

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 March 2008

Public Authority: Commonwealth Development Corporation ('CDC')
Address: 6 Duke Street
London
SW1Y 6BN

Summary

The public authority, CDC, is a government owned company which invests in private equity funds focused on emerging markets in developing parts of the world. The complainant requested the contract between CDC and Actis, one of its fund managers. CDC refused to disclose the contract on the basis that it was exempt under sections 41 and 43 of the Act. The Commissioner has concluded that whilst the majority of the sections of the contract are exempt on the basis of section 43(1), some of the sections are not exempt by virtue of either section 41 or 43 and therefore the Commissioner has ordered these sections to be disclosed.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant submitted the following request to CDC on 12 September 2005:
*'1. A copy of your publication scheme (Freedom of Information 2000);
2. A copy of your schedule of charges (Environmental Information Regulations 2004);
3. A copy of your Five Year Investment contract with ACTIS'.*
3. CDC responded on 28 September 2005 and provided the complainant with the information covered by requests 1 and 2. However, with regard to request 3 CDC refused to disclose this information explaining that 'the agreement between Actis

Capital LLP and CDC Group plc is confidential and under section 41 of the Act will not be disclosed'.

4. On 28 September 2005 the complainant asked CDC to conduct an internal review into its decision to withhold the contract.
5. CDC informed the complainant of the outcome of the internal review on 21 October 2005 and confirmed that its position that the contract was exempt from disclosure by virtue of section 41 of the Act. CDC noted that in addition to the contract being exempt on the basis of section 41 of the Act it also considered the contract to be exempt by virtue of the exemption contained at section 43 of the Act because disclosure 'will undermine both Actis' and our ability to fulfil our roles'.
6. CDC informed the complainant that it had given consideration to the possibility of extracting all non-confidential clauses, however it believed that:

'this process (which would require detailed discussion with Actis) would be too time consuming and costly and would ultimately produce a document that is of very little interest. We consider that the cost would be such that we are entitled to rely upon section 12 of the Act'.

The Investigation

Scope of the case

7. On 14 November 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant argued that CDC had failed to provide evidence to demonstrate that information contained within the contract was either confidential or that disclosure would prejudice the commercial interests of either party. The complainant also highlighted a number of public interest arguments in favour of disclosure of the contract. Finally, the complainant also argued that CDC's assertion that to remove the exempt information from the contract would be too costly was not credible because this was not an activity which public authorities could charge for under the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations').

Chronology

8. Between March 2006 and September 2007 the Commissioner and CDC exchanged correspondence on the issues related to CDC's decision to withhold the information requested by the complainant. The Commissioner has summarised the key communications below.
9. The Commissioner wrote to CDC on 13 March 2006 and asked to be supplied with a copy of the information requested by the complainant.

10. On 11 May 2006 CDC provided the Commissioner with a copy of the contract and a summary of the reasons as to why it considered it to be exempt from disclosure.
11. Following further discussions, CDC provided the Commissioner with further arguments to support its position that the contract was exempt from disclosure in a letter dated 31 October 2006.
12. During these discussions the Commissioner suggested that CDC could provide the complainant with an index of the various provisions contained within the contract so that the complainant would be able to narrow the scope of his request. In an email dated 3 January 2007 CDC confirmed that as well as considering the content of the contract exempt from disclosure, it also believed that disclosure of the index of the contract was also exempt from disclosure on the basis of sections 41 and 43. CDC explained that this was because disclosure of the existence of certain contractual terms may harm either its or Actis commercial interests.
13. On 26 March 2007 the Commissioner wrote to CDC again and explained that its arguments to support the application of the exemptions to date had been too general. The Commissioner explained that the onus was on public authorities to explain how the each part of the contract was exempt from disclosure on the basis of section 41 and/or section 43 and why the public interest favoured withholding the information; essentially CDC could not apply the exemptions contained in the Act on a blanket basis. The Commissioner's letter specifically asked CDC to respond to a number of points in order to demonstrate the likelihood of CDC's and Actis' commercial interests being harmed if the contract was disclosed.
14. The Commissioner did not receive a response to this letter until 24 July 2007. Unfortunately this response failed to address the issues the Commissioner had raised in his letter of 26 March 2007. Therefore, the Commissioner wrote to CDC again on 14 August 2007 and reiterated his position that he needed CDC to provide a detailed explanation of why it considered the exemptions to apply the various parts of the contract.
15. CDC provided the Commissioner with a substantive response on 10 September 2007. In this letter CDC provided a more detailed explanation of why it considered the exemptions to apply. CDC also suggested to the Commissioner that it had reviewed the contract and concluded that some of the various provisions within the contract may be disclosed because neither CDC's nor Actis' commercial interests were likely to be harmed by disclosure of these provisions.

Findings of fact

16. Before the Commissioner considers in detail whether the CDC has dealt with the request in line with the requirements of the Act, he believes that it would be useful to outline a number of key facts about this case, beginning with why CDC is a public authority for the purposes of the Act.

