

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 November 2023

Public Authority: Tees Valley Combined Authority
Address: Teesside Airport Business Suite
Teesside International Airport
Darlington
DL2 1NJ

Decision (including any steps ordered)

1. The complainant has requested information on the income and expenditure of 'Teesworks Ltd' for 2020/21 financial year. Tees Valley Combined Authority (TVCA) initially refused to disclose the information, stating that Teesworks Ltd was not subject to FOIA. However, at internal review TVCA disclosed some of the requested information but withheld the majority citing section 43(2) (Commercial interests) of FOIA to do so. During the Commissioner's investigation it revised its position and disclosed further redacted information maintaining section 43(2) for those redactions.
2. The Commissioner's decision is that the withheld information engages section 43(2), and the balance of the public interest lies in maintaining the exemption.
3. The Commissioner does not require any further steps as a result of this decision.

Background

4. Teesworks is Europe's largest brownfield site. It is currently being redeveloped for a range of industrial and business uses.

5. According to its website¹, TVCA is a partnership of five authorities; Darlington, Hartlepool, Middlesbrough, Redcar & Cleveland, and Stockton-on-Tees, working closely with the Local Enterprise Partnership, wider business community and other partners to lead economic development of the Tees Valley area.

Request and response

6. On 2 June 2023, the complainant wrote to TVCA and requested information in the following terms:

“Please let me have details of income and expenditure of Teesworks Ltd for 2020/21 financial year (for which it was consolidated as part of the STDC group).

For each item of income or expenditure I would expect these details to include: the date, the amount, the payer/payee, and the category/purpose of payment.”
7. TVCA responded on 30 June 2023. It refused the request, stating:

“Teesworks Limited is not wholly owned by the public sector as defined in Section 6(1) of the Freedom of Information Act 2000. Therefore, TVCA is not obliged to respond to your request under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.”
8. The complainant requested an internal review on the same day. TVCA provided the review outcome on 27 July 2023. It disclosed some information in scope of the request and cited section 43(2) had been applied to the rest of the information.
9. During the Commissioners investigation TVCA disclosed some further information around accounts held applying redactions under section 43(2).

Scope of the case

10. The complainant contacted the Commissioner on 8 August 2023 to complain about the way their request for information had been handled.
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¹ <https://teesvalley-ca.gov.uk/about/our-region/faqs/>

During the investigation, they expressed the view that TVCA regularly failed to comply with statutory timescales when responding to requests.

11. During the Commissioner's investigation, TVCA disclosed accounts for the period in questions with redactions to specific parts. It explained that the redacted information contained sensitive details of transactions and therefore fell under the exemption at section 43(2).
12. The complainant has said: "There is no evidence this would cause commercial harm. It would not, for example, disclose prices and it is very hard to see how the sales in question would be damaged (the authority gives no explanation as to how this would happen)."
13. What remains for the Commissioner to consider is whether the information still being withheld under section 43(2) is being withheld correctly.

Reasons for decision

Section 43(2) – commercial interests

14. Section 43(2) states that information may be withheld if its disclosure would, or would be likely to, prejudice the commercial interests of any legal person (including the public authority holding the information).
15. In order to engage section 43(2), it's not sufficient to argue that because information is commercially sensitive, its disclosure would, or would be likely to, prejudice commercial interests. There must be a causal link between disclosure and the prejudice envisaged.
16. In this case TVCA is concerned that disclosure would have a prejudicial effect on prices future purchasers may be willing to pay: "Having awareness of the prices paid by other purchasers may alter the prices future purchasers are willing to offer and the release of the requested information is likely to have a prejudicial effect on the commercial interests of all parties involved."
17. TVCA has continued to withhold certain information for the following reasons:
 - The withheld information includes actual prices paid and disclosure would reveal these to future prospective buyers.
 - As the withheld information contains actual prices paid disclosure would be likely to prejudice TVCA's ability to achieve value for money in the future.

- Disclosure would be likely to prejudice the disposal of assets themselves which would require TVCA to look for other means of disposal and/or effectively have to sell at a lower price thus reducing funds being returned to the public purse and the future development of the site.
 - Disclosure would damage the relationship between TVCA, and the third parties involved which would compromise TVCA's ability to form similar relationships in the future. In turn, this would be likely to increase costs to TVCA and affect the funds it receives in the future.
18. The Commissioner has considered each of TVCA's arguments above, bearing in mind that for the causal link referred to in paragraph 15 to exist, the prejudice claimed must at least be possible, i.e. there are circumstances in which it could arise.
19. The Commissioner has also considered the content of the information that is actually being withheld. Having done so, he's satisfied that a causal link exists and that the prejudice described would be likely to occur in this case.
20. The Commissioner accepts TVCA's, arguments that the withheld information details the payments received for disposal of its assets by third parties and that in order to achieve this a process of tendering has taken place to ensure that the best outcome was achieved in the disposal process. The Commissioner accepts that disclosure could lead to the replication of the third parties approach and techniques, especially in similar consultations which would be likely to affect the third parties ability to operate in a commercially competitive field – therefore the exemption is engaged.
21. Section 43(2) is a qualified exemption; the Commissioner will now go on to consider where the balance of the public interest lies.

Public interest test

Arguments in favour of maintaining the exemption

22. The Commissioner has accepted that disclosure would be likely to prejudice the commercial interests of the third parties involved in the purchase and disposal of TVCA's assets, on the basis that competitors could benefit from the actual price paid being placed into the public domain.

23. In turn, this would skew the competitive market in which the third parties operate and may affect TVCA's ability to obtain value for money in the future if it wants to engage with the third parties again.

Arguments in favour of disclosure

24. There is always a public interest in public authorities being transparent about their work and opening up their decisions for scrutiny.
25. TVCA acknowledges that the public have an expectation that public bodies will always seek to obtain value for money and spend money responsibly. Furthermore, the public also expect transparency from public bodies, particularly when public bodies are involved in potentially contentious issues. Disclosure of the information concerned could provide this assurance.
26. At the time of raising their complaint with the Commissioner, the complainant said: "It is widely accepted that knowing the identities of companies with which public bodies transact and the value of those transactions is in the public interest."

Balance of the public interest

27. TVCA has explained to the Commissioner that: "it is recognised that there is public interest in achieving value for money for publicly owned assets, we have demonstrated that releasing the information requested would have a prejudicial effect on the ability for South Tees Development Corporation and South Tees Developments Limited to achieve best value in future transactions. With the public interest in mind, and the need to achieve best value and drive commercial sales in a commercial market." And "safeguards in place to ensure that the South Tees Development Corporation is doing all it can to achieve best value. South Tees Development Corporation will continue to be subject to internal and external audit processes. It is South Tees Development Corporation's position that much more reassurance can be found in reports of qualified auditors with a statutory duty, than a member of public being provided with information they may not understand and drawing conclusions from it."
28. In this instance, the Commissioner has determined that the balance of the public interest lies in maintaining the exemption.

Right of appeal

29. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

30. 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.
31. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF