

BETWEEN

MR C ZACHARIDES

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

THE UK SPORTS COUNCIL

Additional Party

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**CONFIDENTIAL**

SKELETON ARGUMENT ON  
BEHALF OF THE  
ADDITIONAL PARTY

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All references in **OB**[ ] are to page numbers in the open bundle produced for this hearing. All references to **CB**[ ] are to page numbers in the closed bundle produced for this hearing.

*Essential Reading (Time estimate 2 hours)*

- (i) Decision Notice **OB**[1-14]*
- (ii) Notice and Grounds of appeal **OB**[15-32]*
- (iii) Commissioner's Response **OB**[33-46]*
- (iv) Additional Party's Response **OB**[47-52]*
- (v) Appellant's Amended Reply **OB**[89-111]*
- (vi) Witness Statement of Peter Keen **CB**[35-87]*
- (vii) Skeleton arguments*

## Introduction

1. This Skeleton is submitted on behalf of The UK Sports Council (“The Additional Party”).
2. Mr C Zacharides (“the Appellant”) brings an Appeal under section 57 of the Freedom of Information Act 2000 (“The FOIA”).
3. The Appellant entered a Notice and Grounds of Appeal dated 17 September 2010 **OB[15-32]** against Decision Notice FS50294752 (“The Decision”) dated 9 September 2010 **OB[1-14]**.
4. 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”).
5. The Additional Party has served a response dated 5 November 2010 **OB[47-52]**.
6. The summary of the original decision against which this appeal is made is at **OB[1]** “*The complainant asked the public authority to provide him with all reviews quarterly or annually, received from UK Athletics since the UK’s performance update Quarter Two. The information was identified by the public authority as being two reports it had received from UK Athletics and its own comments on those reports. The Commissioner decided that the two reports are within the scope of the request but the public authority’s comments on them are not*”.
7. The Directions for this hearing are set out at **OB[118A-118C]**.

## **Position of Additional Legal Party**

8. The Additional Party adopts the relevant Legal Framework as set out in the Response by the Commissioner at paragraphs 5 to 13 **OB[34-35]**.
9. The Additional Party adopts the points put forward by the Commissioner in his Response **OB[33-46]**. It is not proposed to repeat those points in this skeleton.

10. The Additional Party has requested that it be joined to these proceedings to assist the Tribunal in any way possible. The critical issue for the Additional Party is that it should not breach any confidence that was owed to UK Athletics as part of the Mission 2012 process.
11. Further, the Additional Party is concerned to try and strictly limit the hearing to the relevant issues that the Tribunal has to consider under the FOIA.
12. Clearly, the Appellant is not happy with the general funding mechanisms currently adopted for the sport of athletics within the U.K. In line with that general dissatisfaction the Appellant seems to be intent on proving 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 allegations very seriously and strongly rejects such unfounded and false assertions.
13. It is correctly pointed out by the Commissioner in the Response at paragraph 55 *OB[42]*, “*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*”.
14. The Tribunal is respectfully reminded that the question is solely whether the information requested is properly considered to be exempt under Section 41 Freedom of Information Act 2000 (“FOIA”).
15. The Appellant has put his requests on such a basis that matters seemed to have become muddled as to what he is actually requesting. In particular, the Additional Party points to what the Appellant states at paragraph 54 of his reply *OB[100]* “*Mission 2012 did not form any part of the original information request. Mission 2012 appears to be a Public Relations concept allowing a sport to be placed into one of three categories depicted as simplistic traffic lights where green represents a positive situation, red represents a negative situation and amber represents a neutral situation.*”
16. The Additional Party has sought clarification from the Appellant. It maybe that this matter can be clarified before the hearing, or as a preliminary issue?

17. As matters currently stand under this Appeal, it is understood the Appellant is seeking information in 2 documents:

*(i) Submission in respect of Quarter 4 of 2007: 'Document 1' CB[1-2]*

*(ii) Submission in respect of Quarter 1 of 2008: 'Document 2' CB[3-8]*

18. The issues that arise for the Tribunal would appear to be as follows:-

*(i) Is the Additional Party and UK Athletics one body for the purposes of the FOIA?*

*(ii) Is the Information requested Confidential?*

*(iii) Would disclosure of any such information give rise to an actionable breach of confidence?*

***(i) Is the Additional Party and UK Athletics one body for the purposes of the FOIA?***

19. 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.

20. The Additional Party refutes the assertion that the distinction between the two organisations is a sham and in fact they are one and the same. The position is correctly stated at paragraph 48 of the Response by the Commissioner **OB[41]**“*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)*”.

***(ii) Is the Information requested Confidential?***

21. The Appellant argues that the disputed information cannot contain material which possesses the necessary quality of confidence required to engage section 41 FOIA.

22. In assessing the confidentiality of the information the Tribunal will no doubt have regard to the test set out in the well known authority of *Coco v A N Clarke (Engineers) Limited* [1968] FSR 415.

23. The ethos behind Mission 2012 and the essential requirement of confidentiality is set out within the witness statement of Peter Keen **OB[473 – 509] and CB[35-87]**.
24. In assessing the quality of confidence, it is not in dispute the information is not publicly available, nor is it trivial. It is unquestionable that great lengths have been gone to, in order to preserve the integrity of the process and keep the information requested out of the public domain.
25. In the Commissioners 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*” **OB[37]**.
26. The disclosure of the information would clearly be detrimental. The circumstances under which information is imparted are clearly under a principle that confidential information is protected. Without the process being confidential, it would not take much for the whole mechanism under which UK Athletics, or any other National Governing Body report to the Additional Party to be completely undermined.

***(iii) Would disclosure of any such information give rise to an actionable breach of confidence?***

27. The Tribunal is invited to remind itself of the evidence from Peter Keen.
28. 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)).
29. The Additional Party could not realistically argue the Defence that there is public interest in disclosure which outweighs the public interest in maintaining confidentiality.

30. There is in fact a compelling public interest argument for maintaining the confidentiality of the information as evidenced by the statement of Peter Keen at paragraphs 32 to 46 **CB[41-44]**.
  
31. The Additional Party adopts the conclusion at paragraph 52 in the Response by the Commissioner **OB[42]** *“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”*.
  
32. The Tribunal is invited to dismiss this appeal.

Dated this 28 day of February 2011

Simon Perhar

Counsel for and on behalf of The UK Sports Council