



IN THE FIRST-TIER TRIBUNAL Case No. EA/2010/0162
GENERAL REGULATORY CHAMBER
INFORMATION RIGHTS

ON APPEAL FROM:

**The Information Commissioner's
Decision Notice No: FS50294752
Dated: 9 September 2010**

Appellant: Mr C Zacharides
Respondent: Information Commissioner
Additional Respondent: The UK Sports Council
Heard at: Victory House London
Date of hearing: 22 and 23 March 2011
Date of decision: 4 April 2011

Before

Judge John Angel

and

Richard Fox and Elizabeth Hodder

Attendances:

For the Appellant: In person
For the Respondent: Laura Elizabeth John
For the Additional Party: Simon Perhar

Subject matter: s.41 Confidential Information

Cases: *Coco v A N Clarke (Engineers) Limited* [1968] FSR 415
AG v Guardian Newspapers Ltd (No 2) [1990] AC 109

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal upholds the decision notice dated 9 September 2011 and dismisses the appeal.

REASONS FOR DECISION

Introduction

1. The UK Sports Council (“UK Sports”) was established by Royal Charter in 1997 and is responsible for distributing around £100 million of public funds each year, from both the National Lottery and the Exchequer, in support of high performance sport.
2. UK Athletics Ltd (“UK Athletics”) commenced operations in January 1999 as the national governing body for athletics in the United Kingdom.
3. ‘Mission 2012’ is a programme developed by UK Sports with the intention to help each Summer Olympic and Paralympic sport achieve success in the London 2012 Olympics. As part of that process, UK Athletics submits a periodic report to UK Sports.

The request for information

4. On 5 February 2008 Mr Zacharides requested a copy of the last review submitted by UK Athletics relating to

Section 12 of the funding agreement between UK Athletics and UK Sport for the period from 2005 to 2009 under the heading of “Review” states:

The Governing Body will submit to UK Sports an Annual Review (or report) that will report on developments within its sport and will give detailed information regarding its progress against the high level goals, annual milestones, and key performance indicators and outcomes agreed as part of this Agreement, as well as other matters reasonably required by UK Sports. UK Sports will agree

with the Governing Body the date for submission of its Annual Review.

5. UK Sports responded on 29 February 2008 confirming that it did hold the information but that it was considering claiming some exemptions. On 25 March 2008 UK Sports provided a progress report explaining that it was still considering the request but the requirement in the funding agreement for an annual review had been superseded by a new approach to monitoring and evaluation across all the funded Olympic and Paralympic sports which was launched in May 2007 and known as "Mission 2012".
6. On 31 March 2008 UK Sports sent Mr Zacharides a copy of the Performance Update received from UK Athletics under the funding agreement for the second quarter 2006/07 with redactions for which UK Sport claimed certain exemptions.
7. In the meantime Mr Zacharides had responded to UK Sports letter of 25 March 2008 making further requests which UK Sports responded to on 17 April 2008.
8. These responses resulted in Mr Zacharides making the request which is the subject of this appeal on 6 May 2008 for "all reviews, quarterly or annually, received from UK Athletics since the UK Sports performance update 2006/2007 Quarter Two" ("the Request") .
9. On 4 June 2008 UK Sports identified the requested information as being UK Athletics' reports to it for the fourth quarter of 2007 and first quarter of 2008. UK Sports provided a detailed reply explaining how the Mission 2012 system worked with its "traffic light" approach. It disclosed the summary findings and the final traffic light ratings for the Q1 2008 report but the rest of the report and 2007 report were exempted from disclosure under sections.27(1), 28(1), 36(2), 43(2), 40 and 41(1) of the Freedom of Information Act 2000 ("FOIA") ("the Refusal Notice").
10. UK Sports further clarified its decision by letter dated 2 July 2008.

11. Mr Zacharides asked for an internal review of UK Sports' decisions relating to both requests and by letter dated 22 January 2009 UK Sports upheld its decisions.