17. Section 3(1)(b) of the Act states that a public authority includes a publicly-owned company as defined by section 6. Section 6(1)(a) defines a publicly-owned company as an entity which is wholly owned by the Crown. Furthermore, Section 6(2)(a) defines a company as wholly owned by the Crown if it has no members except –
 - (i) Ministers of the Crown, government departments or companies owned by the Crown.
18. As the Department for International Development ('DFID') is a government department and owns 100% of CDC, the Commissioner is satisfied that CDC is a public authority for the purposes of the Act.
19. The Commissioner believes that it would also be useful to provide a brief description of the background of CDC and Actis.
20. CDC was created in 1948 and has developed as the primary operator for the Government's private sector investment programme in developing countries. It has responsibilities for carrying out the Government's investment strategy by making investments in private sector businesses in developing countries and conducting the ongoing management of the resulting investment portfolio.
21. In 2002 the Government proposed a change to the structure of CDC and suggested that this new structure should be based upon the private equity fund management model. The project designed to implement this new structure was called Project Atlas. Under Project Atlas a new entity, Actis, was spun out of CDC to manage CDC's portfolio of emerging markets investments and to establish and manage new private equity funds for CDC and other third party investors. Actis is a private owned limited liability partnership, albeit with a minority Government stake.
22. As a result of Project Atlas, CDC's role effectively changed and it no longer invests directly in emerging market investments. Instead it invests in an intermediated manner through a number of independent fund managers, such as Actis.
23. The information requested by the complainant, but withheld by CDC, constitutes the contract entered into between CDC and Actis in 2004 and details the terms and conditions underlying Actis' management of CDC's investments for a five year period.
24. The Commissioner has established that the contract in question is around 600 pages long and is made up of three main sections. The first is the main agreement containing 45 clauses; the second part contains 13 schedules and final part contains 16 appendixes.
25. During the course of the Commissioner's investigations, CDC suggested that it accepted that some of the sections of the contract may not contain information of sufficient commercial sensitivity to make them exempt under section 41 or section 43 of the Act. CDC made it clear to the Commissioner that it had highlighted the

possibility of disclosing these sections ('the non-redacted sections') without prejudice to their position in respect of the remaining sections ('the redacted sections') of the contract being exempt from disclosure. CDC also noted that 'we do not propose to consent formally to such information being disclosed until we have reached a satisfactory conclusion of the complaint process'.

26. The Commissioner has reviewed the non-redacted sections of the contract that CDC suggested it may consent to disclose and agrees with CDC that these sections are not exempt by virtue of section 41 or section 43 of the Act. As CDC has in essence agreed to the disclosure of these sections, the Commissioner does not intend to address in the analysis section of this decision notice why these sections are not exempt under the Act. However, as CDC has to date not disclosed these sections he has included in the 'Steps Required' section a requirement for CDC to disclose this information. These sections are those listed in Annex A and are marked 'disclose'.
27. The Commissioner is mindful of the volume of the requested information and the practical problems this presents for both CDC and the Commissioner when deciding whether information contained within the contract is exempt from disclosure under the Act. CDC's suggested list of disclosures (see previous paragraph) dealt with the contract on a section by section basis, i.e. deciding whether a particular clause, schedule or appendix should be disclosed. The Commissioner has been influenced by this approach and has analysed the contract on a clause by clause basis in order to decide whether that particular clause is exempt on the basis of the exemptions cited by CDC. The Commissioner wishes to note that the length of the clauses varies greatly, as do the length of the attached schedules and appendixes. Therefore in some instances where the Commissioner has concluded that a particularly lengthy clause, schedule or appendix is exempt from disclosure, inevitably that section may contain information that is not exempt. However, the Commissioner considers this to be a reasonable approach given the resource implications involved in analysing such a lengthy contract line by line.
28. Finally, the Commissioner is mindful of the comments by the Tribunal in the case *Derry City Council v Information Commissioner* (EA/2006/0014). In this case the Tribunal rejected Derry City Council's argument that disclosure of the requested information would prejudice the commercial interests of a third party, Ryanair, because the Tribunal had not been provided with any direct evidence from Ryanair to support this argument.
29. The Commissioner recognises that the Tribunal's comments could be taken to suggest that the when considering prejudice to a third party's commercial interests it will not be sufficient for the public authority to speculate about prejudice that may be caused, rather arguments originating from the third party itself will need to be considered. In respect of this case, the Commissioner understands that CDC undertook lengthy discussions with Actis regarding prejudice to their commercial interests that may occur following disclosure of the contract. Consequently, the Commissioner is satisfied that the arguments that have been advanced in relation to the prejudice to Actis' commercial interests,

along with the evidence to support these arguments, originates from Actis and not simply speculation on the part of CDC.

Analysis

Exemptions

30. CDC has argued that all of the redacted sections of the contract are exempt by virtue of the exemptions contained at sections 43(1), 43(2) and 41 of the Act.

Section 43(2) – commercial interests

31. Section 43(2) is a prejudiced based exemption and therefore to engage the exemption CDC must demonstrate that disclosure would, or would be likely to prejudice the commercial interests of any person.
32. The Commissioner has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of Information Tribunal decisions. With regard to likely to prejudice, the Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) 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). This interpretation followed the judgment of Mr Justice Munby in *R (on the application of Lord) v Secretary of State for the Home Office [2003]*. In this case the Court concluded that 'likely connotes a degree of probability that 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'. With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The information Commissioner* (EA/2005/0026 & 0030) commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).
33. CDC has argued that all of the sections of the contract are exempt by virtue of section 43(2). In order to support this position CDC has identified a number of different ways in which prejudice could occur if the redacted sections of the contract were disclosed. The five arguments can be summarised as follows:
1. Disclosure would harm Actis' negotiating position when attracting new investors.
 2. Disclosure would harm CDC's negotiating position when looking for new fund managers.
 3. Disclosure would harm Actis' negotiating position when acquiring new investments and when disposing of current investments.
 4. Disclosure would prevent CDC from being able to invest in certain funds.

5. The contract contains proprietary information and disclosure would harm Actis' commercial interests because rivals could use this information at no cost.
34. The Commissioner wishes to note that CDC has not attempted to explain which of these prejudice arguments apply to which section or sections of the redacted parts of the contract. Rather CDC has simply argued that all of the redacted sections of the contract are exempt by virtue of section 43(2) and advanced the arguments listed above.
35. In order to analyse the prejudice arguments advanced by CDC, the Commissioner has considered whether these arguments can, in principle, apply to the information being withheld. The Commissioner has then gone on to establish how these arguments apply to the separate sections of the contract and considered, in respect of each of the redacted sections, how likely it is that the harm described in each of the arguments would occur.

