

IN THE MATTER OF AN APPEAL TO THE (FIRST-TIER) TRIBUNAL
(INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF
INFORMATION ACT 2000

Case Number: EA/2010/0162

BETWEEN

MR C ZACHARIDES

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

THE UK SPORTS COUNCIL

Additional Party

REPLY ON BEHALF OF THE
ADDITIONAL PARTY

INTRODUCTION

1. Mr C Zacharides ("the Appellant") entered a Notice of Appeal dated 17 September 2010 against Decision Notice FS50294752 ("The Decision") dated 9 September 2010.
2. The Additional Party has been joined to these proceedings pursuant to rule 9(3) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 ("The Rules").
3. This Reply is served on behalf of The UK Sports Council ("The Additional Party"). The Additional Party endorses and adopts the points put forward on behalf of the Information Commissioner ("the Commissioner") in the Commissioner's response dated 28 October 2010 ("The Response"). The Additional Party does not propose to repeat the points fully herein.

4. The Additional Party maintains its original position as set out at paragraph 12 of the Decision *“the information from UK Athletics is exempt from disclosure by virtue of sections 27,28,36,40,41 and 43(2)”*.
5. Having considered Rule 2 of the Rules with regard to the overriding objective of dealing with cases proportionately the Additional Party will not expand upon the arguments on each exemption of the FOIA relied upon, unless otherwise directed by the Tribunal. Further, the Additional Party agrees with the Commissioner for this case to be heard without a hearing.
6. In the Decision section 41 of the FOIA is dealt with first. The Additional Party concurs with the factual and legal analysis and the conclusions reached in the Decision and the Response. The Commissioner was satisfied the disputed information attracted the necessary quality of confidence, that it was confided in circumstances giving rise to an obligation of confidence, and that its disclosure would result in detriment to the confider.
7. At paragraph 24 of the Decision the Commissioner correctly concluded, in the event that the Additional Party were to disclose the disputed information, a breach of confidence would occur which would be actionable by UK Athletics Ltd. In the Response at paragraph 23 the Commissioner rightly highlights the letter dated 30 April 2010 from UK Athletics which unequivocally states *“confidentiality was a prerequisite of (its) agreement to engaging with the M2012 process”*.
8. The Commissioner found at paragraph 27 of the Decision *“The Commissioner therefore concludes that the withheld information that comprises the reports from UK Athletics to the public authority was correctly withheld by reference to section 41(1). In the light of*

this finding the Commissioner did not go on to consider the alternative exemptions relied upon by the public authority”.

NOTICE OF APPEAL

9. At section 6 of the Notice of Appeal the Appellant sets out various matters which he says support his view that the Commissioners Decision should be overturned.

GROUND FOR RESISTING THE APPEAL

10. The Additional Party agrees with the Commissioner’s view in the Response that none of matters raised by the Appellant constitute any valid ground for appeal in the present case.
11. The Commissioner relies upon the conclusions contained in the Decision in this regard and the Additional Party agrees with the conclusions.

Ground 1 - The relationship between UK Sport and UK Athletics Ltd.

12. It is correct that UK Athletics Ltd is an independent Company limited by guarantee, operating as the National Governing Body for Athletics. It is not a public authority for the purposes of FOIA.
13. The Additional Party totally refutes the assertion that the distinction between the two organisations is a sham and in fact they are one and the same. As correctly stated in the Response by the Commissioner *“the Additional Party and UK Athletics Ltd are, as a matter of fact and law, (and therefore for the purposes of section 41 FOIA), separate legal entities”.*

14. Accordingly, as separate entities, information provided in confidence by UK Athletics Ltd to the Additional Party engages section 41 of FOIA. Disclosure of that information to the public at large by the Additional Party would constitute a breach of confidence actionable by UK Athletics Ltd or any other person (see FOIA s41(1)(b)).
15. The Additional Party agrees with the conclusion in the Response *“The exemption to disclosure provided for by section 41 FOIA is absolute and, in the Commissioners submission, that absolute exemption is clearly engaged by the disputed information in the present case. Accordingly, this ground must fail”*.

Ground 2 - The Additional Party’s ‘sham’ allows it to hide behind a mask of confidentiality.

16. In pursuing this ground, the Appellant argues that disclosure of the disputed information would reveal that the Additional Party is guilty of wrong-doing, has lied to parliament and has conducted itself in an inappropriate fashion. The Additional Party takes any such allegation very seriously and strongly rejects such an unfounded, false and malicious assertion.
17. It is correctly pointed out by the Commissioner in the Response at paragraph 55, *“the Appellants argument at this point relies upon unsubstantiated speculation as to the contents of the disputed information and he provides no evidence in support of his assertions of wrongdoing”*.
18. The Commissioner highlights in the Response the Appellant’s disregard for the evidence as to the historical expectation of confidentiality between UK Athletics Ltd and the Additional Party.

19. The Commissioner found that in the absence of any clear evidence of wrongdoing which may afford a public interest defence to an action for breach of confidence which may be pursued by UK Athletics Ltd, the general public interest points raised by the Appellant did not fall to be considered when the engagement of the absolute exemption to disclosure at section 41 FOIA is considered.
20. The Commissioner concludes in the Response *“he has seen nothing whatsoever to cause him to conclude in the present case that any potential public interest in disclosure would be sufficiently strong so as to provide a viable defence to an action for breach of confidence against the Additional Party which would, on the balance of probabilities, prove successful. Accordingly, and in the absence of such evidence, this ground must fail”*.

Ground 3 – There can be nothing confidential in nature contained within the disputed information.

21. The Appellants position is that the disputed information cannot contain material which possesses the necessary quality of confidence required to engage section 41 FOIA.
22. The use of the word secret that the Appellant has latched on to is unfortunate. The Commissioner correctly asserts *“It is not a reference to some form of ‘trade secret’, but rather that collective body of specific techniques and tactics which comprise a particular approach to training and which can afford an edge in performance”*.
23. The following conclusion by the Commissioner is endorsed by the Additional Party. *“However, and notwithstanding the above, the Appellants argument is wholly speculative as to the contents of the disputed material more widely, and he adduces no evidence in support of his assertion. Accordingly, this ground must fail”*.

24. The Tribunal is invited to dismiss this appeal.

OTHER MATTERS

25. The Additional Party has spent time and ever precious resources dealing with these requests. The Additional Party takes such matters extremely seriously but has found the Appellant's pursuit of these serious and false allegations to be unreasonable. The Commissioner is invited to consider Rule 10 (1) (b) in making an order for costs against the Appellant.

Dated this 5th day of November 2010

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