

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 26 February 2014

**Public Authority:** Royal Borough of Greenwich Council

**Address:** 35 The Woolwich Centre  
Wellington Street  
London  
SE18 6HQ

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to the provision of care services in the area of the Royal Borough of Greenwich (the "Council"). Initially, the Council cited the exemption at section 43 (commercial interests) as a basis for refusing to provide that information which was not publicly available. During the course of the Commissioner's investigation, it revised its position and provided some further information. It argued that the remainder was exempt under section 12 (cost limit) or section 43.
2. The Commissioner's decision is that Council is entitled to rely on section 12 and section 43 as a basis for refusing to provide the information which still remains withheld. However, the Council failed to comply with its obligations under section 16 (advice and assistance) in its handling of the complainant's requests. It also failed to comply with its obligations under sections 1 and section 10 of the Act when it failed to respond to the request within 20 working days.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Write to the complainant to suggest that he make his request more specific by asking for information relating to a specific care home/agency.
  - Supply the complainant with the paragraph of explanation that it provided to the Commissioner in its letter of 10 February 2014 regarding Request 1. This is a single paragraph on the first page of that letter which begins "All contracts ...".

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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5. On 17 March 2013 the complainant requested information of the following description:

"Under the Freedom of Information Act could you please provide me with all the recorded information that you hold on the Care Agencies that have been used by Greenwich Council Adult and Older People Services from January 2011 until January 2013, plus copies of their the tendering contracts and the information provided by the agencies to secure their contract Greenwich Council Adult and Older People Services.

Please also confirm where this information is or has been stored and recorded and in what format."

6. On 5 April 2013, the Council wrote to ask for clarification and to ask the complainant to be more specific about the information he sought.

7. On 11 April 2013, he specified the following information:

"1. Copies of Tender contracts for care agencies that have been used and the value of each contract from January 2010 until March 2013.

2. If the value of any care agency contract exceeded £100,000, then copies of the council's legal directors seal on the contracts.

3. Copies of all due diligence documents used in the decision making process to appoint the care agencies through the tender process, including advertisements and where they were placed, references provided by the care agencies to Greenwich council from January 2010 until March 2013 and copies of documents confirming that the references were checked.

4. Names and job titles of the people at Greenwich council who were responsible for taking on the care agencies from January 2010 until March 2013 and copies of their reasons for giving the contracts to the care agencies.

5. Copies of documents submitted by the care agencies confirming the care agency's previous experience in relation to the provision of care services.
6. Copies of care agency environmental standards, accreditations, Insurance cover and Health and Safety documents provided to Greenwich council before awarding the tender contracts from January 2010 until March 2013.
7. Copies of care agency company accounts, director's information including references from the directors of the care agencies from January 2010 until March 2013 and copies of documents confirming that the references were checked.
8. Copies of all care workers references and proof of their qualifications provided by the care agencies for all the agencies staff used by Greenwich Council from January 2010 until March 2013.
9. Copies of care agency performance documents from January 2010 until March 2013.
10. Copies of care agencies complaint documents and the number of complaints that were submitted to Greenwich council from January 2010 until March 2013 and how and when these complaints were investigated.
11. Copies of any fraud and malpractice reported against care agencies used from January 2010 until March 2013".

8. On 31 May 2013, the Council responded. The response can be summarised as follows:

Request 1: It argued that the information caught by the scope of this request was exempt from disclosure under section 43 of the FOIA.

Request 2: It argued that this information was also exempt under section 43.

Request 3: It argued that this information was also exempt under section 43.

Request 4: It provided a name but argued that the remainder of the information caught by the scope of this request was exempt from disclosure under section 43.

Request 5: It argued that this information was also exempt under section 43.

Request 6: It argued that this information was also exempt under section 43.

Request 7: It argued that this information was exempt under section 21 (information reasonably accessible by other means). It provided a link to the Companies House website.

Request 8: It argued that this information was exempt under section 40 (unfair disclosure of personal data).

Request 9: It argued that this information was exempt under section 21 (information reasonably accessible by other means). It provided a link to the Care Quality Commission website.

Request 10: It said that it did not hold a care agency complaints document. It provided a link to its own complaints procedure.

Request 11: It said that it did not hold any information within the scope of this request.

9. The complainant requested an internal review on 31 May 2013. The Council sent him the outcome of its internal review on 14 June 2013. It upheld its original position as regards Requests 1, 2, 3, 4, 5 & 6. It had applied section 43 in relation to these six Requests and it construed the request for review as being a request to review its use of section 43 in relation to these 6 requests.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 17 September 2013 to complain about the way his request for information had been handled. He complained about the Council's reliance on section 43 and the delays he had experienced. The complainant also provided background information about general concerns he had raised. These concerns related to the quality of care being received by a family member that was provided at the family member's home by contractors on behalf of the Council. These matters are outside the Commissioner's remit although general concerns about the quality of home care as provided by the Council are relevant to the consideration of the public interest test.
11. The Commissioner initially asked the Council for its arguments as to section 43 which had been applied to the first 6 requests. In a letter to

the Commissioner, dated 9 January 2014, it explained that it was revising its position as follows:

Request 1 – it argued that it was not obliged to provide the information described in this request by virtue of section 12 (costs limit)

Request 2 – it said it would provide the complainant with this information [copies of the relevant paperwork which included copies of the council's legal directors seal on the contracts].

Request 3 – it said it would provide the complainant with the following documents: the relevant invitation to tender; an evaluation table (minus the names of the companies evaluated in the table citing section 43 as its basis for doing so); and a decision report.

Request 4 – it said it would provide the “names and job titles of the people at Greenwich council who were responsible for taking on the care agencies from January 2010 until March 2013” to the complainant. It explained that “their reasons for giving the contracts to the care agencies” were set out in the decision report to be provided in response to Request 3.

Request 5 – it argued that it was entitled to rely on section 12 in relation to this request.

Request 6 – it argued that it was entitled to rely on section 12 in relation to this request.

12. Its arguments as to why section 12 applied were unclear and, in parts, incorrect as regards the actual calculations submitted in support of its use of section 12. On 15 January 2014, the Commissioner wrote to the Council to ask for its confirmation that it had provided the complainant with the information that it was now prepared to release. He also gave the Council a final opportunity to provide more coherent arguments as to section 12. Finally, he asked the Council to provide arguments with regard to section 16 (the duty to provide advice and assistance). He specifically asked the public authority to explain what advice and assistance the Council now proposed to give to the complainant in relation to Requests 1, 5 and 6, given that it had now introduced section 12 as a basis for refusing those requests.
13. On 21 January 2014, the Council sent the complainant its revised position and made a disclosure to him. It disclosed the information it held in relation to Requests 2 and 4 in full and it disclosed part of the information described in Request 3. It withheld the names of companies to which the disclosed information related. However, for reasons which are not clear, it did not explain its revised position with regard to Requests 5 and 6.

14. The Council eventually responded to the Commissioner's letter of 15 January 2014 on 10 February 2014. It said that it had provided copies of tender contracts for care agencies to the complainant. These appeared to be the documents it had already provided in response to Request 2 which showed the seals and signatures described in Request 2. In respect of the "the value of each contract from January 2010 and March 2013" as described in Request 1, it provide the Commissioner within information about the value and nature of the contracts which it does not appear to have provided explicitly to the complainant.
15. In light of the above, the Commissioner has therefore considered the following:
  - whether the Council is entitled to rely on section 12 in relation to Requests 5 and 6;
  - whether the Council is entitled to withhold company names that fall within the scope of Request 3 by virtue of section 43(2);
  - whether the Council has complied with its obligations to provide advice and assistance to the complainant under section 16; and
  - whether the Council has complied with its obligations as regards the timeliness of its responses to the complainant.

## Reasons for decision

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### Section 12

16. The Commissioner has discretion to decide whether to accept a late claim of section 12.
17. By a narrow margin and as an exercise of his discretion, the Commissioner is prepared to consider the Council's late reliance on section 12 in this case. It would be unreasonable to expect a public authority to commit public money (by answering a request) where it may not be obliged to do so because it can rely on the cost limit exemption at section 12. That said, the Commissioner is extremely dissatisfied with the incoherent explanation that the Council provided to him in support of section 12 when it first sought to make a late claim of section 12. He is also dissatisfied with the paucity of information provided by the Council to the complainant about its use of section 12.
18. Section 12 of the FOIA states that:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."*

19. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Fees Regulations") sets the appropriate limit at £450 for the public authority in question. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work.
20. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
  - (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,
  - (c) retrieving the information, or a document which may contain the information, and
  - (d) extracting the information from a document containing it.
21. The Council argued that it could aggregate the cost of compliance with Requests 5 and 6 because they follow an overarching theme.
22. When a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:
  - made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
  - made for the same or similar information; and
  - received by the public authority within any period of 60 consecutive working days.
23. The Commissioner considers that multiple requests within a single item of correspondence are separate requests for the purpose of section 12. This was confirmed by the Information Tribunal in the case of Ian

Fitzsimmons v ICO & Department for Culture, Media and Sport (EA/2007/0124, 17 June 2008).<sup>1</sup>

24. Regulation 5(2) of the Fees Regulations requires that the requests which are to be aggregated relate "*to any extent*" to the same or similar information. A public authority needs to consider each case on its own facts but requests are likely to relate to the same or similar information where, for example, the requestor has expressly linked the requests, or where there is an overarching theme or common thread running between the requests in terms of the nature of the information that has been requested.
25. The Commissioner agrees that Request 5 and 6 follow the same overarching theme. Request 5 is for "copies of documents submitted by the care agencies confirming the care agency's previous experience in relation to the provision of care services" and Request 6 is for "copies of care agency environmental standards, accreditations, Insurance cover and Health and Safety documents provided to Greenwich council before awarding the tender contracts from January 2010 until March 2013". The Commissioner is satisfied that this information falls within an overarching theme of bid support documentation. As such, he is satisfied that Requests 5 and 6 can be aggregated when considering the cost of compliance.
26. The Council submitted the following calculations in support of its position that it would exceed the cost limit set out in the Fees Regulations to comply with Requests 5 and 6:

"In order to establish whether we hold any of the information requested, one officer will have to do the following:-

- Determine if the data is held electronically
- Locate box catalogue numbers on the spread sheet
- Insert catalogue numbers on email request to offsite archivist

The delivery of the boxes from our off-site archive which contain the files will cost £69.00. (We have added this onto the cost)\*.

This will take one officer approximately 35 minutes.

In order to locate the information, or a document which may contain the information, one officer will have to do the following:-

- Go through each box and pull out the contract tender documents containing Care agencies previous experience

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<sup>1</sup> <http://www.informationtribunal.gov.uk/DBFiles/Decision/i242/Fitzsimmons.pdf>



- Pre-Qualification Questionnaires

This will take one officer approximately 15mins x 30 [files] = 450mins.

In order to retrieve the information, or document which may contain the information, and extracting the information from a document containing it, one officer will have to do the following:-

Retrieve the care agencies previous experience

Obtain the following information from the Pre Qualification Questionnaire:

- Agency environmental standards

- Accreditations

- Insurance Cover

- Health & Safety documents

- Review and photocopy

This will take approximately, 25mins x 30 = 750mins

#### Calculations

35mins + 450mins + 750mins = 1235mins (20hrs and 35mins) x £25 = £514.58

£514.58 + £69.00\* = **£583.58**"

27. The Commissioner has considered these calculations carefully. He has focussed on the calculations of time submitted by the Council. Calculations of actual cost would be applicable when considering whether the Council has issued an accurate fees notice which is not relevant here.
28. The Commissioner notes that the Council argued that it can include "review and photocopying" as part of its calculations. When it submitted its first arguments in support of section 12 (which included flawed calculations), it also used the phrase "review" when describing the activities it would need to undertake in order to comply with the requests. When the Commissioner asked it to resubmit its calculations, he also asked it to explain what it meant by the term "review". The Commissioner told the Council that a public authority cannot take into account the time it would take to consider exemptions, mark redactions or correct inaccuracies when calculating the cost of compliance. He provided a link to his own published guidance to assist the Council in preparing its response.<sup>2</sup> Unfortunately, the Council did not provide an

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of)

explanation as to what it meant by the term "review" in its final response to the Commissioner. The Commissioner is therefore unclear about the activity the Council is referring to when it says "review and photocopy".