1. Disclosure would harm Actis' negotiating position when attracting new investors.

36. CDC has argued that if the contract was placed in the public domain Actis' competitors would be provided with a direct insight into the terms under which Actis was prepared to manage investors' funds. This could allow these competitors to undercut the terms which Actis offered to investors in order to secure these contracts. Furthermore, if the contract was placed in the public domain potential investors would also know the terms that Actis had previously agreed to manage funds under. These potential investors could then use the contract as a point of reference in order to negotiate more advantageous terms from Actis.
37. In the Commissioner's opinion, for this argument to be sustainable there has to be evidence that Actis has a clear intention of entering into contracts with investors other than CDC. Clearly, if the significant majority of Actis' business is actually with CDC and therefore governed by the terms of this agreement, then the likelihood of this prejudice occurring will probably be low simply because Actis is not actively negotiating any contracts with other potential investors.
38. With regard to this point the Commissioner had established that at the time of its formation in 2003 one of Actis' key objectives was to raise £900m of third party (i.e. non-CDC) funds for investment in developing countries by December 2007. The Commissioner has been provided with evidence to demonstrate that Actis is on course to meet this objective. Therefore, the Commissioner accepts that it is not implausible to suggest that this type of harm could occur if this information was disclosed. However, whilst the Commissioner accepts that the terms of a contract will be a factor in securing new investors, he would envisage that the deciding factor would be likely to be past performance of the Actis' performance.

2. Disclosure would harm CDC's negotiating position when looking for new fund managers.

39. The second argument that CDC has advanced is similar to its first argument except that in this case the prejudice is to CDC's, rather than Actis', negotiating

position. This argument can be summarised as follows: If the contract was placed in the public domain this would negatively affect CDC's bargaining position during contractual negotiations with other fund managers because other fund managers would be aware of the terms that CDC had been prepared to accept in the past.

40. As with the first argument, in the Commissioner's opinion this argument is only sustainable if CDC has a clear commitment to investing funds with other fund managers. The Commissioner is satisfied that this is indeed the case: in 2004 95% of CDC's capital was invested in Actis managed funds, by 31 December 2006 this figure had fallen to 73%, it was projected that by 31 December 2007 this figure would have fallen to 45%. Furthermore, the Commissioner understands that the number of fund managers that CDC has entered into agreements with has increased significantly in recent years.
41. Therefore, the Commissioner is satisfied that it is plausible to argue that CDC's negotiating position may be harmed by disclosure of the redacted sections of the contract because there is clear evidence to suggest they are investing significant proportion of their funds with a number of third party fund managers.

3. Disclosure would harm Actis' negotiating position when acquiring new investments/disposing of current investments.

42. The principle of this argument can be summarised as follows: If the terms of the contract were placed in the public domain this could affect Actis' ability to dispose of current investments as counterparties may become aware of the termination of a forthcoming Actis fund. If a particular fund is about to be terminated or be forced to dissolve pursuant to the terms of the contract then counterparties may recognise that they have greater bargaining power and seek to lower the price of the disposal.
43. Furthermore, Actis may also compete with other entities for acquisition of underlying businesses by auction. If a rival bidder had knowledge of investment restrictions that bind Actis, (e.g. how much they can invest in a particular region or specific company, whether acquisitions need to be subject to particular terms) then these bidders could gain significant commercial advantage when entering into the auction or bidding process.
44. In the Commissioner's opinion this argument is logical and the effects outlined in the previous paragraphs are ones that would clearly prejudice commercial interests.

4. Disclosure would prevent CDC from being able to invest in certain funds.

45. CDC has highlighted the discreet nature of the private equity industry and the fact that fund managers take steps to ensure that commercially sensitive internal fund documentation, including information that it may have provided to its investors, is not available to competitors. In order to ensure that such documentation is not placed in the public domain, CDC has suggested that some fund managers may be reluctant, or in some cases unwilling, to accept investments from public bodies

- who are subject to the disclosure requirements of freedom of information legislation.
46. CDC has therefore argued that disclosure of this redacted sections of the contract could effectively lead to them to be treated as a 'second rate' investor with a variety of possible consequences: its access to certain funds could be restricted; the information which fund managers supply them could be restricted or even, funds managers could decide not to accept investments from CDC.
 47. CDC has explained that it is difficult to provide concrete examples of where a fund manager has restricted an investors' access to certain funds following disclosures under freedom of information legislation given the discreet nature of the industry. An investor who has been denied access to a particular fund is unlikely to publicise this fact. Consequently, whilst in CDC's opinion there are likely to have been a number of recent incidents where this has occurred, details of such incidents have not been widely published.
 48. Nevertheless, in order to demonstrate the strength of this argument and thus the likelihood of prejudice to CDC's commercial interests if the redacted provisions were disclosed, CDC has drawn the Commissioner's attention to a number of independent sources:
 49. Firstly, CDC has referred to comments in a report entitled 'Disclosure and Transparency in Private Equity'. This is a consultation document produced by Sir David Walker in July 2007 who had been tasked by the British Venture Capital Association ('BVCA') to address such issues. CDC specifically drew the Commissioner's attention to a section of the report which noted that 'there have reportedly been instances in the United States where general partners have declined to accept participation in a new fund by public sector pension funds to which freedom of information provisions apply' (http://walkerworkinggroup.com/sites/10051/files/walker_consultation_document.pdf paragraph 4, page 29).
 50. Secondly, CDC highlighted the widely reported case in which Sequoia Capital a leading US fund manager rejected the University of California from one of its funds because it did not wish to have the fund's performance placed in the public domain.
 51. Thirdly, CDC provided the Commissioner with an article published on Alt Assets, an internet resource for the private equity industry. This article noted that 'certain funds have asked limited partners with FOIA concerns to sell their existing interest. Others have indicated that they will not allow such limited partners to participate in future funds'. (Source: <http://www.altassets.com/casefor/countries/2004/nz4388.php>)
 52. The Commissioner has considered the examples cited by CDC and has concluded that a distinction can be drawn between the nature of the information which was referred to in the sources referenced by CDC and the nature of the information contained in the contract. In the sources referred to by CDC, the majority of the information which was disclosed related to the performance of

actual funds or the performance of companies which fund managers had invested in. However, the information contained in the contract pertains to the terms and conditions which an investor and fund manager have agreed. Therefore, in the Commissioner's opinion the sources referred to by CDC are not directly analogous to its fourth prejudice argument.

53. In its submissions to the Commissioner, CDC did acknowledge this point. However, in CDC's opinion although there is a distinction between fund performance information and the commercial terms which set out how capital will be invested, the latter type of information is also clearly confidential and commercially sensitive and the vast majority of private equity fund managers would seek to protect such information in the same way they would seek to protect information about fund performance. Therefore, in CDC's opinion disclosure of the contract would not only seriously undermine its relationship with Actis, but also its reputation in the private equity world.
54. In considering the strength of this argument the Commissioner has established that four US states (Colorado, Massachusetts, Michigan and Virginia) modified their information laws in 2004 in order to exempt from disclosure some information about private equity funds. (Source: http://www.nixonpeabody.com/publications_detail3.asp?ID=937). Furthermore, the Commissioner has established that in September 2005 the Governor of California introduced an amendment which narrowed the scope of information relating to venture capital and private equity that must be disclosed under the California Public Records Act. (Source: <http://www.wilsonsonsini.com/PDFSearch/2733810.pdf>). This amendment specifically introduced an exemption for information which was about 'fund governing agreements and related documents', in addition to information about the performance of funds.
55. The Commissioner understands that a key reason why these pieces of legislation were introduced was in order to ensure that private sector fund managers would continue to accept investments from public sector organisations. Clearly, the introduction of such legislation, by providing an exemption to disclosure of such information, protects the position of public sector bodies in relation to their ability to contract with fund managers.
56. On the basis of the evidence outlined above, the Commissioner is satisfied that a connection can be made between public sector bodies disclosing information about private equity investments, including details of fund governing documents, and decisions of private equity funds to refuse to accept their future investments. Therefore, the Commissioner accepts that if CDC were to disclose sensitive information contained in the contract, then it is likely that its ability to invest in a number of investments funds would be negatively impacted and thus its commercial interests harmed.
57. In reaching this decision, the Commissioner has taken into account the number of fund managers with which CDC has invested in since the establishment of its contract with Actis in 2004. Clearly, if CDC has not invested with any fund managers except Actis then the chance of this type of prejudice occurring will be

very low. However, the Commissioner understands that CDC has a clear commitment to developing relationships with new fund managers in addition to maintaining its relationship with Actis. In 2005 CDC entered into agreements with 11 new fund new managers and in 2006 it entered into agreements with 19 new fund managers.

58. The Commissioner has also taken into account the level of funds that CDC intends to invest with new fund managers. He acknowledges that it could be argued that if the commitment that CDC wanted to make to a particular fund manager was so significant in size then despite the risks of information being disclosed under the Act, the fund manager in question could simply not afford to reject the investment that CDC wanted to make. However, the Commissioner has reviewed the level of commitments that CDC has with its various fund managers. Although it is clear that the amount of money that CDC committed to Actis was significant, its subsequent investments with other individual fund managers do not constitute such large sums of money. Therefore, in the Commissioner's opinion the detriment which these fund managers would suffer by not accepting CDC's investments is not likely to be sufficient to encourage entry into contracts with CDC.

5. The contract contains proprietary information and disclosure would harm Actis' commercial interests because rivals could use this information at no cost.

59. CDC has explained to the Commissioner that Actis considers many of the terms contained in the contract to be proprietary information because substantial time and expense has been incurred in preparing the fund documents and acquiring the necessary legal opinions. Therefore, if the redacted sections of the contract were disclosed then Actis' competitors would be able to utilise the proprietary information at no cost thus negatively affecting Actis' commercial interests. In order to support this argument, CDC has suggested that the terms contained in the contract can be seen as analogous to customer lists and operations procedures of a company, information which CDC suggests would be commonly accepted as proprietary information.
60. The Commissioner considers there to a number of weaknesses to this argument. Firstly, the Commissioner does not accept that simply because time and money has been invested in creating information, this means that the information must therefore have an inherent commercial value. Clearly, it is possible that significant time and resource could be expended in creating or acquiring information which is in fact of no commercial value or interest at all. Rather, in the Commissioner's opinion there is a distinction between information which represents a one off cost for Actis (such as the contract) and information for which there is a genuine market for re-sale (such as Actis investment strategy). This approach is supported by the experience of other jurisdictions in dealing with the commercial interests issues under freedom of information legislation (see the Office of the Information Commissioner (Queensland) decision *Cannon and the Australian Quality Egg Farms Ltd* [http://www.oic.qld.gov.au/indexed/decisions/pdf/\[1993_S0094\]_\[Cannon\]_\[30_05_1994\].pdf](http://www.oic.qld.gov.au/indexed/decisions/pdf/[1993_S0094]_[Cannon]_[30_05_1994].pdf)).

61. Even if the Commissioner were to accept that the redacted provisions of the contract constituted proprietary information and therefore had some commercial value, the Commissioner does not believe that CDC has provided sufficient evidence to demonstrate how this information would be used by Actis' rivals to engage section 43(2).
62. Firstly, the Commissioner notes that neither CDC nor Actis have explained which sections of the contract actually constitute proprietary information. Secondly, the Commissioner has not been provided with any detailed explanation of exactly how this information would be used by CDC's rivals save for the generic suggestion that it could be used by Actis' rivals when entering into contracts with investors.
63. Thirdly, the Commissioner considers it highly likely that other fund managers will have sought their own legal advice when preparing similar contracts and therefore they will already be in possession of information very similar to the proprietary information contained in the contract. Therefore the risk of Actis' rivals copying, wholesale, parts of the contract are reduced. Furthermore, the Commissioner would suggest that even if this information is not held by Actis' rivals then it is possible that the information contained in the contract between CDC and Actis deal is so unique that the information would not be of real use to Actis' competitors.
64. Fourthly, the Commissioner would suggest that given the importance of contracts between fund managers and investors he does not consider it likely that competitors would 'copy' the legal opinions contained in this contract rather than, or even in addition to, instructing their own lawyers. To take such an approach would be a risky strategy for fund managers given the significant levels of sums under consideration.
65. On the basis of the issues discussed above the Commissioner does not accept that CDC has provided sufficient evidence to demonstrate that the redacted sections constitutes proprietary information that could be used by Actis' rivals to the detriment of Actis' commercial interests.

