

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 21 February 2017

**Public Authority:** Hartlepool Borough Council  
**Address:** Civic Centre  
Victoria Road  
Hartlepool  
TS23 8AY

#### Decision (including any steps ordered)

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1. The complainant has requested information from Hartlepool Borough Council (the council) regarding the transfer of ownership of Teesside International Airport (TIA) in 2003 and related payments made to Peel Group, along with any irrevocable commitments entered into by Peel Group and any third party commitments by One North East. The council confirmed that it did not hold all the requested information as it was not the lead authority on the matter of TIA. With regard to the information it does hold, it provided some and withheld the remainder under section 43 of the FOIA. During the course of the Commissioner's investigation, the council also sought to rely on section 36(2)(c) to withhold the information. The Commissioner also found it necessary to consider whether the names of two councillors should have been withheld under section 40(2).
2. The Commissioner's decision is that the council has failed to adequately demonstrate that section 43(2), section 36(2)(c) or section 40(2) are engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Disclose the withheld information.

Reference: FS50640872

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 case to the High Court pursuant to section 54 of the Act and may be dealt with as contempt of court.

## Request and response

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5. On 17 March 2016 the complainant made the following information request:

*"In year 2003 Teesside Airport in 100% sharehold ownership of a group of Local Authorities was transferred to a new Company made up of a Group of Local Authorities with 25% sharehold ownership and Peel with 75% sharehold ownership.*

*Please provide details of that transfer of ownership and any consideration paid directly by Peel and any irrevocable commitments, e.g. in the form of deferred consideration, entered into by Peel.*

*Please also provide details of any third party commitments made by the Government Agency, One North East, that facilitated the transfer of ownership."*

6. On 19 April 2016, the council responded. It confirmed that it held some of the requested information, and of this, it provided some documents and withheld the remainder under section 43 of the FOIA as it was information which would or would be likely to prejudice the commercial interests of any person, including the council. The council also confirmed that it considered that the public interest in withholding the information outweighed the public interest in disclosure.
7. The complainant requested an internal review on 19 April 2016. The council sent the outcome of this on 28 July 2016, in which it upheld its original position, advising that the information was commercially sensitive.

## Scope of the case

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8. The complainant contacted the Commissioner on 5 August 2016 to complain about the way his request for information had been handled. In particular he argued that due to the age of the information he was requesting the public interest must now rest in favour of disclosure.
9. During the course of the Commissioner's investigation the council also sought to rely on section 36(2)(c) to withhold the information, as well as relying on section 43 as originally stated. The Commissioner considers that the scope of this investigation is to determine whether the council was correct to withhold the requested information under either of the exemptions cited.

## **Background**

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10. The Commissioner finds it useful to set out a brief background to the request in order to put some context in place and to explain the relationship between the various parties.
11. Durham Tees Valley Airport (DTVA) – formerly Teesside International Airport (TIA) until 2004 – is majority owned by Peel Investments (DTVA) Limited which is itself a wholly owned subsidiary of the Peel Group. In 2003 Peel Airports reached an agreement with the six Tees Valley local authorities to acquire 75% shareholding in the airport. The following local authorities held a combined 25% shareholding in DTVA; Hartlepool Borough Council (the council subject to the request in this case), Stockton-On-Tees Borough Council (the lead authority in relation to partnership negotiations), Darlington Borough Council, Redcar and Cleveland Borough Council, Durham County Council, and Middlesbrough Borough Council. The councils' aggregate shareholding in DTVA is currently 11%.

## **Reasons for decision**

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### **Section 43(2) – Prejudice to commercial interests**

Reference: FS50640872

12. Section 43(2) provides that information is exempt if its disclosure would, or would be likely to prejudice the commercial interests of any person. This is a qualified exemption and is therefore subject to the public interest test.
13. In order for the exemption to be engaged it is necessary for it to be demonstrated that disclosure of information would result in some identifiable commercial prejudice which would or would be likely to be affect one or more parties.

*Is the withheld information commercial in nature*

14. The council has identified the following information as falling within the scope of the request:
  - a. Confirmation of Executive Authority – 31.03.03
  - b. Partner for development of Teesside International Airport [a summary of the agreement for the six local authorities to transfer 75% of TIA to Peel Group] – undated
  - c. Report to Cabinet “Teesside International Airport Limited” – 24.02.03
  - d. TIA Report to Cabinet – 24/03/03
  - e. TIA Report to Cabinet – Council’s interest/membership – 24/03/03
15. Following the complaint to the ICO, the council reconsidered whether any part of the information could now be disclosed. The council confirmed to the Commissioner that the documents d. and e. (TIA Report to Cabinet 24/03/03 and TIA report to Cabinet – Council’s Interest/Membership 24/03/03) were disclosed in full. It also stated that the remaining documents could be released subject to redactions.
  - a. Confirmation of Executive Authority – 31.03.03 – the council has redacted the names of the councillors named as Deputy Chairman and as the council’s Representative.
  - b. Partner for development of Teesside International Airport – undated – the council has redacted all but two paragraphs of this document.

- c. Report to Cabinet "Teesside International Airport Limited" – 24.02.03 – the council has redacted all but two paragraphs of this report.
16. The council states that the withheld information is about a commercial transaction in relation to the appointment of a strategic partner to work with the shareholding local authorities of TIA. It also highlighted that document c. (Report to Cabinet "Teesside International Airport Limited" – 24.02.03) demonstrates that the commercial activity was conducted in a competitive environment as it sets out the background to the deal, a process which a number of companies initially expressed interest in.
17. The Commissioner can confirm that the withheld information in documents b. and c. relates to the procurement process for Peel's acquisition of DTVA, Peel's bid and the development agreement, and is therefore commercial information.
18. However, with regard to the information withheld from document a. The Commissioner finds that the names of two councillors could not, on their own, be considered as commercial information. Therefore, the Commissioner finds that section 43(2) cannot be engaged for this information. However, given the regulatory responsibility that the Commissioner has for the DPA, and the fact that the names of councillors is clearly their personal data, later in this notice she has gone on to consider any implications that section 40(2) might have.

*The nature of the prejudice*

19. Following the lead of the Tribunal decision in Hogan and Oxford City Council v The Information Commissioner (EA/2005/0026 and 0030), the Commissioner considers that in determining the nature of prejudice a public authority must be able to show that the prejudice claimed is "real, actual or of substance" and show that there is a "causal link" between the disclosure and the prejudice claimed.
20. The council has stated that disclosure of the withheld information would damage reputation and business confidence as the subject matter continues to be contentious and negotiations for the future of the airport are ongoing.

Reference: FS50640872

21. The council has defined that the parties whose commercial interests would or would be likely to be prejudiced are Peel Airports Limited, Hartlepool Borough Council, Stockton-on-Tees Borough Council, Middlesbrough Council, Redcar and Cleveland Borough Council, Durham County Council and Darlington Borough Council. However, the council has not specified which party or parties would be affected by damage to business confidence and reputation, or how the withheld information will cause this to happen.
22. The council informed the Commissioner that it had regard to her guidance on the application of section 43 and stated that as negotiations for the future of the airport are ongoing, it considers that disclosure would harm its negotiating position. However, the Commissioner notes that the council has not suggested any causal links between disclosure of the information and prejudice to any of the parties' commercial interests.
23. Further to this, whilst the council has provided its view that there is a real and significant possibility that disclosure of the withheld information would be detrimental to the development and implementation of plans for the airport, it has not provided any arguments or evidence to back this up.
24. The Commissioner observes that the council has not explained the nature of these current negotiations, but instead refers to a decision notice served on Stockton-on-Tees Borough Council (FS50568725)<sup>1</sup> on 22 July 2015 as providing relevant arguments. The decision notice confirmed that at that time negotiations for the development of the airport were ongoing.
25. The Commissioner has also conducted her own research into the negotiations for the future of the airport. She has established that Peel Group has outlined a number of proposals for the growth of the airport in the "Durham Tees Valley Airport Master Plan to 2020 and Beyond"<sup>2</sup>. The Commissioner understands that whilst there is planning permission in place for some of the proposals, others have not yet begun the formal approval process, and as such, it appears that there are ongoing negotiations between Peel Airports Limited and the six local authority shareholders. The Commissioner's own research has also established that a meeting of the council's Finance and Policy Committee on 16 May 2016 considered a recent proposal by Peel Group relating to the future of DTVA:

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<sup>1</sup> [https://ico.org.uk/media/action-weve-taken/decision-notice/2015/1432189/fs\\_50568725.pdf](https://ico.org.uk/media/action-weve-taken/decision-notice/2015/1432189/fs_50568725.pdf)

<sup>2</sup> [http://www.durhamteesvalleyairport.com/uploads/documents/DTVA\\_Masterplan.pdf](http://www.durhamteesvalleyairport.com/uploads/documents/DTVA_Masterplan.pdf)

*"Against the backdrop of the Master Plan proposals, reports to the local authorities involved with the airport explained that DTVA/Peel had asked the Local Authority Shareholders to consider a further proposal. This proposal was, and continued to be seen by DTVA/Peel as an important part of a package of key measures aimed at securing the Airports future."<sup>3</sup>*

26. However, whilst the Commissioner has been able to establish that negotiations for the future of the airport are ongoing, this has been predominately through her own research. The Commissioner is clear that the onus is on the public authority to prove that an exemption is engaged, it is not for the Commissioner to make the arguments on its behalf. In addition to this, whilst it is evident that negotiations are ongoing, no arguments have been made regarding how release of the specific withheld information would, or would be likely to prejudice these.
27. The Commissioner has had regard to the withheld information. She notes the fact that it is now 13 years old, and that whilst negotiations for the future of the airport are ongoing, they have necessarily moved on considerably from the starting position over a decade ago. For instance the Master Plan documents that the level of the councils' shareholding in DTVA has decreased and there has been a significant decline in demand on the airport services as a result of the economic downturn since the agreement was initially reached.
28. From the limited arguments provided by the council, the Commissioner has been unable to determine a causal link between the prejudice envisioned and disclosure of the withheld information. This is despite the Commissioner specifically asking the council to *"ensure that you provide evidence which demonstrates a clear link between disclosure of the information that has actually been requested and any prejudice to commercial interests which may occur."* It may well be the case that details of Peel Group's bid to be strategic partner for the development of the airport could be prejudicial to the ongoing negotiations. However, the council has failed to provide sufficient evidence to support this position,

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<sup>3</sup> [https://www.hartlepool.gov.uk/download/meetings/id/5718/download\\_the\\_minutes](https://www.hartlepool.gov.uk/download/meetings/id/5718/download_the_minutes)

and it is not for the Commissioner to make arguments on behalf of a public authority.

29. In addition to this, given the fact that the council now holds approximately 1.8% shares in DTVA, the council has not presented any arguments to demonstrate how a small shareholding such as this would impact negotiations sufficiently to warrant the prejudice claimed.
30. In addition, given that the council is one of six councils with an aggregated shareholding of 11%, each of a presumably equal share, the case as to how the approximate 1.8% holding of the council would hold sufficient weight to warrant the prejudice claimed has not been made. Although the council has stated that disclosure of the information would prejudice all the shareholders of DTVA, it has not sought or put forward arguments on behalf of these third parties. Following the lead of the Tribunal decision *Derry v Information Commissioner (EA/2006/0014)*, the Commissioner cannot consider prejudice to the commercial interests of third parties unless the public authority can demonstrate that it has either consulted with the third party on the matter, or that the arguments provided are based in evidence.
31. In this case, the Commissioner is not in a position to consider the prejudice to any of the other shareholders in this case as the council has not provided evidence that it has sought the views of the third parties, or that it has any arguments which it can demonstrate is from its prior knowledge of the third parties' concerns. The Commissioner can therefore only consider the prejudice to the council in this case.
32. It is therefore the Commissioner's decision that the council has failed to demonstrate that section 43(2) is engaged.
33. In respect of the names of the councillors withheld in document a. the Commissioner will now consider whether section 40(2) applies in respect of that information.

#### **Section 40(2) – personal data**

34. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under



the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').

35. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

*“personal data” means data which relate to a living individual who can be identified –*

*(a) from those data, or*

*(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.”*

36. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.
37. The Commissioner has noted that the information the council seeks to withhold in document a. *Confirmation of Executive Authority – 31.03.03* is the names of the councillors named as Deputy Chairman and as the council's Representative. This is clearly the personal data of these two individuals. Although the council has not relied on section 40(2) to withhold this personal data, the Commissioner, as a responsible regulator of both the FOIA and the DPA, has considered whether disclosing any of this personal data would breach the first principle. The Commissioner has not found it necessary to undertake a detailed analysis of whether disclosing the personal data would be unfair. She has adopted a pragmatic approach as the information consists solely of the names of two councillors.
38. The Commissioner has therefore considered whether disclosure of the information would breach the first data protection principle which requires that personal data is processed fairly and lawfully. In this context the Commissioner has had regard to the position and seniority of the individuals. At the time, they were both councillors at one of the six local authorities with shared part ownership of DVTA.

39. Councillors are elected representatives with public responsibilities. They exist in a public facing position in their roles as councillors and the Commissioner therefore considers that they would have a reasonable expectation that information relating to their position as councillor, and the roles they undertake in that capacity would be publicly available.
40. There is nothing to suggest that their positions on the board of DTVA, a company which their respective councils at the time shared a 25% holding, would be information that they would not reasonably expect to be disclosed, not least because board membership of limited companies is public information. The current councillor board members of DTVA are publicly available on Companies House. The Commissioner does not therefore accept that the councillors in this case would have a reasonable expectation that their names would be withheld in the context of their positions on the board of DTVA in 2003.
41. The Commissioner does not consider that disclosure of the councillors' names in the context of their positions on the DTVA board in 2003 to be unfair in terms of the DPA. Therefore, the Commissioner finds that section 40(2) is not engaged.
42. The Commissioner will therefore go on to consider the council's application of section 36(2)(c) to documents b. and c.

### **Section 36(2)(c) – prejudice to effective conduct of public affairs**

43. Section 36 allows a public authority to withhold recorded information where its disclosure would prejudice the effective conduct of public affairs.
44. The council has confirmed to the Commissioner that it is relying on section 36(2)(c) not to disclose the withheld information.
45. Section 36(2) states:

*"36 (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act –*

*(b) would, or would be likely to, inhibit –*

*(i) The free and frank provision of advice, or*

*(ii) The free and frank exchange of views for the purpose of deliberation, or*

*(c) Would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."*

46. The application of section 36 requires the public authority's "qualified person" to consider the withheld information and the exemption which applies to it. This consideration cannot be delegated to another person within the public authority.
47. The council's qualified person for the purpose of considering the application of section 36 of the FOIA is the council's Chief Solicitor and Monitoring Officer, Mr Peter Devlin.
48. The council provided the Commissioner with a record of the qualified person's opinion on the Commissioner's 'Record of the qualified person's opinion' proforma<sup>4</sup>. The opinion was sought on 21 December 2016 and the record confirms that the withheld information was described to the qualified person, rather than shown to him. The opinion is recorded as:

*"if the information requested were disclosed, the prejudice/inhibition specified in the following section of the Freedom of Information Act 2000 – section 36(2)(c) – would be likely to occur for the following reasons: ongoing issue, negotiations contentious."*

The Commissioner understands that effectively, Mr Devlin's opinion is that disclosure of the requested information would be likely to prejudice the effective conduct of public affairs because there is an ongoing issue with DTVA and negotiations are contentious.

49. The record also shows that under the section 'Arguments put forward as to why prejudice would be likely to occur' Mr Devlin was directed to consider *"likely to prejudice the effective conduct of public affairs"*. Under the section 'Counter arguments put forward', Mr Devlin was directed to consider *"public interest"*. Finally under the 'Any other factors taken into

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<sup>4</sup> [https://ico.org.uk/media/for-organisations/documents/1176/section\\_36\\_record\\_of\\_the\\_qualified\\_persons\\_opinion.doc](https://ico.org.uk/media/for-organisations/documents/1176/section_36_record_of_the_qualified_persons_opinion.doc)

account' he was directed to consider "*previous decision notice*". The Commissioner assumes that this refers to the case FS50568725, but the council has not made this clear.