29. The Council argued that it would take 25 minutes per file to retrieve and extract the requested information and that this included time spent reviewing and photocopying. Noting that at least some of the information described in Requests 5 and 6 is likely to be in separate supporting documents that are readily identified and readily available, e.g. copies of insurance documents or accreditations, he is not satisfied that 25 minutes per file is a reasonable estimate. There would be little requirement to "review" readily available documents in order to extract the requested information. Furthermore, the time taken to photocopy readily available documents cannot be taken in to account when calculating the cost of compliance. The Commissioner accepts that some of the information described in Requests 5 and 6 may be within other documents and may therefore need to be "extracted" from those documents using a photocopier. However, he is not clear how this would take as long as 25 minutes per file. That said, if it were an overestimate by, say, 5 minutes per file, the cost of compliance would, by a narrow margin, still exceed the appropriate limit.<sup>3</sup>

### Section 12 – Conclusion

30. Although the Commissioner finds that some of the Council's estimates are neither reasonable nor cogent, he agrees that compliance with Requests 5 and 6 would exceed the appropriate limit. As such, it is entitled to rely on section 12 as a basis for refusing to provide the information described in Requests 5 and 6.

### **Section 16 – advice and assistance**

31. Section 16 places a duty on public authorities to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made requests for information to it.

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[Information/Detailed specialist guides/costs of compliance exceeds appropriate limit.aspx](#)

<sup>3</sup> (20 minutes x 30 files) + 450 + 35 = 1085 minutes; 1085 minutes ÷ 60 = 18 hours and 5 minutes.

32. Under section 16(2) a public authority is considered to have met that duty if it follows the section 45 code of practice (the "code"). The code sets out what is expected from a public authority in terms of advice and assistance when a request is refused under section 12.

33. Paragraph 14 of the code states that where a public authority is not obliged to comply with a request because it would exceed the appropriate limit to do so, then it:

"...should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee."<sup>4</sup>

34. The Commissioner would describe the Council's advice and assistance in to the complainant as wholly inadequate. In correspondence with the Commissioner, it said that it would provide advice and assistance to the complainant by asking him to:

"[make] his request more specific, by asking for information relating to a specific care home/agency".

35. The Commissioner can see no good reason why the Council did not write to the complainant to advise him to do this as soon as it changed its position regarding Requests 5 and 6. It had ample opportunity to communicate this change of position and to provide adequate advice and assistance to the complainant about this. It did not even tell the complainant that it was seeking to rely on section 12.

36. Further, in relation to Request 1, the Commissioner notes that the Council provided him with an explanation about the nature of its contracts and the costings. It should have provided this detail to the complainant in order to comply with its obligations under section 16 in relation to Request 1 to provide reasonable advice and assistance.

### Section 16 - Conclusion

37. The Commissioner concludes that the Council has failed in its obligations under section 16 to provide reasonable advice and assistance to the complainant. The Commissioner requires the Council to take the following steps:

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<sup>4</sup> <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-of-practice.pdf>

- Write to the complainant to suggest that he make his request more specific by asking for information relating to a specific care home/agency.
- Supply the complainant with the paragraph of explanation that it provided to the Commissioner in its letter of 10 February 2014 regarding Request 1. This is a single paragraph on the first page of that letter which begins "All contracts ...".

### **Section 43 – Request 3**

38. The Commissioner has next considered the information withheld only by virtue of section 43(2). That information comprises the names of companies found in the Evaluation Table which has already been supplied to the complainant.
39. Section 43(2) of FOIA sets out an exemption from the right to know if release of the information is likely to prejudice the commercial interests of any person, including those of the public authority holding the information.
40. In order for a prejudice based exemption, such as section 43(2), to be engaged the Commissioner believes that three criteria must be met:
  - Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner believes that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority to discharge.
41. In relation to the commercial interests of third parties, the Commissioner does not consider it appropriate to take into account

speculative arguments which are advanced by public authorities about how prejudice may occur to third parties. Whilst it may not be necessary to explicitly consult the relevant third party, the Commissioner expects that arguments which are advanced by a public authority should be based on its prior knowledge of the third party's concerns.

42. In correspondence with the Commissioner, the Council said:

"We consider that because this information is still live, it would affect the commercial standing of each of the companies in a very competitive market, particularly disclosure of the narrative. The Council is currently at the pre-let process and is at the Pre-Qualification Questionnaire (PQQ) stage.

If this information is disclosed it would provide potential competitors with detailed information about each companies business plan and future income. If this information was placed in the public domain it would be likely to impact on each company who provided a tender to participate competitively in this commercial activity".