The Commissioner's view on the applicability of the exemption arguments to the sections of the contract

66. In the Commissioner's opinion, the fourth prejudice argument can essentially be viewed as a class based argument; i.e. if any of the redacted sections of the contract were disclosed then the harm outlined in paragraphs 45 to 58 would be likely to occur; the differences between the various types of information contained within the redacted provisions is irrelevant.
67. The Commissioner has reviewed all of the redacted provisions and is satisfied that they all contain information of sufficient sensitivity that their disclosure would lead to the effect outlined under prejudice argument number four above. Therefore, the Commissioner is satisfied that all of the redacted sections are exempt on the basis of section 43(2). However, for the sake of completeness the Commissioner has gone on to consider whether the remaining prejudice

arguments (namely one, two and three) can be correctly applied to the redacted sections of the contract.

The main body of the contract.

68. Having reviewed the main body of the contract the Commissioner believes that the redacted clauses can be split into two general categories. Firstly, information which deals with specific costs issues agreed between the two parties. E.g. the level of management fees, which party will pay VAT costs, how the various legal costs will be paid, the levels of funds CDC will commit to Actis etc. Secondly, information which deals with the non-numeric terms and conditions agreed between the two parties. E.g. circumstances in which the contract may be terminated, service level agreements etc.
69. The Commissioner is satisfied that all of the redacted clauses in the main body of the contract contain either the first type of information (numeric terms and conditions) or the second type of information (non-numeric terms and conditions). Indeed some clauses contain information of both classes.
70. In the Commissioner's opinion disclosure of either type of information would be likely lead to the harm described in arguments one and two above. This is because this information would prove very useful to third parties negotiating new contracts with either CDC or Actis and is likely to be used a negotiating tool by these third parties. Therefore, the Commissioner is satisfied that all of the redacted clauses in the contract are exempt from disclosure on the basis of the prejudice arguments one and two.
71. With regard to argument three, in the Commissioner's opinion this argument is only applicable to a small number of the clauses contained within the contract. Furthermore, in the Commissioner's opinion the likelihood of the prejudice outlined in argument three is one that whilst could be likely, is certainly not certain. The Commissioner has reached this conclusion because although these clauses do contain details which relate to Actis' ability to dispose of current investments as well as investment restrictions that bind Actis, these details are relatively general and top-level. It would not be possible using this information to develop a detailed and perfectly accurate picture of Actis' plans with regard to the disposal of investments. Rather the information would only give an indication of some of the factors and issues that Actis would be bound by in terms of its negotiations.

Schedules of the contract

72. The Commissioner does not believe that disclosure of any of the redacted schedules would result in the harm described in argument three because none of the information contained in the schedules relates to how Actis may dispose of investments.
73. In the Commissioner's opinion schedule 6 cannot be exempt on the basis of either argument 1 or argument 2 because the information contained in it does not

contain details of either the level of fees or the terms and conditions that CDC and Actis have agreed.

74. The information contained in schedules 3 and 4, and 7 to 11 inclusive, detail the various management fees and remuneration fees, service level agreements and details of who will pay for various expenses. The Commissioner is satisfied that disclosure of these schedules would be likely to lead to the prejudice outlined in arguments 1 and 2.

Appendixes to the contract

75. The Commissioner does not believe that disclosure of any of the redacted appendixes would lead to the prejudice outlined in argument three because, as with the information contained within the schedules, they do not contain any information about how Actis will dispose of its investments.
76. The information contained in appendixes 2, 6, 10, 12 and 14 relates to the terms and conditions that the CDC and Actis have agreed upon, including details of specific costs the two parties have agreed to pay each other. Therefore the Commissioner is satisfied that disclosure of this information would be likely to lead to the effects of prejudice outlined in arguments one and two.
77. With regard to the remaining appendixes (1, 3, 4, 11, 13, 15 and 16) in the Commissioner's opinion disclosure of this information would not prejudice the future negotiating positions of either CDC or Actis because they do not relate to the terms and conditions that the two parties have entered into. Consequently, these appendixes can not be exempt on the basis of prejudice arguments numbers one and two.

Public interest

78. Section 43 is a qualified exemption and therefore subject to the public interest test under section 2(2)(b) of the Act. Section 2(2) states that information is exempt information where the public interest, in all the circumstances, in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest factors in disclosing the information

79. The Commissioner recognises that there is a strong inherent public interest in public authorities being open and transparent about commercial arrangements they have entered into with private sector companies. In this case, the Commissioner considers that this fact is particularly relevant given the significant levels of public money that Actis manages on CDC's behalf – in 2006 Actis had \$878m worth of CDC funds under management.
80. Furthermore, the Commissioner notes that some of CDC's investments which are managed by Actis could be seen as somewhat controversial in nature. For example, some of the CDC's investments have been made in countries which have a history of conflict (e.g. Rwanda) or of human rights abuses (e.g. the

alleged human rights abuses in China). A number of the companies that CDC has invested funds in have the potential to create large scale environmental, social and economic impacts. Also, private equity investments involve a higher degree of risk than more traditional forms of investment. Therefore, the Commissioner believes that there is a public interest in the redacted provisions of the contract being disclosed so that the public can be re-assured that it contains appropriate checks and balances which manage the risks created by these aspects of the investments. Disclosure would also allow the public to scrutinise how effective and thorough these checks and balances actually are.