50. In addition to the proforma, the council informed the Commissioner that it took into account the ICO guidance as well as decision notices, most notably FS50568725. It stated "*It is the view of the qualified person that the release of information at this time would be damaging to the local authorities' interests as shareholders, would undermine relations between the local authorities, between the local authorities and their advisors and with the Peel Group.*"
51. It also explained that whilst it appreciates that the withheld information dates to 2003, as the matter remains subject to ongoing negotiations, it is felt that to disclose it at this time would be prejudicial to all concerned. It also noted that final decisions do not rest with officers of the council, but rather with elected members.
52. The Commissioner notes the contents of the qualified person's opinion. She is satisfied that the qualified person has given an opinion and she must now consider whether that opinion is reasonable.
53. In considering whether the qualified person's opinion is "reasonable", the Commissioner adopts the plain meaning of that word. She has referred to the definition of "reasonable" given in the Shorter English Dictionary: "in accordance with reason; not irrational or absurd". If it is an opinion that a reasonable person could hold, then it is reasonable for these purposes. This is not the same as saying that it is the only reasonable opinion that could be held on the matter. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only not reasonable for these purposes if it is an opinion that no reasonable person in the qualified person's position could hold. The qualified person's opinion does not even have to be the *most* reasonable opinion that could be held; it only has to be a reasonable opinion.
54. Whilst the Commissioner is primarily concerned with the reasonableness of the substantive opinion and is not explicitly required to assess the quality of the reasoning process that lay behind it, the content of the opinion or

the submission made to support it will often be relevant to the assessment of whether the opinion is reasonable. The Commissioner's guidance on section 36 states that *"it is in the public authority's interests to provide the ICO with all the evidence and argument that led to the opinion, in order to show that it was reasonable. If this is not done, then there is a greater risk that we may find that the opinion is not reasonable."*<sup>5</sup> The guidance also states that *"section 36(2) is expressed in broad terms, and in order for the opinion to be reasonable, it must be clear as to precisely how the prejudice or inhibition may arise."*

55. To engage section 36, the qualified person's opinion needs only to be reasonable: It needs to be an opinion reasonably held by a reasonable person. This is not a high hurdle. It is not necessary for the Commissioner to agree with the opinion given; she only needs to recognise that a reasonable person could hold the opinion given. In this case, it is difficult to make a decision as to the reasonableness of the qualified person's opinion given the scant information he has been provided with, and also the very limited detail of his opinion. In addition to this, the opinion does not clearly demonstrate how the prejudice envisioned may arise as limited detail has been provided regarding the ongoing negotiations, and no arguments have been advanced to evidence how information that is over a decade old would impact on these. As noted above, the Commissioner's guidance on the application of section 36 states that in order for the opinion to be reasonable, it must be clear as to precisely how the prejudice may arise.
56. To that end, the Commissioner will now consider the submissions on this matter section by section as presented by the council.
57. In confirming to the Commissioner that it seeks to rely on section 36(2)(c), it referred to the section 36 form which it stated was completed by Mr Devlin, the qualified person. As discussed above, the Commissioner finds that the opinion that has been given by the qualified person is considerably lacking in detail, and does not give any indication as to how disclosure of the information in question will lead to the prejudice envisioned. The Commissioner has therefore considered whether any of the submissions provided by the council have demonstrated how the prejudice may arise.

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<sup>5</sup> [https://ico.org.uk/media/for-organisations/documents/1175/section\\_36\\_prejudice\\_to\\_effective\\_conduct\\_of\\_public\\_affairs.pdf](https://ico.org.uk/media/for-organisations/documents/1175/section_36_prejudice_to_effective_conduct_of_public_affairs.pdf)