43. The Commissioner notes that although the Council did make a further disclosure to the complainant it did not disclose any information from which individual companies could be identified.
44. When identifying the applicable interests, the Commissioner must consider whether the prejudice claimed is to the interest stated. He is satisfied that this is the case here.
45. The Commissioner's view is that the use of the term 'prejudice' is important to consider in the context of the exemption at section 43. It implies not just that the disclosure of information must have some effect on the applicable interest, but that this effect must be detrimental or damaging in some way.
46. Secondly, there must be what the *Hogan*<sup>5</sup> Tribunal called a 'causal link' between the disclosure and the prejudice claimed. The authority must be able to show how the disclosure of the specific information requested would, or would be likely to, lead to the prejudice.

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<http://www.informationtribunal.gov.uk/DBFiles/Decision/i42/MrCMHoganandOxfordCityCouncilvInfoComm17Oct06.pdf>

47. The Council's arguments, as reproduced above, were not particularly detailed. However, the Commissioner agrees that there is a causal link between disclosure and a prejudicial impact on the commercial interests of the companies involved. The Council has already disclosed information and commentary which shows that certain bids failed to meet the financial robustness criterion of the bid process. In the disclosed evaluation document, the information which the Council has now disclosed states:

"As a bit of background the finance team look at various areas of Companies Accounts. If they have high levels of cash in the bank or lots of assets (say buildings) it looks more likely that they could trade through difficult periods. Generally, we like to see companies profitable and consistently expanding as well. What we want to avoid is an organisation that may go out of business and us having to find new Home carers in a crisis situation".

48. The disclosed evaluation document shows analysis of why certain companies failed to make the next stage of the process. The names of the companies are redacted as are the names of those who satisfied the financial analysis of the evaluators. The Commissioner accepts that disclosing information that shows which companies have failed meet the financial robustness criterion could have a detrimental effect on the commercial interests of those companies.

#### Likelihood of prejudice

49. As noted above, the Council argued that disclosure 'would be likely' to have a prejudicial effect.

#### Is the exemption engaged?

50. In determining whether or not the effect of disclosure in this case would be detrimental or damaging in some way to the commercial interests of the named companies, the Commissioner has considered the nature and likelihood of harm that would be caused.
51. The Commissioner considers it important that, in claiming the section 43 exemption on the basis of prejudice to the commercial interests of a third party, the public authority must have evidence that this does in fact represent or reflect the view of the third party. None has been supplied in this case.
52. In the Commissioner's view, a commercial interest relates to a person's ability to participate competitively in a commercial activity. Disclosure of information which shows a negative analysis of a company's financial situation is likely to have a negative impact on other parties' assessment

of that company, for example, to engage them as a contractor; to supply them; to work for them.

53. In this case, the Commissioner accepts that disclosure of the disputed information would be likely to harm the respective companies' ability to operate commercially in a competitive market.
54. He also notes that there would be a similar impact on the same companies were the names of those who met the financial robustness criterion to be disclosed. The absence of a company's name on that list would indicate that it had failed to meet the financial robustness criterion.
55. It follows that the Commissioner finds the exemption engaged.

#### Section 43 – the public interest test

56. Having established that the section 43 exemption is engaged the Commissioner must go on to consider the public interest test as set out in section 2(2)(b) of FOIA.

#### *The complainant's arguments*

57. The complainant has made serious allegations about the quality of care his family member has received. He has also explained the wider adverse consequences that this has had in his family.
58. The complainant has also undertaken a rudimentary due diligence exercise relating to certain relevant company names already known to him via the website of Companies House.<sup>6</sup> This, he alleged, provided alarming results regarding the legal status of certain companies engaged by the Council and, in some cases, their directors. It suggested to him that the Council was not conducting adequate due diligence itself. He therefore argued that he had legitimate concerns about the status of certain care providers as well as the care they provided. He was not satisfied with the Council's response to these concerns. In his view, this added particular weight to the public interest in disclosure.

#### *The Council's arguments*

59. The Council, having emphasised that the tendering process was live at the time of the request, argued as follows:

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<sup>6</sup> <http://www.companieshouse.gov.uk/>

"The authority recognises the public interest in the scrutiny of how public money is spent, maintaining openness and transparency within the public sector and ensuring that companies are able to compete fairly.

It is not in the public interest to disclose information which would be likely to put these companies at a commercial disadvantage in a very competitive market.