81. The Commissioner also believes that disclosure of the withheld sections of the contract would allow knowledgeable members of the public to analyse whether public money had been used effectively, i.e. had CDC and Actis actually identified the countries which would benefit most from the investment via private equity funds, have these investments been made in the most suitable companies and at the most efficient levels. Furthermore, disclosure would also allow the public to analyse whether CDC was getting value for money for the management fees it paid to Actis.
82. The Commissioner also believes that there is a public interest in encouraging the private sector to respond better to the commercial opportunities provided by government. Disclosure of the contract would raise the private sector's awareness of DFID's, and specifically CDC's, role in investing public funds in developing countries and could help attract other fund managers focusing on emerging markets. The Commissioner notes that this argument can be linked to one of CDC's stated objectives of Project Atlas which was to demonstrate how private capital could be a powerful force for development in poor countries so that other privately held and other investors would follow CDC's lead.
83. The Commissioner is also aware of the wider debate in the private equity industry surrounding issues of transparency and accountability. As has been noted above, Sir David Walker was asked by BVCA to consider issues of transparency and disclosure requirements in the industry in the UK. Sir David's report was published in November 2007 and suggested that a code of conduct should be introduced which will require 65 private equity-owned companies in the UK to publish more information on their accounts, ownership and prospects. However, the report fell short of demanding full disclosure of company accounts, including remuneration packages. As a result the report was criticised by both unions and politicians because of its limitations. (See: <http://politics.guardian.co.uk/economics/story/0,,2214079,00.html>).

Public interest factors in withholding the information

84. CDC has argued that the public interest in openness and transparency is already met by the information that it already discloses and the regulation by independent bodies that it is subject to. CDC has specifically highlighted its Annual Report and Accounts which as a publicly limited company, comply with company best practice; its publication scheme under the Act; statutory filings at Companies House and the periodic reports it submits to the FSA as a registered entity.

85. The Commissioner recognises that if the harm described in prejudice argument four was to occur, then CDC's ability to effectively invest public funds would be undermined. The Commissioner agrees that it would not be in the public interest to limit the number of fund managers that CDC would be able to enter into contracts with, nor would it be in the public interest for CDC to be provided with restricted levels of information about investments it has made.
86. Similarly, the Commissioner accepts that it would not be in the public interest if the harm outlined in prejudice argument two were to occur. It is clearly in the public interest that the Government is in a position to negotiate the best price available for the goods and services that it buys.
87. CDC has also suggested that it is not in the public interest if the harm outlined in prejudice argument three would occur. This is because it is not in the public interest for Actis' ability to maximise its investments to be in any way undermined. To do so would not only have a direct impact on the level of returns Actis made to CDC, but also to other third party investors.
88. CDC has argued that given the significant levels of public funds it has invested under the contract with Actis, clearly any problems that may arise following disclosure of the information could have significant cost implications.
89. CDC also suggested that there is a general public interest in counterparties of public authorities being able to negotiate sensitive contracts and be able to provide sensitive information in the knowledge that it will be confidentially preserved.
90. Finally the Commissioner has taken into account the timing of this request – the contract came into effect in July 2004 covers all investments made by CDC in Actis funds for a five year period (i.e. to 2009). The complainant submitted his request in September 2005 and therefore the information contained in the contract was essentially current information and consequently the likelihood of the either party's commercial interests being harmed would be higher than if in the contract was no longer in effect.

Balance of the public interest arguments

91. Having considered the public interest arguments outlined above, the Commissioner has concluded that in this case the public interest is weighed in favour of not disclosing the redacted sections of the contract.
92. In reaching this conclusion the Commissioner has been particularly persuaded by the argument that disclosure may affect CDC's ability to enter into contracts with other fund managers (prejudice argument four) and that disclosure may undermine CDC's negotiating position (prejudice argument two). The Commissioner believes that there is a very strong public interest in the CDC being able to agree the most competitive and advantageous terms that it can when investing public funds, particularly given the size of the public funds involved in this case. Ultimately, the more successful CDC's investments are the higher level of funds that can be re-invested back into the economies of

developing countries, something which the Commissioner considers to clearly be in the public interest.

93. Furthermore, in relation to the timing of the request, the Commissioner accepts that over time the sensitivity of commercial information, and the corresponding prejudice that may be caused to commercial interests, will often decrease and consequently the public interest in withholding the information will decrease. However, at the time of the request in September 2005 (and indeed at the time the Commissioner has issued this decision notice) the contract in question was still current and therefore the information contained in it remained of significant sensitivity.
94. Whilst the Commissioner recognises the strength of the argument outlined at paragraph 80, he considers that to some extent this public interest is met by the fact that CDC has placed in the public domain its 'Toolkit for Fund Managers' (<http://www.cdccgroup.com/files/other/CDC-toolkit-hires.pdf>) which explains in detail how CDC ensures that as part of its investments it takes full account of the environmental, social and governance risks associated with private equity investments in the developing world.
95. Although the Commissioner has concluded that the public interest is best served by the information not being disclosed, he wishes to note that he has not been persuaded by CDC's suggestion that there is general public interest in private companies always being able to contract with public sector bodies in a confidential fashion. To accept such a suggestion would essentially elevate such contracts to being exempt under the Act on an absolute based exemption basis, that is to say there could never be a compelling public interest argument which mean that such contracts are exempt. Given that section 43 is in fact a qualified exemption, the Commissioner does not consider this to be a sustainable argument.
96. Commissioner has therefore concluded that the redacted sections of the contract are exempt by virtue of section 43(2) and the public interest favours withholding the information.

Section 43(1) - trade secrets

97. As the Commissioner has concluded that all of the redacted sections of the contract are exempt on the basis of section 43(2), he does not need to make a formal decision as to whether the redacted sections are also exempt on the basis of section 43(1). This is in line with his usual approach in cases where the public authorities have applied multiple exemptions to the same information.

Section 41 - information provided in confidence

98. Similarly, the Commissioner does not need to make a formal decision as to whether the redacted sections are also exempt by virtue of section 41. However, the circumstances of this case, the Commissioner considers it appropriate to comment briefly on CDC's application of section 41.

99. However, in the circumstances of this case, the Commissioner considers it appropriate to comment briefly on CDC's application of section 41.
100. Section 41 of the Act provides that information is exempt from disclosure if the information in question was provided to the public authority in confidence. There are two components to the exemption:
 - The information must have been obtained by the public authority from another person and
 - Disclosure of the information would give rise to an actionable breach of confidence. In other words, if the public authority disclosed the information the provider of the information could take the public authority to court for breaching a duty of confidence.