The complaint to the Information Commissioner

12. On 6 February 2009 Mr Zacharides complained to the Information Commissioner ("IC") about the refusal to provide "the original quarterly and annual reviews received by UK Sport since 1 October 2007 from UK Athletics in accordance with the funding agreement."
13. On 9 September 2010 the IC issued a Decision Notice ("the Decision Notice"). He considered that there were two reports which were the subject of the Request. The Decision Notice identified the requested information as being UK Athletics' reports to it for the fourth quarter of 2007 and first quarter of 2008 ("the Disputed Information"). In brief, the IC accepted UK Sports' contention that the Disputed Information which was supplied to it by UK Athletics was confidential in nature and that to disclose it would constitute an actionable breach of confidence.
14. The IC then went on to consider whether or not any defence to such an action might arise. Whilst acknowledging that there were certain public interest factors favouring disclosure, the IC found that the public interest in maintaining the doctrine of confidence itself was significant and he was unable to identify any factors which would establish a public interest defence to an action for breach of confidence against UK Sports if it were to release the disputed information without the consent of UK Athletics.
15. The IC concluded that the disputed information was correctly withheld by reference to section 41(1) FOIA. In the light of this finding the IC did not go on to consider the alternative exemptions relied upon by UK Sports.

The appeal to the Tribunal

16. Mr Zacharides lodged an appeal with the Tribunal dated 17 September 2010. There were two principal grounds of appeal. Firstly

that the relationship between UK Athletics and UK Sports was a sham and that, in effect, they were the same organisation and therefore UK Sports could not hide behind a mask of confidentiality. Secondly, there was nothing confidential in nature about the disputed information and even if it was confidential there was a public interest defence requiring disclosure.

17. The Tribunal issued directions on 18 November 2010 joining UK Sports as a party. The Tribunal, under its usual process where evidence and information is confidential, required the parties to prepare their cases to be considered in both open and closed sessions at the hearing.

18. As the appeal drew close to the hearing UK Sports disclosed further information to Mr Zacharides. This continued at the hearing where a climate of co-operation prevailed between the parties.

19. Some question arose about Mr Zacharides's reliance on parliamentary privileged information. The House of Commons Legal Services Office become involved. Mr Zacharides decided not to rely on the evidence so we have not had to rule on its admissibility and have not taken it into account. We would observe however that the High Court has taken different views on the admissibility of such evidence.¹

The relevant legal framework

20. Under section 1(1) FOIA a person who has made a request to a 'public authority' for information is, subject to other provisions of the Act: (a) entitled to be informed in writing whether it holds the information requested (section 1(1)(a)) and (b) if it does, to have that information communicated to him (section 1(1)(b)).

¹ See *Office of Government Commerce v Information Commissioner & The Speaker of the House of Commons* [2008] EWHC 774 Admin and *Age UK v Secretary of State for Business, Innovation and Skills & The Equality and Human Rights Commission* [2009] EWHC 2336 (Admin).

21. The duty to provide the requested information imposed under section 1(1)(b) will not arise where the information is itself exempted under provisions contained in Part II of FOIA.
22. Part II of FOIA contains both absolute and qualified exemptions (see section 2(3)).
23. By virtue of section 2(3)(g), section 41(1) provides for an absolute exemption in respect of information provided in confidence. In relevant part, section 41 FOIA reads as follows:

'(1) 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'*

24. Under section 3 a "public authority" means (for the purposes of this appeal) any body which is listed in Schedule 1. UK Sports is listed in Schedule 1. UK Athletics is not.
25. Under section 58 the Tribunal has power to consider whether or not the Decision Notice has been made in accordance with the law and in order to undertake that process may carry out a merits review.

The questions for the Tribunal

26. In this case the Tribunal has to decide:
- a. whether UK Athletics and UK Sports are the same organisation?

- b. If they are not, whether the disputed information is confidential information under section 41 FOIA?
- c. If it is confidential information, is there a public interest defence requiring its disclosure.
- d. If there is, then are any of the other exemptions claimed by UK Sports engaged and if so where does the public interest balance lie.

Whether UK Athletics and UK Sports are the same organisation?

27. Mr Zacharides contends that UK Athletics is in reality a part of UK Sports. He explained the history of the sport to us. He says that UK Athletics is controlled by UK Sports. An example of such control is that the CEO and other senior officers of UK Athletics are he says, in effect, appointed by UK Sports.

28. The structure of the industry is somewhat complicated. The government funds sport through two main channels. Firstly, elite athletes from all sports including athletics are funded by or through UK Sports. Other funding, particularly at grass roots school and club level, is provided by or through Sport England and the national equivalents e.g. Sport Wales. The government department responsible for both these organs of sport is the Department of Culture, Media and Sport ("DCMS").

29. UK Sports was established by Royal Charter in 1997. Its objectives are the "fostering, supporting and encouraging the development of sport and physical recreation and the achievement of excellence therein in Our United Kingdom and the provision of facilities therefore."

30. UK Athletics was incorporated as a company limited by guarantee in December 1998 and it commenced operations in January 1999 as the national governing body for athletics in the United Kingdom covering

both grass roots athletics and elite athletes. UK Athletics has delegated governance of the sport to national associations like England Athletics Ltd which took over responsibility for the functions of the AAA of England.

31. This new structure for athletics resulted from the recommendations of the Foster report² which concluded that the sport of athletics needed reorganising and that a more professional approach was required.

32. The relationship between UK Sports and UK Athletics is governed by a funding agreement dated 3 June 2005 (“the Funding Agreement”). The Funding Agreement sets out the funding to be made over a four year period for elite athletes. Under the agreement UK Athletics is required to do a number of things including submitting a plan for the period and be subject to monitoring, reviewing and reporting against the plan. The agreement also provides for an annual review that reports on developments within athletics including providing detailed information regarding progress against high level goals, annual milestones and key performance indicators and outcomes agreed as part of the agreement.

33. Mission 2012 was introduced by UK Sports in May 2007 to help ensure that it made the most of its investment in Olympic and Paralympic success. In order to do this it changed the annual to a more regular review and determined its framework and reporting method and introduced a traffic light approach.

Conclusion on whether separate bodies

34. The Tribunal finds the two bodies, UK Athletics and UK Sports, are legally distinct, set up at different times, for different purposes and with different functions. UK Sports is a public authority, explicitly listed in Schedule 1 Part VI FOIA. It was established by Royal Charter in 1997 for the purpose of managing and distributing public funds to high performance sports. UK Athletics is a company (number

² “Moving on – a review of the need for change in athletics in the UK” by Sir Andrew Foster May 2004.

03686940) limited by guarantee. It was established in 1998 and commenced activities in 1999. It is the national governing body (“NGB”) for athletics. UK Sports distributes funds to UK Athletics, but also to various other NGBs.

35. Relations between the two bodies are governed by a contractual arrangement. UK Sport provides funding to UK Athletics, and UK Athletics accepts certain obligations, including reporting obligations. No such arrangement would be required if the two were a single body.

36. Mr Zacharides relies on the level of control exerted by UK Sports over UK Athletics as establishing that UK Athletics “*is effectively a lower tier of the same organisation*”. The argument that UK Athletics is essentially a part of UK Sports, and therefore a part of the public authority listed in Schedule 1 FOIA, is based on a misapprehension of the scope of FOIA:

a. The right to access information in section 1 is a right to access it from “public authorities”, as defined in section 3. Section 3 makes clear that companies are within scope only where they are “publicly owned” within section 6, and not otherwise. That distinction between public bodies and companies cannot be elided, as Mr Zacharides contends, by an assessment of whether the activities of one are closely controlled by the other. Such an approach would not only be highly uncertain, but it would render sections 3(1)(b) and 6 nugatory;

b. A read across to the Environmental Information Regulations 2004 (‘EIR’) confirms this interpretation. Regulation 2(2) makes clear that the EIR apply to “*any public authority as defined in section 3(1) [FOIA]*” (Regulation 2(2)(b)) and in addition to bodies that carry out public administrative functions (Regulation 2(2)(c)) or that are “*under the control*” of bodies which are themselves within the definition of a public authority (Regulation 2(2)(d)). By implication, bodies of the latter sort are not within section 3(1) FOIA.

Whether the disputed information is confidential information

37. What is the disputed information? All parties agree it is two reports, one at the end of 2007 and the other the Q1 report for 2008. The Tribunal has to be careful not to disclose any part of the disputed information not already in the public domain so we can only make findings in this open decision in broad terms so as not to reveal the Disputed Information.
38. Peter Keen, who was Head of Performance of UK Sports at the time of the Request (he is now Director of Performance), gave evidence at the hearing and explained that the Mission 2012 system is designed to provide an honest and open analysis of each NGBs progress in respect of three “Dimensions” of success: The Athletes, The System and The Climate which are defined in “A Guide to UK Sport – Mission 2012 Overview”. UK Athletics provides their submissions or reports based on these Dimensions three times per annum allocating a traffic-light status for each component: green - performing; amber - working on it; and red - need help.
39. When these are received UK Sports staff and external independent experts review the submissions. After each submission UK Sports publishes a 50 word summary against the NGBs performance ambitions and the traffic light colour against each Dimension and an overall traffic light for the programme status which appear on a Mission 2012 tracker board at UK Sports offices.
40. UK Sports has disclosed what is on the tracker board from the Q1 2008 report to Mr Zacharides but not the rest of the submission by UK Athletics. No information for the 2007 report has been disclosed because, according to Mr Keen, this was a trial format before the Mission 2012 review process was fully operational and no part of it has been published.
41. Under section 41(1)(a) for the exemption to be engaged firstly the Disputed Information must be “obtained” by UK Sports from any other person. The submissions were received from UK Athletics, who we

have concluded is another body, and so the Tribunal finds this sub section is satisfied.

42. Next, under section 14(1)(b) the disclosure of the disputed information to Mr Zacharides which, in effect, would be to the public, by UK Sports would need to constitute a breach of confidence actionable by UK Athletics.

43. Ms John, on behalf of the IC, has set out for us the consistent approach developed by the Commissioner and the Tribunal to section 41(1)(b) FOIA. This approach imports the test of confidentiality outlined Megarry J in *Coco v A N Clarke (Engineers) Limited* [1968] FSR 415:

“In my judgment, three elements are normally required if, apart from contract, a case of breach of confidence is to succeed. First the information itself [...] must have the necessary quality of confidence about it. Secondly, that information must have been imparted in circumstances importing an obligation of confidence. Thirdly, there must be an unauthorised use of that information to the detriment of the party communicating it...” (emphasis added).

44. We agree that this is the right approach for this Tribunal to take in this case.

45. Ms John submits that the IC was correct to apply all three limbs of this test in this case, for the following reasons:

Limb 1: Quality of Confidence

46. The information requested is contained in two documents:

Submission in respect of Quarter 4 of 2007
Submission in respect of Quarter 1 of 2008.

47. The information is a breakdown of how elite athletics is progressing towards its targets for the 2012 Olympics.

48. Lord Goff in *AG v Guardian Newspapers Ltd (No 2)* [1990] AC 109 indicated at 282 that the first two “limiting principles” on the protection of information as confidential are:

“The first limiting principle (which is rather an expression of the scope of the duty) is ... that the principle of confidentiality only applies to information to the extent that it is confidential. In

particular, once it has entered what is usually called the public domain (which means no more than that the information in question is so generally accessible that, in all the circumstances, it cannot be regarded as confidential) then, as a general rule, the principle of confidentiality can have no application to it...

The second limiting principle is that the duty of confidence applies neither to useless information, nor to trivia..."

49. In this case, UK Athletics and UK Sports have taken steps to keep the information requested out of the public domain:

- i. UK Sports' Response to the Consultation in 2007 on Mission 2012 contained an undertaking that it would not publish the information submitted to it by NGBs. It stated, in respect of the public reporting which would be undertaken:

"Most significantly, we have decided not to report publicly on the outcomes of the first quarter of Mission 2012 – i.e. your unchallenged self-assessments..." (this refers to the submissions in Quarter 4 of 2007, of which Document 1 is one)

"...We would absolutely not depart from our existing practice of keeping specific details out of the public domain where issues have sensitive commercial, competitive or personnel elements at their heart – such as those likely to feature in the Reporting Template and underpinning information..."

"Here is a reminder of some of the key undertakings we will make as a result of your input:

Public Reporting

- *We will not report publicly on the outcomes of the first quarter of Mission 2012 – your unchallenged self-assessments...*
- *No further information, such as that contained within the Reporting Template or Profiling Tool, will be put in the public domain..."*

- ii. There is now a contract in place between UK Sports and UK Athletics to ensure confidential information is protected.

50. Ms John therefore contends that the information is not of a nature that is publically available already.

51. In relation to §49 ii we note that this agreement was not signed until 2009, after the Request. However we find it did reflect the nature of the relationship, not only because of the steps taken as set out in §49 i but also because according to Mr Keen the Disputed Information was only permitted to be seen by a very limited number of staff of UK Sports who themselves were subject to confidentiality obligations.

52. Ms John submits that the information is not trivial. She refers us to Mr Keen's evidence given in closed session. Having heard this evidence we find that the Disputed Information is not trivial. We also find that it has two of the elements referred to in the consultation response that of sensitive commercial and competitive.

53. Mr Zacharides invites the Tribunal to find that the information does not have the quality of confidence as *"the spirit of [FOIA] is to overcome this element. To allow such reports the mask of confidentiality because the content is not generally known undermines the very value of transparency that the ICO stands for"*.

54. Mr Zacharides has a good point. However Parliament has decided that certain confidential information should be exempt under FOIA. Therefore the spirit of FOIA recognises the need to preserve confidentiality.

55. We accept the arguments put forward by Ms John and find that the Disputed Information has the necessary quality of confidence.

Limb 2: Circumstances in which information imparted

56. The Disputed Information was created as part of Mission 2012. Mission 2012 requires NGBs, including UK Athletics, to make such reports. The Funding Arrangement provides for reviewing and reporting in wide terms. NGBs, including UK Athletics, agreed to provide the Mission 2012 information on the understanding that it would remain confidential. The only information to be published was

the overall and Dimension traffic lights system and a short summary prepared by UK Sports specifically for the media.

57. The understanding that the Mission 2012 reports would remain confidential is also underlined by:

- a. The undertakings given by UK Sports in its Response to the Consultation on Mission 2012, referred to above;
- b. Mr. Keen's evidence that throughout the consultation process it was made clear to NGBs that the new reports would be kept confidential for the first trial report, and then for later reports except for the limited publication described above.

58. From this evidence we find that the circumstances in which the Mission 2012 reviews were submitted by UK Athletics to UK Sports were such as to import an obligation of confidence.

Limb 3: Detriment of the party communicating the information

59. Mr Zacharides does not contest the potential for disclosure of the information to have a detrimental impact on UK Athletics. To the contrary, he appears to hope that the content of the information is such as to “*shame [it] out of existence*”: The question of whether such a result would be in the public interest is dealt with below. For the purposes of ‘limb 3’ of the test, it appears to be common ground that this is met.

Is there a public interest defence?

60. It is well established that it may be a defence to an action for breach of confidence that there is a public interest in disclosure which outweighs the public interest in maintaining confidentiality. Lord Goff in *AG v Guardian Newspapers (No 2)* [1990] 1 AC 190 at 282 said:

“... although the basis of the law's protection of confidence is that there is a public interest that confidences should be preserved and protected by the law, nevertheless that public interest may be outweighed by some other countervailing public interest which favours disclosure. This limitation may apply, as the judge pointed out, to all types of confidential information. It is this limiting principle which may require a court to carry out a balancing operation, weighing the public interest in maintaining confidence

against a countervailing public interest favouring disclosure. Embraced within this limiting principle is, of course, the so-called defence of iniquity. In origin, this principle was narrowly stated, on the basis that a man cannot be made the 'confidant of a crime or a fraud' (see Gartside v Outram (1856) 26 LJ Ch 113 at 114 per Page Wood V-C). But it is now clear that the principle extends to matters of which disclosure is required in the public interest (see Beloff v Pressdram Ltd [1973] 1 All ER 241 at 260 per Ungood-Thomas J and Lion Laboratories Ltd v Evans [1984] 2 All ER 417 at 432-433, [1985] 1 QB 526 at 550 per Griffiths LJ)." (emphasis added).

61. In order to establish that there would be no "actionable breach" under section 41(1)(b) FOIA if the information were to be disclosed, it must be shown not only that such a defence could be constructed, but that it would, on the balance of probabilities, succeed.
62. Mr Zacharides's main contention in this case is that there is a very strong public interest in disclosure because in his view, and the view of all his witnesses, athletics as a sport in the UK is in decline. This is something they feel passionately about and Mr Zacharides hopes that disclosure of the Disputed Information will lead to a better understanding of what is happening in the sport and ultimately lead to its improvement. This decline is directly linked, Mr Zacharides believes, to the manner in which UK Sports and UK Athletics are allocating their funds.
63. We heard evidence from:
 - a. John Bicourt who had been an athlete, taught athletics as a school teacher, became an athletics agent and coach. He coached a number of athletes who won Olympic Medals;
 - b. Michael Winch who had been a senior athlete, then coach and administrator. He had been Vice President of UK Athletics for four years.
 - c. Dennis Daly who had been an athlete, coach and secretary of an athletics club for many years. He was also a founder member of the Association of British Athletic Clubs ("ABAC") set up to monitor the activities of UK Athletics.
 - d. William Laws who had been an athlete and team manager of one of the most successful athletics clubs in the UK, Belgarve Harriers.

- e. Rob Wittingham an athletics statistician who for a time was engaged as a consultant by UK Athletics.
- f. Jim Cowan who had been an athlete, coach and administrator. He worked in coach education for UK Athletics.

64. These witnesses give a depressing picture of the decline of athletics as a sport in the UK over the last decade. We would summarise their evidence as follows:

- a. there is a decreasing performance of UK athletes at world events particularly the number of medals awarded;
- b. this is poor value for the large amounts of money being invested in the sport;
- c. there are increasing numbers of administrators and associated bureaucracy;
- d. the focus is on the elite;
- e. there is insufficient investment at grass root level particularly in clubs;
- f. the quality of coaching is declining for non elite athletes;
- g. the short term emphasis on the Olympics in 2012 is damaging the long term interests of the sport;
- h. there is a steady decline in the number of athletes competing at all levels;
- i. there is a steady decline in the number of volunteers making it difficult to manage athletics meetings and events;
- j. the governing body is lowering key performance indicators and manipulating the statistics to make the picture appear better than it is;
- k. the CEO of UK Athletics was recently awarded a pay increase despite this worsening picture.

65. Mr Zacharides argues that this picture amounts to a very strong public interest which favours disclosure of the Disputed Information.

66. UK Athletics is the sport's governing body. It is responsible for grass roots development of athletics as well as elite athletes performing well at international level. Clearly the two are connected hence its overall responsibility for the sport.

67. The role of UK Sports is confusing. Its Royal Charter gives it a wide remit (§29 above). However we are informed that it only funds elite athletes in a number of sports. It is not responsible for any of these sports as such. That is the role of the governing bodies like UK Athletics. Grass root funding comes from elsewhere e.g. Sport England.
68. A number of the witnesses did not seem to fully understand this structure despite their significant involvement with athletics. This must be of public interest and concern.
69. The IC accepted in the Decision Notice that there is a public interest in transparency around spending public funds. However, Ms John contends that the fact that the party communicating the information is in receipt of public funds cannot, in itself, be sufficient to constitute a defence to an actionable breach of confidence. Section 41(1)(a) provides that information is exempt when it has been received from another person “*including another public authority*”. This confirms, she maintains, that information supplied by a person who is in receipt of public funds can be exempt.
70. Ms John argues that the question for the purposes of section 41 must be whether the information is capable of being put to some use that is positively in the public interest, beyond merely showing how public funds have been spent. Moreover, if the confidentiality of the information is to be overridden it must be shown that that positive public interest is sufficiently compelling to outweigh the public interest in maintaining confidentiality³. It must also be shown that that positive public interest cannot be served by other means. She submits that there is no such public interest here.
71. The public interest surrounding this case as expressed by Mr Zacharides and his witnesses is in much wider terms than the transparency around the spending of public funds.

³ The Commissioner notes in this regard that the Tribunal has confirmed that the approach outlined in *AG v Guardian Newspapers (No 2)* [1990] 1 AC 190 requires a presumption in favour of maintaining confidentiality when considering whether to disclose the information under section 41 FOIA: *Derry County Council v ICO* (EA/2006/0014) at [35(m)], page 29.

72. However the Disputed Information, which we have seen, is limited to the monitoring of UK Sports investment in elite athletes managed through UK Athletics as described earlier in this decision.
73. Mr Zacharides may disagree with the choice to provide funding to elite athletics rather than 'grass root' athletics and is clearly unhappy about the way the sport as a whole is being run and is developing but the information requested is not, in our view, relevant to that debate.
74. Also much of the information which causes Mr Zacharides concern is already in the public domain. For example the number of medals awarded at a particular event, and the rankings of individual elite athletes, is a matter of public record. The amount of public money invested in elite athletics by UK Sports is a matter of public record.
75. Ms John argues that this public information is an adequate basis upon which the efficacy of UK Sport and UK Athletics can be assessed and this can be seen from the newspaper articles and information published on the web produced in evidence in this case.
76. UK Sports does put a high level summary of the Mission 2012 reports it receives from NGBs into the public domain through its traffic light system and short summaries: From the evidence it appears to be no hindrance to public debate on the efficacy of UK Athletics, or UK Sports, in supporting and promoting elite athletics as a result of the detailed information requested being kept confidential.
77. On the other hand the public interest in maintaining the confidentiality of the information is strong. As Mr Keen explained the reviews provide an honest assessment by UK Athletics of its progress to achieving its Olympic and Paralympic objectives. The extent of this honest approach might lessen if the information was made public. Because UK Sports keeps the information confidential NGBs do not object to it being shared amongst themselves in order to benefit each others sport. Only a few employees at UK Sports have access to the information because of its confidential nature and they are subject to confidentiality clauses in their employment contracts.

78. In our view, having seen the Disputed Information, it would not contribute in any significant way to the public debate particularly of the many concerns expressed by Mr Zacharides and his witnesses. The answer to those concerns lies mainly elsewhere.

79. Having considered all the evidence we find that the public interest in disclosure is not sufficiently strong to outweigh the public interest in maintaining confidentiality in all the circumstances of this case.

Conclusion

80. We find that there is not a public interest defence in this case and that the Disputed Information, except the information already disclosed, is exempt under s.41 FOIA. Therefore we do not need to consider the other exemptions claimed and uphold the IC's Decision Notice and dismiss the appeal.

81. Our decision is unanimous.

82. We would observe that there would appear to be genuine concerns about the state of athletics generally in the UK. We noted that Mr Keen and those representing UK Sports at the hearing seemed to be listening to Mr Zacharides and his witnesses. The fact they offered to disclose a great deal of information at the hearing, albeit the information was not part of this appeal, was in our view an indication that they were treating the concerns seriously. We would hope, that in view of the objectives stated in its Royal Charter, UK Sports will go beyond the current rather limited remit that has been set to ensure that athletics in the UK has every opportunity of thriving as a sport in the future.

John Angel

Tribunal Judge

Date: 4 April 2011