

Neutral citation number:[2024] UKFTT 00073 (GRC)

Case Reference: EA/2022/0423

First-tier Tribunal

General Regulatory Chamber

Information Rights

Determined, by consent, on written evidence and submissions.

Considered on the papers on 8 January 2024.

Decision given on: 22 January 2024

Decision Promulgated on: 24 January 2024

Before

TRIBUNAL JUDGE Stephen Cragg KC

TRIBUNAL MEMBER Paul Taylor

TRIBUNAL MEMBER Dan Palmer-Dunk

Between

THE ROYAL MINT LIMITED

Appellant

And

INFORMATION COMMISSIONER

KRISTAAN CLARKE

Respondents

Decision: The appeal is Allowed

Substituted Decision Notice: A substituted decision notice is made to the effect that the Royal Mint is entitled to rely on the exemption in s43(2) Freedom of Information Act 2000 not to disclose the requested information to the requester.

REASONS

MODE OF HEARING AND PRELIMINARY MATTERS

1.

The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 Chamber's Procedure Rules.

2.

The Tribunal considered an agreed open bundle of documents of 118 pages, a closed bundle, and further evidence from the Royal Mint.

BACKGROUND

3.

Mr Clarke requested the Royal Mint (RM) to disclose the total number of one ounce gold, silver and platinum "Britannia's" minted since 2013 to 2021 year by year. RM refused to disclose the requested information under section 43 FOIA (commercial interests).

4.

Thus, on 29 April 2022, Mr Clarke wrote to RM and requested it disclose information in the following terms:-

Please could you provide me with the total number of one ounce gold, silver & platinum Britannia's [sic] minted since 2013 to 2021 year by year.

5.

RM responded on 27 May 2022 and refused to disclose the requested information citing section 43 FOIA. Mr Clarke requested an internal review on 27 May 2022. RM carried out an internal review and notified Mr Clarke of its findings on 27 June 2022.

STATUTORY FRAMEWORK

6.

Section 1(1)(b) FOIA provides for a general right of access to information held by public authorities, upon request.

7.

As stated above, the relevant exemption relied on by RM is in section 43(2) FOIA which, materially, reads as follows:-

43.— Commercial interests.

(1)

...

(2)

Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

8.

S.43(2) FOIA is not a provision conferring absolute exemption listed under s.2(3) FOIA. Therefore it is a qualified exemption, subject to the public interest assessment in s.2(2)(b) FOIA which provides that:-

(2)

In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that—

(a)

the information is exempt information by virtue of a provision conferring absolute exemption, or

(b)

in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

9.

In relation to the test for prejudice in s43(2) FOIA, Hogan v Information Commissioner (EA/2005/0026, 17 October 2006) sets out useful principles. It was stated as follows:-

28.

The application of the 'prejudice' test should be considered as involving a number of steps.

29.

First, there is a need to identify the applicable interest(s) within the relevant exemption...

30.

Second, the nature of the 'prejudice' being claimed must be considered. An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and that the prejudice is, as Lord Falconer of Thoroton has stated, "real, actual or of substance" (Hansard HL, Vol. 162, April 20, 2000, col. 827). If the public authority is unable to discharge this burden satisfactorily, reliance on 'prejudice' should be rejected. There is therefore effectively a de minimis threshold which must be met. ..

31.

When considering the existence of 'prejudice', the public authority needs to consider the issue from the perspective that the disclosure is being effectively made to the general public as a whole, rather than simply the individual applicant, since any disclosure may not be made subject to any conditions governing subsequent use.

32...

33 ...

34.

A third step for the decision-maker concerns the likelihood of occurrence of prejudice. A differently constituted division of this Tribunal in *John Connor Press Associates Limited v Information Commissioner* (EA/2005/0005) interpreted the phrase "likely to prejudice" as meaning that the chance of prejudice being suffered should be more than a hypothetical or remote possibility; there must have been a real and significant risk. That Tribunal drew support from the decision of Mr. Justice Munby in *R (on the application of Lord) v Secretary of State for the Home Office* [2003] EWHC 2073 (Admin), where a comparable approach was taken to the construction of similar words in [Data Protection Act 1998](#). Mr Justice Munby stated that 'likely': "connotes a degree of probability where there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there 'may very well' be prejudice to those interests, even if the risk falls short of being more probable than not."

