8 January 2019.
15. The Commissioner wrote to the complainant on 1 April 2019 to confirm that whilst the information he had now provided was sufficient to investigate the council's handling of his request of 8 January 2019, he would still need to provide additional information if he wanted her to consider any of his other concerns.
16. Following receipt of further correspondence from the complainant, the Commissioner wrote to him to confirm that, based on the information he had provided, she was still only able to proceed with an investigation into the council's handling of his request of 8 January 2019. However, she did go on to say that as the council's response to that request appeared to be linked to two of his previous requests, the way in which they had been handled may also be taken into consideration when making her decision.

## **Request and response**

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17. On 8 January 2019 the complainant wrote to the council and requested information in the following terms:
  1. *I require the financial arrangements between Gloucestershire County Council and their third party contractor Apcoa.*
  2. *What are Apcoa making from parking and bus lane PCNs from the people of Gloucestershire and its visitors?*

3. *Why is it that Gloucestershire County Council allow the use of publicly owned equipment for the profit and gain of private sector, profit driven companies?*
4. *For each £30 PCN how much goes to Apcoa?*
5. *Please provide details of the Apcoa contract with regards to bus lane enforcement and revenue generated this way.*
18. The council provided a response to the complainant on 5 February 2019. It advised that it had applied section 14(2) of the FOIA to part 1 and part 5 of the request as it viewed their content to be substantially similar to two previous requests that he had made. For the purposes of this decision notice these two previous requests will be referred to as Request A (dated 12 December 2016), and Request B (dated 29 November 2018).
19. With regard to part 2 and 3 of the request, the council advised the complainant that it viewed both of these to be requests for opinions, rather than requests for recorded information.
20. The council provided some information in response to part 4 of the complainant's request. It advised that PCN's which are issued for non-compliance with bus lane restrictions have a value of £60, and not £30 as he had suggested and that, '*in principle*', all income generated from PCN'S is paid to the council. It went on to say that the payments made for the services that are carried out by APCOA are set out in a Framework Agreement (the Agreement) between the two parties, and that a copy of this had already been provided in its response to Request A.
21. On 6 February 2019, the complainant requested an internal review and the council provided its response on 6 March 2019.
22. With regards to parts 1 and 5 of the complainant's request, the council maintained its previous position that section 14(2) was engaged. It advised that the Agreement provided to the complainant in response to Request A contained the relevant details of the contract between the council and APCOA. It went on to say that this Agreement was still in operation, adding that the period of time which had passed between the complainant's repeat requests was not sufficient for there to have been any likelihood that the information would be significantly different.
23. The council also referred to the internal review response it had provided in respect of Request A. It stated that this had set out the reasons why, under section 43(2) of the FOIA, certain financial information contained within the Agreement was exempt from disclosure.

24. With regard to part 2 of the complainant's request, the council confirmed that, upon review, it had revised its position. It now stated, in answer to the complainant's question, that the Agreement that had already been provided to him outlined the relevant payments which were made.
25. With regards to part 3 and part 4 of the request, the council confirmed that its view remained unchanged to that which it had set out in its original response to the complainant.

### **Scope of the case**

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26. On 20 March 2019 the complainant contacted the Commissioner to complain about the way in which the council had handled his information request of 8 January 2019.
27. During the Commissioner's investigation, the council confirmed that, upon review and after further communication with APCOA, it had decided that certain information relating to the '*contract defaults*' charges set out within the Agreement could now be released. However, it maintained that the charges set out within the Pricing Schedule of the Agreement should be withheld.
28. The Commissioner then contacted the complainant to ask whether the disclosure of the 'contract default' information was sufficient to resolve the matter for him.
29. The complainant responded to say that matters were not resolved as the council had persistently failed to provide him with the information he required. He advised that the council paid a set fee for bus lane cameras and for the employment of parking attendants and yet the payments that it made to APCOA varied month to month. He advised that, as a result, he had wanted to know whether there are any financial incentives for APCOA to issue PCNs.
30. The Commissioner considers the scope of her investigation to be as follows:
  - Whether the council was correct to have applied section 14(2) to parts 1 and 5 of the complainant's request of 8 January 2019.
  - Should it be the case that the Commissioner finds that section 14(2) is not engaged, she will then go on to consider whether the council can rely on section 43(2) when withholding information relevant to part 1 and 5 of the request.

- Whether the council was correct to have advised that part 3 of the request of 8 January 2019 was not a request for recorded information.
- Whether, on the balance of probabilities, any further information is held by the council which should have been considered in response to parts 2 and 4 of the request of 8 January 2019.

## Reasons for decision

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### Section 1-general right of access to information

31. Section 1 of the FOIA is most relevant to part 2, 3 and 4 of the request. This states that:

*'(1) Any person making a request for information to a public authority is entitled-*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him.'*

#### Part 2 of the request

32. Part 2 of the request had asked what APCOA *'was making'* from parking and bus lane PCN's.
33. The council had originally advised the complainant that this was a request for an opinion, rather than recorded information. However, at the internal review stage, the council then referred the complainant to information held within the Agreement that it now believed to be relevant to this part of his request.
34. The Commissioner does not agree with the council that the information requested in part 2 is held within the Agreement. However, she does consider that, if the terms of this part of the request are considered literally, she would not expect the council to hold this information; whilst it pays APCOA for the services it provides, it is unlikely to be privy to what APCOA is actually *'making'* from providing services that specifically relate to parking and bus lane PCNS.
35. The Commissioner would add that, even if it were the case that the complainant's intended meaning of *'making'* was the actual payments made to APCOA by the council specifically *'from bus lane and parking*

PCNs', she is satisfied that, having considered terms of the contract and the Pricing Schedule within the Agreement, this is not information that would be held by either party.

36. Given the above, whilst the Commissioner does not agree with the council's interpretation of part 2 of the request, she is of the view that it is unlikely to hold the specific information requested by the complainant.

Part 3 of the request

37. With regards to part 3, the Commissioner agrees with the council that this is not a request for recorded information and therefore does require any further consideration.

Part 4 of the request

38. Part 4 of the request asked that *'for each £30 PCN how much goes to Apcoa?'* The council provided a detailed response to the complainant which explained that the income received from PCN's is paid in total to the council, and that APCOA's income is determined from the services it provides, which are set out in the Agreement.
39. The Commissioner notes that the council, in response to the complainant's request of 10 November 2016, had already confirmed to the complainant that *'All PCN income is paid in its entirety and without deduction to Gloucestershire County Council'*.
40. It would appear from the explanations provided by the council that it does not allocate a *'share'* of the income it receives directly from the payment of PCNs with APCOA, and therefore does not actually hold the information that has been described by the complainant.
41. However, the Commissioner does regard it to be appropriate at this point to make reference to item 26 and 39 of the Pricing Schedule contained within the Agreement.
42. Firstly, item 26 contained within the Pricing Schedule is described as the *'price per PCN issued by a camera (mobile or static) and processed to full payment'*.
43. Item 39 contained within the Pricing Schedule of the Agreement is described as *'Fixed price per fully paid PCN payable by the lead authority, for PCNs fully paid in the previous month.'*
44. Both item 26 and item 39 appear to be charges that are claimed by APCOA which could potentially be deemed to directly relate to each PCN that is issued and/or paid.



45. The Commissioner accepts that, technically speaking, the information set out in item 26 and 39 (and potentially other items) of the Pricing Schedule does not explicitly provide a response to part 4 of the request. She also acknowledges that the complainant was already in possession of this information (with the charges redacted). However, taking into account the circumstances of this case, she believes it might have been helpful to the complainant if the council had at least made reference to the existence of such information in its response to part 4 of the complainant's response.
46. Having considered the content of the complainant's correspondence to both the council and the ICO, it would appear that he believes additional documents are held by the council that do not, in reality, exist. For example, on a number of occasions he asks directly, or indirectly, for copies of the additional contracts and financial arrangements between the council and APCOA that relate specifically to the services provided relating to bus lanes.
47. The Commissioner notes that there appears to be no direct references to the management and enforcement of bus lanes contained within the version of the Agreement that was released to the complainant. It is not perhaps unreasonable for the complainant to have therefore assumed that a separate contract existed between APCOA and the council for this service.
48. The council has advised the Commissioner that, upon review, it believes that it could perhaps have provided a bit more background with the responses it provided to the complainant in order to make it clear that the Agreement was being used in place of a contract, and that this covered both parking and bus lanes. It has provided the Commissioner with the following details which it also believed may have been of assistance the complainant, had it been included in its responses to him:

*The Parking Framework Agreement was set up by the County Council to provide a framework from which any parking authority within Gloucestershire could call off a contract to cover its particular area-both geographically and in terms of on or off street parking. The benefits would be to minimise the costs of procurement for the 7 different authorities (1 county council and 6 borough/district councils), to have a consistent standard of provision of service across all the districts, and also to maximise the benefits of economies of scale, by maximising the amount of work that could be put through the Framework. Each enforcing authority would have its own contract, which it would manage individually, but using the same specification and prices.*



49. The Commissioner agrees with the council that further explanation of certain matters might have been helpful. However, having considered the details contained within a number of the council's responses to the complainant, she is of the view that it did go some way in trying to provide some helpful explanations about the operation of parking enforcement within the county, where the information that had been requested by the complainant was not held.
50. With regards to the complainant's concerns that the council has failed to provide him with an explanation for the variation in the monthly payments it makes to APCOA, or details about whether APCOA receives any financial incentive based on the number of PCNs issued, the Commissioner is not persuaded that these are matters that would fall within the scope of the request under consideration. However, even in the event that they do, the Commissioner is satisfied that this information has already been made available to him.
51. The Pricing Schedule contained within the Agreement includes clear descriptions of all the services that are provided by APCOA, and the charges that have been agreed for such services. Therefore, any charges that may relate directly to the number of PCNs that are issued, or paid, are set out within the descriptions contained within this Pricing Schedule.
52. In addition, it is apparent from the descriptions of items within the Pricing Schedule that some of the services that APCOA is required to provide as part of its contract will vary week to week (for example, the number of temporary lines that are painted, or the number of missing signs that need to be replaced will not be a constant) and this will affect the monthly charges that are submitted to the council.
53. The Commissioner has taken into account all the information available and is satisfied that, on the balance of probabilities, there is no additional information held by the council which should have been provided in response to parts 2, 3 and 4 of the complainant's request.

#### **Section 14(2)-repeat requests**

54. This is most relevant to part 1 and 5 of the complainant's request. Section 14(2) of the FOIA states that:

*'Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.'*

55. The Commissioner's guidance<sup>2</sup> on the application of section 14(2) states that a public authority can only apply this exception where it has either:

- previously provided the same requester with the information in response to an earlier FOIA request: or
- previously confirmed the information is not held in response to an earlier FOIA request from the same requester.

The guidance clearly states that if neither of these conditions apply then the public authority must deal with the request in the normal manner.

56. The council had advised the complainant that it had taken into account both Request A and Request B when it applied section 14(2) to his request of 8 January 2019. These were as follows:

Request A (dated 8 December 2016):

*'1. What are the financial arrangements between GCC and APCOA?'*

*2. Do GCC [the council] pay a set fee for their services?*

Request B (dated 29 November 2018):

*'Can you please supply me a copy of the contract between Gloucestershire County Council and Apcoa, not the Framework Agreement, I already have that.'*

57. The Commissioner accepts that part 1 of the complainant's request of 8 January 2019 is almost identical to part 1 of Request A. She also views part 5 of the request to be similar to Request B.

58. In the council's representations to the Commissioner, it advised that, in addition to Request A and Request B, it also considered a number of other requests to be of relevance when applying section 14(2) to the complainant's request of 8 January 2019. Some of these requests were submitted by the complainant after 8 January 2019. As the Commissioner can only consider the circumstances that were relevant at the time that the request was received, these requests have not been taken into account when making a decision in this particular case.