Reference: FS50640872

58. The council's submission to the Commissioner elaborates on the opinion in the proforma to a limited degree. It refers to paragraphs 14 and 15 of the decision notice FS50568725 as setting out the background of DTVA. It states that this is relevant to the current request. For completeness, the Commissioner has reproduced these paragraphs here:
- "14. Durham Tees Valley Airport – formerly Teesside Airport until 2004 – (the airport) is part of Peel Airports which is itself part of the Peel Group. The six local authorities of Stockton-On-Tees Borough Council (the public authority in this case), Darlington Borough Council, Redcar and Cleveland Borough Council, Durham County Council, Hartlepool Borough Council and Middlesbrough Borough Council hold an 11% shareholding in the airport.*
- 15. The public authority and the five other local authorities are in negotiations with the Peel Group in relation to the future of the airport. There is a very significant possibility that, without further financial investment, the airport would have to close. The financial reports were prepared by independent financial advisors between 2008 and 2014 for the six minority local authority shareholders and set out various possible options for them to consider in their negotiations with the Peel Group regarding the future of the airport."*
59. The council goes on to say that *"The Airport and its ownership has been a contentious issue for a number of years and is still subject to ongoing negotiations. It is the view of the qualified person that release of information at this time would be damaging to the local authorities' interests as shareholders, would undermine relations between the local authorities, between the local authorities and their advisors and with the Peel Group."* Although this clarifies the prejudice that the council envisions from the release of the information, it does not provide any indication as to how disclosure would result in this prejudice.
60. To further put this into context, the Commissioner has had regard to the withheld information in the decision notice FS50568725. It consisted of financial reports dating between 2008 and 2014 which set out the options for negotiations. The Commissioner considers that this is inherently different to the information requested in this case which consists of information on the original 2003 agreement to sell 75% of DTVA to Peel

Group, and some information on Peel Group's bid. These two sets of information are fundamentally different, and so the Commissioner does not accept that any arguments referred to in FS50568725 can be directly translated to this case as the council seeks to do.

61. In mitigation, the council does acknowledge that the information requested in this case does go back to 2003, but it states that *"as the matter remains subject to ongoing negotiations it is felt that to disclose the information at this point would be prejudicial to all concerned."* Again the Commissioner views this as a statement of the prejudice envisioned, it does not go any way to linking the requested information to this prejudice.
62. The council also considers it a point in favour of withholding the information that there is some information about ownership of the DTVA available at Companies House. The Commissioner fails to see the significance of publicly available shareholder information in shaping the prejudice to effective conduct of public affairs.
63. The council also stated to the Commissioner that final decisions regarding DTVA rest with elected members, rather than with council officers.
64. The council's final points on the matter of section 36 is included as part of its public interest arguments. It states that the issue of DTVA is high profile in the region, and there is already some information in the public domain, the Commissioner assumes that this refers to the Companies House information. The council finally states that the Commissioner attached significant weight to the public interest in the case FS50568725 in not undermining Stockton-on-Tees Borough Council's negotiations with the Peel Group to secure the best possible deal. The council states that it believes that this still applies as the minority shareholding local authorities are still in the same position. The council also states that it considers these arguments apply to all the minority shareholding local authorities, whereas the decision notice was specifically concerned with the arguments advanced by Stockton-on-Tees Borough Council and the prejudice to its own position. The council has specifically referred to paragraph 38 of the FS50568725 decision notice:

*"While it is not in itself a substitute for public scrutiny, the Commissioner considers that in the circumstances of this case, the*

*fact that the final decision regarding the public authority's position as minority shareholder in the airport rests with elected Council Members, does to some extent strike a reasonable balance in the public interest. With the final decision resting with Council members, unelected officers cannot be said to be acting unilaterally without taking the views of the people of Stockton into account. Equally, the integrity of ongoing negotiations and the provision of frank advice are not compromised."*

65. The Commissioner cannot find any reference here to the prejudice the council has referred to, and how disclosure of the reports from 2003 would lead to it. The Commissioner also observes that FS50568725 was regarding a request made in December 2014, which was completed in March 2015. The decision notice was served in July 2015. The Commissioner notes that in that case the information was predominantly contemporaneous to the request, and so it is not possible to draw direct parallels with the information and prejudice envisioned in this case.
66. The Commissioner finds that the council's submissions in this case fail to make it clear as to how the withheld information will result in the stated prejudice. When this is combined with the very scant record of the qualified person's opinion, the Commissioner cannot find that the opinion is reasonable.
67. The Commissioner therefore finds that section 36(2)(c) is not engaged.
68. The Commissioner has found the council has failed to adequately demonstrate that section 43(2), section 36(2)(c) or section 40(2) apply to the withheld information.



## Right of Appeal

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69. 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 123 4504  
Fax: 0870 739 5836

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)

70. 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.
71. 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**.....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**