35 On the basis of these decisions there are two possible limbs on which a prejudice-based exemption might be engaged. Firstly, the occurrence of prejudice to the specified interest is more probable than not, and secondly there is a real and significant risk of prejudice, even if it cannot be said that the occurrence of prejudice is more probable than not. We consider that the difference between these two limbs may be relevant in considering the balance between competing public interests (considered later in this decision). In general terms, the greater the likelihood of prejudice, the more likely that the balance of public interest will favour maintaining whatever qualified exemption is in question.

DECISION NOTICE

10.

The decision notice (IC-183154-T0Z5) is dated 17 November 2022. The Commissioner's decision was that section 43(2) FOIA was not engaged, and the RM was required to disclose the withheld information.

11.

The Commissioner explained the RM's position as follows - these passages are set out in full as they provide an insight into the particular subject matter with which this request is concerned:-

12.

RM has said that it operates in a highly competitive marketplace, both nationally and internationally, in respect of precious metal bars and coins. It draws a distinction between precious metal or Bullion coins and commemorative coins. RM considers Bullion coins are a form of investment, people buy them for the intrinsic value of the precious metal they contain so it considers production places a greater emphasis on efficiency. RM argued that the price point for Bullion coins tracks the spot price for the underlying precious metal, so margins are inherently thin.

13.

RM confirmed that commemorative coins on the other hand are collectible pieces. These are typically issued to celebrate a national event of significant importance. It said that these coins are to be viewed as works of art in their own right and are typically struck to a much higher standard than a Bullion coin. RM explained further that proof coins are the highest quality commemorative coins; their sharpness, detail and finish are unrivalled, making them perfect for collectors looking for the highest levels of craftsmanship and detail. As such commemorative coins attract a significant premium to the intrinsic metal value of the coin. It said that scarcity and popularity of a particular theme can drive increased values on the secondary market.

14.

Generally, when RM sells or markets its commemorative coin ranges, the mintage figures are made available to the public. In turn, this means that its customers can know how limited or popular a product will be and the chances of them being able to purchase it.

15.

It confirmed, by contrast, it does not publish the mintage of Bullion coins. It said that these coins do not have mintages, and certainly not in the sense that it does with commemorative coins. Instead the production and sales figures of these coins has the potential to impact sales and falsely inflate the prices in the Bullion market. For example, it said, if the production or sales figure is considered to be low then the product could be viewed as a rare collectible item, which is never intended, and in these cases retailers of its products may increase the prices. RM believes this would cause confusion as to the crucial distinction between core Bullion products and commemorative coins. It would also be likely to negatively impact the end customer as they could end up paying more for a Bullion coin than a sum which is representative of a market value based on its intrinsic metal content.

16.

RM also commented that disclosure would be likely to call into question the integrity and strength of its relationships with its customers and retailers if it was complicit, even if unintentionally, in this potential price distortion.

17.

It also felt that disclosure would be likely to damage the ability of RM to source blanks (the round metal disk, ready for stamping). It said that unlike some other mints, RM and the US Mint do not produce their own blanks for the production of Bullion coins. It argued that there is a limited number of coin blanks suppliers and it is accepted in the market place that there is an insufficient supply of coins blanks to meet the global market demand for the supply of Bullion coins. It is know to RM that the US Mint is actively seeking to onboard new Bullion blank suppliers.

18.

RM explained further that it has witnessed a major expansion in its Bullion business in the last three to four years. It believes US Mint will likely think that its current production volumes are much smaller than they actually are. It commented that if it were to disclose production and sales figures showing the true size of its business, US Mint may realise the capacity that its blank suppliers have and seek to utilise its blanks suppliers which would be to RM's detriment i.e. it may end up with a much smaller share of the total they are able to produce having regard to the US Mint's greater negotiating power noting the higher volumes of Bullion coins that they produce.

19.

RM stated that it may lose many existing and new customers if it is unable to meet the demand of its Bullion coins and this would be a significant financial detriment.

12.

The Commissioner provided fairly brief reasons for finding that s43 FOIA does not apply in relation to this request, which are again worth setting out fully. The main points were as follows:-

20.

The Commissioner agrees that there is a distinction between the Bullion coin and the commemorative coin, but he considers this distinction between the two is well known to RM's suppliers and the customers who purchase them. The Commissioner cannot see why the disclosure of the mintage of one type of coin would cause commercial prejudice whilst disclosure of another would not. RM says itself that disclosure of the mintage of commemorative coins allows suppliers and customers to gauge their rarity and consider a price for that coin based on that. It would be the same for the Bullion coin. It would allow those interested in Bullion coins to see how many there are and, if the price is inflated as a result, it is only based on fact; the number produced and the rarity of that item. If anything it would allow RM and its suppliers to ask a price that reflects both the rarity of the coin and its metal content. This would not prejudice the commercial interests of the suppliers or RM, in fact it would do the opposite.

21.

What a customer is willing to pay, is essentially their choice. Often customers pay more for collectibles or items of worth than their market value, because they are happy to do so and because they want that item. Demand and rarity does drive up price, but if the true mintage figures are known, prices will be based on actual production in conjunction with the value of the metal. If a customer is not happy to pay more than the intrinsic value of the metal they could purchase Bullion coins from other mints. But the Commissioner considers this is unlikely to happen, or at least to the extent RM may fear. As RM has stated itself, Bullion coins are classed as an investment. When a customer invests in something, it will be in the hope that the value goes up. This is the same as collectible items. They are often seen as an investments too and buyers will hope that the value of an item will increase. If customers know the true numbers in the market place they may be more content to pay the advertised prices because it will be based on its true rarity, the value of the metal and the popularity of a coin at any one time.

22.

With regards to the potential impact on sourcing the blanks, if there is such a shortage and a limited number of blank suppliers, the Commissioner considers it is more than likely that US Mint will already be aware of the Royal Mint's suppliers and have sought to do its own business with those suppliers. Similarly where Royal Mint is concerned, it will probably already be aware which suppliers US Mint

uses and will have sought to discuss potential supplies, especially if the blanks are getting harder to source. The Commissioner considers those manufacturing the blanks to sell to RM, the US Mint and others are operating in a free market place as well, looking to maintain existing relationships with current buyers, but also attract new customers.

23.

The Commissioner fails to see how the knowledge of past production would result in Royal Mint getting a smaller share of what is available. US Mint is already able to leverage its greater purchasing power, with or without the information being withheld and the Commissioner is sceptical that US Mint underestimates production sufficiently to have a meaningful effect on price negotiations. It will be in every supplier's commercial interests to do all it can to meet the demands of both Mints. If US Mint is producing more than the Royal Mint, US Mint will already be getting a larger share of blanks; because it needs a larger share to meet its output.

13.

On that basis the Commissioner decided in this case that RM had failed to demonstrate sufficiently that disclosure of the withheld information would be likely to prejudice its own commercial interests or those of another party. For this reason, the Commissioner concluded that section 43 of FOIA was not engaged. As the Commissioner found that section 43 FOIA is not engaged, there was no need for the Commissioner to go on to consider the public interest test.

THE APPEAL AND RESPONSE

14.

RM's appeal is dated 12 December 2022. Again it is worth setting out fully to understand the arguments. The appeal says:-

Sourcing of Blanks issue

1.

It is our view that the Commissioner has failed to attribute sufficient weight to the potential impact on the sourcing of blanks, if the Withheld Information is disclosed, and the resulting prejudice to the commercial interests of TRM by so doing.

2.

In paragraph 22, the Decision Notice states that blank suppliers are "looking to maintain existing relationships with current buyers, but also attract new customers" and in paragraph 23 that "it will be in every supplier's commercial interests to do all it can to meet the demands of both Mints".

3.

However, globally, the number of suppliers of coin blanks is very small. TRM buys coin blanks from some of the major mints it competes against in the retail bullion coin market. TRM also uses a number of suppliers to ensure that it is not overly dependent on a single supplier, and to be able to meet as much of the requirement for blanks as it is able to meet; supply of blanks is arguably the biggest constraint faced by TRM's bullion business. As TRM's blank suppliers are also its retail competitors competing for global market share, publishing its mintage (i.e., sales) figures would reveal the extent of TRM's business, and the extent of its dependence on particular blank suppliers.