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1195/dealing-with-repeat-requests.pdf>

59. Whilst the Commissioner does not regard it to be necessary to provide the full details of each of the requests that the council has referred to in support of its decision to apply section 14(2), she does regard it to be of some relevance to set out the terms of one particular request dated 1 August 2016. This was as follows;

*'As a FoIR could you please provide some information about the costs and revenue generated in Gloucester.*

*What contract you (APCOA) have with Gloucestershire County Council, how much you paid for the contract and when it's due to expire.'*

60. The Commissioner regards this request to be very similar to part of that request under consideration. The council's response to this request of 16 August 2016 had included a link to its annual report, which it stated provided the details of costs and revenue generated. The council also advised that its enforcement patrol had been outsourced to APCOA and the contract was due to expire on 31 March 2020. In addition, the council confirmed to the complainant that '*subject to variation*', the contract price was £1,097,210.72 annually.
61. The Commissioner does accept there is some merit in the council's argument that parts 1 and 5 of the request are either the same, or very similar, to other requests that the complainant has made. She views Request A and Request B to be of most relevance. However, whilst the requests may be similar this, in itself, does not necessarily mean that they are repeat requests for the purposes of section 14(2).
62. The Commissioner notes that whilst the council did provide a copy of the Agreement in response to Request A, this contained redactions; certain parts were withheld under section 43(2) of the FOIA, and continue to be withheld. The council has therefore not disclosed all the information that it holds that is relevant to Request A, Request B, or the current request.
63. The Commissioner has also taken into account the time that has passed since a copy of the redacted Agreement was supplied to the complainant in 2016. In addition, she notes that the extension to the term of the parking management contract took effect in 2018; it may therefore not have been unreasonable for the complainant to have anticipated that this extension may have had some effect on the financial arrangements that were originally agreed between the parties.
64. In addition, following the commencement of the Commissioner's investigation, the council changed its response to the complainant's request of 8 January 2019. This has now led to the release of additional information which had not previously been provided to the complainant. Whatever the reasons for this revised approach, this is regarded to be a

change of position to that adopted by the council when it dealt with his previous requests.

65. Given the above, whilst the Commissioner accepts parts 1 and 5 of the request are substantively similar to other requests made by the complainant, she has decided that, with regards to the specific request under consideration, and the circumstances that relate directly to it, the conditions required for a repeat request have not been sufficiently met and therefore the exemption at section 14(2) is not engaged.
66. The Commissioner has therefore gone on to consider whether section 43(2) can be applied to any of the information that has been withheld that is relevant to part 1 and part 5 of the request.

### **Section 43(2)-commercial interests**

67. Section 43(2) of the FOIA states the following:

*'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).'*

68. Section 43 is a prejudice-based exemption and, in order for it to be engaged, the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual, or of substance, and;
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met, i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.

69. In relation to the commercial interests of third parties, the Commissioner does not consider it appropriate to take into account speculative arguments which are advanced by public authorities about how prejudice may occur to third parties. Whilst it may not be necessary to explicitly consult the relevant party, the Commissioner expects that arguments which are advanced by a public authority should be based on its prior knowledge of the third party's concerns.
70. The information contained within the Agreement which the council withheld under section 43(2) is limited to the Pricing Schedule, and the associated Schedule of Rates (pages 113-117). The council has disclosed the descriptions set out in the Schedule of Rates for each item, but has withheld the actual price that it had been agreed APCOA can charge for each item.
71. The Commissioner has already made reference to item 39 in paragraphs 42 to 46 of this decision notice. As is the case with the remaining items contained within the Pricing Schedule, whilst the description of the charge under item 39 has been released, the price chargeable per item has not.
72. However, the Commissioner notes that the price charged in relation to item 39 has been disclosed in other parts of the Agreement (including under point 3.3.3 on page 52 of schedule 2 -'Parking Management-Contract Specification').
73. Whilst it is unclear why the council redacted the price relating to item 39 from the Pricing Schedule, but did disclose it in other parts of the Agreement, as the information has already been released to the complainant, she does not regard it to be necessary to investigate this particular point further.
74. The Commissioner has therefore considered whether the council was correct to have withheld the remaining charges that are set out within the Schedule of Rates contained within the Pricing Schedule.