Having considered the public interest test the Authority decision is to redact the [companies' names]".

*The Commissioner's view*

60. The Commissioner thinks that the complainant has made compelling arguments in favour of disclosure with regard to ensuring transparency about the Council's due diligence process. He has queried the robustness of this process with concerns which, if proven, would show that the Council has questions to answer about how it checks the companies it engages to carry out social care on its behalf.
61. The Commissioner notes that the care of the elderly and vulnerable is a topic which remains of considerable public concern. There have been a number of high-profile prosecutions of persons who have been responsible for disgracefully poor care of elderly and vulnerable adults. The supervision of care has also been the subject of considerable public scrutiny. The focus of public scrutiny has so far been on hospitals and care homes rather than on the care provided to individuals in their own homes. The complainant has raised a number of troubling concerns about the care his relative has received at home. In the Commissioner's view, these concerns should be directed to the Care Quality Commission, the body charged with considering complaints about poor care and he has already drawn this to the complainant's attention.<sup>7</sup>
62. The financial standing of companies providing care services has also been of considerable public concern. Arguably, there is a strong public interest in knowing the names of which companies have already failed to meet the Council's criteria because of their financial shortcomings. Where the names of companies are matched to the narrative that has already been disclosed, the public would be better informed about which companies are in poorer financial health. The companies may be competing for contracts in other areas outside Greenwich. If they are

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<sup>7</sup> <http://www.cqc.org.uk/>



awarded contracts in other areas, for example, because they have met the criteria set by other public authorities, the public would have a greater opportunity to challenge such awards or to reject the use of their services using the information they have obtained from the Council in this case.

63. However, the Commissioner thinks that the Council has eventually gone some way to improving the transparency of its financial due diligence processes. The information it has now disclosed, albeit with company names removed, shows that it has looked carefully at the financial viability of companies that have bid for the contract in question.
64. In the Commissioner's view, the most compelling argument in favour of the exemption relates to the stage which the tendering process had reached at the time of the request. Where a tendering process is still live, the Commissioner recognises that there is a strong public interest in withholding the names of participants. If the process had been completed at the time of the request, the public interest in disclosure may well have outweighed the public interest in maintaining the exemption at section 43.

#### Section 43 - Conclusion

65. In the circumstances of this case and by a narrow margin, the Commissioner has concluded that the names of the companies who submitted bids for the contract in question are exempt under section 43 of the Act. In reaching this view, he has given particular weight to stage the bidding process had reached at the time of the request. Had the process been completed, the Commissioner may well have taken a different view.
66. There has been a widely reported breakdown of trust between those who provide care services (either social care or health care) and the general public prompted by the public's response to the Keogh Report into failings at a number of NHS Trusts.<sup>8</sup> While this Report focussed on in-patient care it reflects wider concerns about care for the elderly and other vulnerable people. The Keogh Report also included recommendations for improved monitoring by the Care Quality Commission. Again these recommendations are primarily directed at in-patient care but it reflects a wider concern about the quality of

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<sup>8</sup> <http://www.nhs.uk/NHSEngland/bruce-keogh-review/Pages/published-reports.aspx>

outpatient care including social care. The remit of the Care Quality Commission includes monitoring services provided in the home.<sup>9</sup>

67. The Commissioner thinks that there is a considerable public interest in knowing more about the checks that any public authority carries out into suppliers of care services. Those companies who wish to supply care services to public authorities should properly expect that their identity is made public once a tender exercise has been completed. Those engaging care service suppliers should ensure that their due diligence activities are as transparent as possible.

### **Section 10 – Time for compliance**

68. Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

69. In this case, the request was made on 11 April 2013 and therefore the first working day following the date of receipt was 12 April 2013. The Council did not provide a response until 31 May 2013 which is 34 working days following the date of receipt. In failing to provide a response within 20 working days, the Council contravened the requirements of sections 1 and 10 of the FOIA. Right of appeal

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<sup>9</sup> [http://www.cqc.org.uk/search/services-in-your-home?f\[0\]=im\\_taxonomy\\_vid\\_34%3A9464](http://www.cqc.org.uk/search/services-in-your-home?f[0]=im_taxonomy_vid_34%3A9464)

## Right of appeal

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70. 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: 0300 1234504

Fax: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

71. 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.
72. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
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