Was the withheld information obtained from a third party?

101. As has been discussed above, the withheld information in this case constitutes a contract between CDC and Actis and various schedules and appendixes attached to that contract.
102. In deciding whether the requested information meets the first limb of section 41, the Commissioner has taken into account the approach of the Information Tribunal in *Derry City Council v Information Commissioner* (EA/2006/0014). This case involved a request for a copy of a fax between Derry City Council and Ryanair which set out a number of terms for the operation of a scheduled service between London and Derry. In this case the Tribunal concluded that a written agreement between two parties did not constitute information provided by one of party to another. This is because the contract essentially recorded the mutual obligations and joint agreements of both parties and therefore information cannot be said to have been passed from one party to another. The Tribunal did however recognise that contracts can contain information which is more than simply a recording of jointly agreed terms and therefore depending on the circumstances of the case, both information regarding a pre-contractual position negotiating position and technical information either contained within the body of the contract or provided in a separate schedule could be information that is passed from one party to another.
103. During the course of his investigation, the Commissioner suggested to CDC that in light of the Tribunal decision in the Derry case some, or possibly all, of the withheld information in the this case could not be said to have been passed from one party to another and therefore could not exempt under section 41 of the Act.
104. However, CDC rejected this suggestion and maintained that all of the withheld information, i.e. the contract itself and all the attached schedules and annexes, constitutes information which was provided from one party to another. In support of this position CDC cited two arguments. Firstly, in CDC's opinion the clear intention of the Act is that contracts entered into by public authorities could benefit from the exemption contained in section 41. Secondly, in the Derry the case, section 41 was held not to apply because the contract was not obtained by the

public authority from any other person; however, in this case information in the contract was obtained from Actis, albeit that this information was later held as part of a contract which both parties signed.

105. The Commissioner has considered the withheld information in depth in light of both the Tribunal's findings in the Derry case and CDC's position that the all of the withheld information was provided from one party to another. The Commissioner has decided that the main body of the contract cannot be said to be information that has been provided from one party (Actis) to another (CDC). In reviewing the structure and language of the contract the Commissioner's opinion is that it clearly documents what can be accurately described as a set of mutual obligations and joint agreements; e.g. CDC will commit x pounds to Actis funds; Actis will deliver levels of service y for a charge of z pounds etc. Strictly speaking, the Commissioner acknowledges that this contract could be said to be a document detailing the obligations CDC will undertake and of its obligations to accept Actis' obligations in return. However, the Commissioner agrees with the Tribunal that although:

'Such a two-way flow might be characterised as a process by which the public authority obtained information from the other party. However, we think that this imposes too great a strain on the language of the Act and the correct position is that a concluded contract between a public authority and third party does not fall within section 41(1)(a) of the Act.' (Tribunal at paragraph 32(c)).

106. The Commissioner has also considered whether each of the individual schedules and annexes attached to the main body of the contract could be said to be have been provided to CDC by a third party.
107. In the Commissioner's opinion the information contained within the schedules is either information that has in fact been generated by CDC (and therefore has not been passed to it by a third party) or alternatively, as with the main body of the contract, constitutes joint agreements which CDC and Actis were both party to.
108. The Commissioner accepts that the information contained in appendixes 11, 13, 14 and 16 can be correctly described as information provided to CDC by a third party because it was either created solely by Actis or by another third party (e.g. appendix 14 was created by Actis external lawyers). However, with regard to the remainder of the appendixes, the Commissioner does not accept that they meet their first limb of section 41 for same reasons outlined in the previous paragraph.
109. Therefore, in the Commissioner's opinion, and contrary to CDC's assertion, only a small number of sections of the contract actually constitute information that has been provided to CDC by a third party and therefore meet the first limb of section 41.

Procedural Matters

Section 12

110. As is discussed above, when CDC initially responded to the complainant's request it explained that it had given consideration as to whether it could redact non-sensitive clauses from the contract and provide these to the complainant. CDC argued that this process would be 'too costly' and therefore it relied on section 12 not to disclose a redacted version of the contract.
111. Section 12 of the Act of the states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit. The Regulations specify that the appropriate limit for CDC is £450. Regulation 4(3) specifies the activities which a public authority can charge for, namely:
- (a) determining whether it holds the information,
 - (b) locating a document containing the information,
 - (c) retrieving a document containing the information, and
 - (d) extracting the information from a document containing it.
113. In CDC's view the reference to 'information' in Regulation 4(3)(d) is a reference to the information that an applicant is entitled to have disclosed to him rather than the entire document originally requested by him. Therefore, in CDC's opinion, under the Regulations public authorities are entitled to charge for the time spent extracting information from a document, which taken as a whole, is not eligible for disclosure. In the circumstances of this case, CDC's initial position was therefore that it is entitled to charge for extracting the non-confidential clauses from the contract. Obviously given the length of the contract, the time taken to extract the non-sensitive information would significantly exceed the £450 cost limit.
114. The Commissioner's interpretation of Regulation 4(3)(d) differs from CDC's. In the Commissioner's opinion the 'information' in this context means the information covered by the scope of the request not the information to be disclosed. Therefore, the time taken to redact a document when the process of redaction is to blank out exempt information, leaving information which is to be disclosed in response to the request does not fall within regulation 4(3)(d). (This position is supported by the Tribunal's findings in the case *Mr John Jenkins v Information Commissioner and Department for Environment, Food and Rural Affairs*, EA/2006/0067). Therefore, the Commissioner believes that CDC incorrectly relied on section 12 of the Act when refusing to disclose the requested information to the complainant.