### **The council's position**

75. The Commissioner asked the council to explain why the disclosure of the charges set out in the Schedule of Rates would, or would be likely to, prejudice any party's commercial interests.
76. In response, the council has advised that the information to which the exemption has been applied contains unique business model costs on APCOA's commercial activity. It states that there is an inherent duty of confidentiality when information is submitted to a council in a contract. It goes on to say the following:

*'The Public Contracts Regulations 2016 and their precursor required that where a contractor obtains information as part of a procurement process the Council should accede to reasonable requests from the contractor that information passed to the Council as part of the procurement process is treated as confidential.'*

77. The council has provided the Commissioner with evidence that it consulted with APCOA about the potential disclosure of the withheld information.
78. APCOA has confirmed that it would not want the withheld information to be placed into the public domain as it regards it to be commercially sensitive information which would allow competitors within the parking market place to view its business model costs. It states that should the information be released, competitors would then be able to use the information to gain a commercial advantage when tendering against the company, not only in relation to council's parking contract, but also elsewhere. It confirmed that it tenders for business nationwide and has developed a chain of suppliers who supply goods and services and this allows it to tender on a competitive basis.
79. APCOA has argued that the release of the withheld information would seriously effect potential opportunities as competitors would have a clear insight into its pricing schedule. APCOA states that any release of financial information of this nature would give a commercial advantage to its competitors and would cause it some financial harm in the future.
80. The council has argued that its own economic interests could also be harmed, should the information be disclosed. It states that confidentiality is required in order to protect its position as a purchaser and that the disclosure of the information would be likely to affect the ability to negotiate best value and to effectively procure services in the future.

### **The Commissioner's position**

81. The term 'commercial interests' is not defined in the FOIA. However, the Commissioner's guidance<sup>3</sup> on the application of section 43 provides the

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1178/commercial-interests-section-43-foia-guidance.pdf>



following description:

*A commercial interest relates to a person's ability to participate competitively in a commercial activity. The underlying aim may be to make a profit however it could also be to cover costs or to simply remain solvent.*

82. The Commissioner considers that the withheld information (a breakdown of charges for services provided) provides details of how a business (APCOA) will deliver a service (parking management) on behalf of the council and that this relates to a '*person's ability to participate in a commercial activity.*' Given this, in the context of this case, the Commissioner is satisfied that the withheld information relates to a commercial interest and that the first criteria is met.
83. With regard to the second criterion, the Commissioner is satisfied that the disclosure of the withheld information has the potential to harm the commercial interests of APCOA.
84. A public authority can withhold information that relates to a third party on the basis of prejudice to the commercial interests of that party. In this instance, whilst the council has referred to the prejudice which could be caused to its own economic interests, the main arguments presented relate to the prejudice which would be caused to the interests of APCOA, should the information be disclosed.
85. The withheld information relates to APCOA's pricing strategy for services that it provides. The Commissioner accepts that the disclosure of this information has the potential to harm APCOA's commercial interests, given the insight such information would provide to competitors. It would give them an unfair advantage, having gained additional knowledge about APCOA's strategy, plans and techniques by virtue of being able to access the costings for services that it is contracted to carry out. The Commissioner is of the view that APCOA would be at a disadvantage, not only in relation to possible future tenders with the council, but also its submission of tenders for other work.
86. Therefore, the Commissioner considers that the second criterion has been met and that there is a causal relationship between the requested information being released and prejudice to the commercial interest that section 43(2) is designed to protect. She is satisfied that this alleged prejudice is of substance.
87. With regard to the third criterion, the Commissioner is satisfied that there is a more than hypothetical risk of prejudice occurring to APCOA, should the withheld information be disclosed. Rather, the risk of such prejudice occurring can be correctly described as one that is real and



significant. Given the nature of the work, and the market to which it relates, it is likely that the same companies will compete against each other in similar competitive exercise. In the Commissioner's view, this increases the risk of prejudice occurring to the company's commercial interests, if the information was to be disclosed.

88. The Commissioner accepts that, in certain circumstances, relevant timescales can be an important factor to take into consideration when considering the consequences of the disclosure of commercial information. In particular, the passage of time can diminish the prejudice which may occur as a consequence of disclosure.
89. However, it is the Commissioner's view that, in this particular instance, whilst the Agreement in question took effect from 2013, the way in which APCOA sets out its pricing is likely to still be relevant to any tenders it is still bidding for, including the council's new parking contract which appears to already be out for tender. Given this, she is satisfied that there is still a realistic prospect that competitors will gain an unfair advantage and APCOA's ability to compete on a 'level playing field' with other companies when bidding for tenders would be undermined, should the information that has been withheld be placed in the public domain.
90. The Commissioner is satisfied that the third criterion is met and section 43(2) is engaged. As a result, she has gone on to consider the public interest test.

### **Public interest test**

91. Section 43(2) is a qualified exemption which means that even where the exemption is engaged, information can only be withheld where the public interest in maintaining that exemption outweighs the public interest in disclosure.

### **Public interest arguments in favour of disclosure**

92. The council has advised that it considered there to be a number of public interest factors that lay in favour of the disclosure of the withheld information. These are as follows:
  - It would help further the understanding of, and participation in, public debate.
  - Further the understanding of issues.
  - Increase understanding of how council decisions affect the public.
  - Promote accountability and transparency in decision making.
  - Promote accountability and transparency in council spending.

### **Public interest arguments in favour of maintaining the exception**

93. The council has put forward the following public interest arguments against the release of the information:

- The effect on the commercial or economic interests of APCOA.
- It is likely to give a commercial advantage to competitors as they would have access to APCOA's business model costs which they could consider when tendering against them.
- It would be likely to undermine APCOA's ability to compete on an equal and fair basis with its competitors who would have a clear insight into its Pricing Schedule.
- It would be likely to prejudice commercial interests in pursuit of a contract of a similar nature.
- There is a likelihood of commercial damage being caused to APCOA through disclosure of information that it regards to be confidential.
- The possibility that in disclosing the information the level of service to the council may be impaired.
- Possibility that the cost for obtaining services may increase through decreased competition for future contracts, thereby creating detriment to the best interest of the community.

### **Balance of the public interest arguments**

94. The Commissioner considers that there is always some public interest in the disclosure of information. This is because it promotes the aims of transparency and accountability which, in turn, promotes greater public engagement and understanding of the decisions taken by public authorities. She is also mindful that the disclosure of the withheld information could improve the wider public's confidence of the tendering of contracts by the council.
95. However, when considering the balance of the public interest in this case, the Commissioner believes it important to take into account the extent of that information which has already been placed into the public domain.
96. Firstly, the Commissioner notes that the council publishes an annual report<sup>4</sup>, '*Civil Parking Enforcement in Gloucestershire*' on its website and this provides a great deal of information, including the income and expenditure derived from parking enforcement in the county.

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<sup>4</sup> <https://www.gloucestershire.gov.uk/media/1519004/annual-parking-report-2017-2018.pdf>

97. In addition, whilst the figures themselves have been redacted from the Pricing Schedule contained within the Agreement, the various activities for which APCOA will charge the council have been released. In addition, the Agreement sets out the terms of the contract between the two parties in great detail.
98. The Commissioner has also taken into account the details of all expenditure over £500<sup>5</sup> published by the council on a monthly basis. This includes the total payments that it makes to APCOA for the services it provides in each monthly period.
99. The Commissioner is satisfied that the council, in the interest of openness, transparency, and accountability, has disclosed information where it would not result in prejudice to the commercial interests of the company. In addition, she is of the view that the information that is already in the public domain provides the public with a good insight into the council's revenue, expenditure, management and enforcement as it relates to parking within the county.
100. In the Commissioner's opinion, there is a very strong and inherent public interest in ensuring fairness of competition, and it would be firmly against the public interest if a company's commercial interests are harmed simply because they have been awarded a public sector contract. The Commissioner is also mindful that there is only a short time left remaining on the current parking contract. Given this, should APCOA wish to submit a bid for the new contract, it would be at an unfair disadvantage if details of its current pricing was disclosed. Not only could knowledge of the current detailed charges lead competitors to potentially undercut APCOA, but it could actually lead to the opposite scenario, with them becoming aware that they can raise their prices when submitting tenders against the company. This would be of detriment to the council and the public purse.
101. It is the Commissioner's view that, in this instance, there is a stronger public interest in protecting the commercial interests of APCOA and ensuring that it is able to compete fairly both in relation to future tenders, both with the council and other businesses.

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<sup>5</sup> <https://www.gloucestershire.gov.uk/council-and-democracy/performance-and-spending/spend-over-500/>

102. Therefore, the Commissioner has decided that, in all the circumstances of the case, the public interest in maintaining the section 43(2) exemption outweighs the public interest in disclosure.

## Right of appeal

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103. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

104. 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.

105. 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 .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**