The Decision

115. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- CDC was correct to withhold the redacted sections of the contract on the basis of the exemption contained at section 43(2).
116. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- CDC was incorrect to rely on section 12 of the Act as a basis to refuse to fulfil the complainant's request.
 - CDC was incorrect to withhold a number of other sections of the contract because they were not exempt under any of the exemptions contained within Part II of the Act. By failing to disclose these sections of the contract at the time of the complainant's request, CDC breached section 1(1)(b) of the Act.
117. The Commissioner has listed in table in Annex A which sections he has concluded are exempt and which are not exempt.

Steps Required

118. The public authority must disclose to the complainant all of the sections marked 'Disclose' in table A within 35 calendar days from the date of this notice.

Failure to comply

119. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

120. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 19th day of March 2008

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex A

Section of contract	CDC consider exemptions apply?	Commissioner's decision
Clause 1	Yes	Withhold – s.43(2)
Clause 1A	No	Disclose
Clause 2	No	Disclose
Clause 3	No	Disclose
Clause 4	Yes	Withhold – s.43(2)
Clause 5	Yes	Withhold – s.43(2)
Clause 6	Yes	Withhold – s.43(2)
Clause 7	Yes	Withhold – s.43(2)
Clause 7A	No	Disclose
Clause 8	No	Disclose
Clause 9	Yes	Withhold – s.43(2)
Clause 10	Yes	Withhold – s.43(2)
Clause 11	Yes	Withhold – s.43(2)
Clause 11A	No	Disclose
Clause 12	Yes	Withhold – s.43(2)
Clause 13	Yes	Withhold – s.43(2)
Clause 14	Yes	Withhold – s.43(2)
Clause 15	Yes	Withhold – s.43(2)
Clause 16	Yes	Withhold – s.43(2)
Clause 17	Yes	Withhold – s.43(2)
Clause 18	No	Disclose
Clause 19	Yes	Withhold – s.43(2)
Clause 20	No	Disclose
Clause 21	Yes	Withhold – s.43(2)
Clause 22	Yes	Withhold – s.43(2)
Clause 23	Yes	Withhold – s.43(2)
Clause 24	Yes	Withhold – s.43(2)
Clause 25	Yes	Withhold – s.43(2)
Clause 26	Yes	Withhold – s.43(2)
Clause 27	Yes	Withhold – s.43(2)
Clause 28	No	Disclose
Clause 29	Yes	Withhold – s.43(2)
Clause 30	Yes	Withhold – s.43(2)
Clause 31	No	Disclose
Clause 32	Yes	Withhold – s.43(2)
Clause 33	No	Disclose
Clause 34	No	Disclose
Clause 35	Yes	Withhold – s.43(2)
Clause 36	No	Disclose
Clause 37	No	Disclose
Clause 38	No	Disclose
Clause 39	No	Disclose
Clause 40	No	Disclose

Clause 41	No	Disclose
Clause 42	No	Disclose
Clause 43	No	Disclose
Clause 44	No	Disclose
Clause 45	No	Disclose
Schedule 1	No	Disclose
Schedule 2	No	Disclose
Schedule 3	Yes	Withhold – s.43(2)
Schedule 4	Yes	Withhold – s.43(2)
Schedule 5	No	Disclose
Schedule 6	Yes	Withhold – s.43(2)
Schedule 7	Yes	Withhold – s.43(2)
Schedule 8	Yes	Withhold – s.43(2)
Schedule 9	Yes	Withhold – s.43(2)
Schedule 10	Yes	Withhold – s.43(2)
Schedule 11	Yes	Withhold – s.43(2)
Schedule 12	No	Disclose
Schedule 13	No	Disclose
Appendix 1	Yes	Withhold – s.43(2)
Appendix 2	Yes	Withhold – s.43(2)
Appendix 3	Yes	Withhold – s.43(2)
Appendix 4	Yes	Withhold – s.43(2)
Appendix 5	No	Disclose
Appendix 6	Yes	Withhold – s.43(2)
Appendix 7	No	Disclose
Appendix 8	No	Disclose
Appendix 9	No	Disclose
Appendix 10	Yes	Withhold – s.43(2)
Appendix 11	Yes	Withhold – s.43(2)
Appendix 12	Yes	Withhold – s.43(2)
Appendix 13	Yes	Withhold – s.43(2)
Appendix 14	Yes	Withhold – s.43(2)
Appendix 15	Yes	Withhold – s.43(2)
Appendix 16	Yes	Withhold – s.43(2)

Legal Annex

Section 1

Section 1(1) provides that -

“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.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 2

Section 2(1) provides that –

“Where any provision of Part II states that the duty to confirm or deny does not arise in relation to any information, the effect of the provision is that either –

(a) the provision confers absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the public authority holds the information

section 1(1)(a) does not apply.”

Section 2(2) provides that –

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

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

Section 3

Section 3(1) provides that –

“in this Act “public authority” means –

- (a) subject to section 4(4), any body which, any other person who, or the holder of any office which –
 - (i) is listed in Schedule 1, or
 - (ii) is designated by order under section 5, or
- (b) a publicly-owned company as defined by section 6”

Section 6

Section 6 provides that –

“(1) A company is a “publicly-owned company” for the purposes of section 3(1)(b) if—

- (a) it is wholly owned by the Crown, or
- (b) it is wholly owned by any public authority listed in Schedule 1 other than—
 - (i) a government department, or
 - (ii) any authority which is listed only in relation to particular information.

(2) For the purposes of this section—

- (a) a company is wholly owned by the Crown if it has no members except—
 - (i) Ministers of the Crown, government departments or companies wholly owned by the Crown, or
 - (ii) persons acting on behalf of Ministers of the Crown, government departments or companies wholly owned by the Crown, and
- (b) a company is wholly owned by a public authority other than a government department if it has no members except—
 - (i) that public authority or companies wholly owned by that public authority, or
 - (ii) persons acting on behalf of that public authority or of companies wholly owned by that public authority.

(3) In this section—

- “company” includes any body corporate;
- “Minister of the Crown” includes a Northern Ireland Minister.

Section 41

Section 41(1) provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

Section 43

Section 43(1) provides that –

“Information is exempt information if it constitutes a trade secret.”

Section 43(2) provides that –

“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).”