These suppliers would then be likely to increase their blank pricing because;

a)

They'd understand TRM's true market share and know that increasing their prices would lead to a fall in TRM's sales and possibly a rise in their own.

At the moment, mints can only speculate and often believe TRM's sales are much smaller than their own (as has historically been the case), so they believe any impact to TRM's sales would not significantly boost their own. Understanding that TRM's sales are on par with their own would change their view of TRM as a major competitor and likely affect their blank pricing; and

b) They'd know exactly how reliant TRM is on them as a supplier and how essential they are as suppliers (they already know how tight the market is for blanks, this would confirm that TRM would really struggle to find an alternative supplier).

The supply of blanks is currently very tight due to manufacturers operating at capacity and many being unwilling to invest in increased capacity as they are anticipating the market to 'return to normal' following a period of elevated demand since the pandemic.

4.

Therefore, it is unlikely that blank suppliers will simply be able to satisfy the demand of both the US Mint and The Royal Mint. Publishing TRM's sales figures will disclose commercially sensitive information to the US Mint, as well as the market at large, and will likely result in the US Mint taking a larger share of the available supply than they already do, at TRM's expense, contrary to the Commissioner's claim in paragraph 23 of the Decision Notice.

5.

It is TRM's understanding that most other major national mints produce their own coin blanks, and therefore publishing their sales data does not impact their ability to source the blanks they need to make new products. That said some of our competitors do not publish this information in any event including The Royal Canadian Mint and the South African Mint.

6.

In terms of the major mints, who do not produce their own coin blanks, this is only the case for the US Mint (whose blank supply issues have been raised in Congress) and TRM. In paragraph 22 the Commissioner states that "it is more than likely that US Mint will already be aware of the Royal Mint's suppliers and have sought to do its own business with those suppliers"

7.

Respectfully, this is very unlikely to be the case as pre-pandemic, the US Mint did not seem to struggle to source sufficient blanks to meet demand.

8.

However, the supply chain crisis brought about by COVID seems to have lasted longer than the US Mint were anticipating, and Congressional attention on this issue is forcing the US Mint to review their options.

9.

The US Mint likely believes The Royal Mint's sales to be very small in comparison to their own (as has historically and until recently been true). Revealing how many blanks TRM's suppliers can provide to TRM would lead the US Mint to approach them knowing their capacity. This would increase the price for TRM and for end investors, damaging its business while other competitors such as The Perth Mint, The Austrian Mint, the South African Mint and The Royal Canadian Mint, who all produce their own bullion blanks, will not be impacted.

Potential to Negatively Impact Market and Investors issue

10.

In paragraph 20 of the ICO Decision Notice, it says, "The Commissioner cannot see why the disclosure of the mintage of one type of coin would cause commercial prejudice whilst disclosure of another would not" and suggests that rarity would benefit our commercial interests because the price would be higher.

11.

In paragraph 21 the Commissioner then states "If a customer is not happy to pay more than the intrinsic value of the metal they could purchase bullion coins from other mints".

12.

These two statements seem to contradict each other - the prices of TRM coins could rise, so TRM customers who are predominantly interested in the metal value (the bulk of our customers) for bullion coins would turn to other mints' competing products which would be damaging to our business.

13.

The Commissioner then says that customers would appreciate the rise in value... but then this blurs the distinction as between bullion coins and commemorative (or collectible coins) which has the potential to cause significant confusion in the market.

14.

The Commissioner's comments only refer to prices being inflated if sales figures are released. However the opposite may also be true. While our bullion products are designed and sold predominantly for investment, there is nevertheless some appeal to collectors. Customers may perceive some coins to be scarce and are therefore able to charge a higher price on the secondary market years down the line. If however, our sales figures show that the coin was more popular than first thought, the achievable price would be lower.

15.

In response, the Commissioner supported the conclusions reached in the decision notice.

16.

Mr Clarke supported the Commissioner's decision and noted that he did not understand how giving past years mintage numbers would have an impact on sourcing blanks today and tomorrow and 'all the major mints know exactly how much each other are producing'. He asked that given 'the insufficient supply of coin blanks why doesn't the Royal Mint take this as an opportunity to invest in producing its own blanks?'. Using RM annual reports he sought to establish that the figures given for sales of gold and silver bullion ounces for particular years enable 'good estimates' to be made by competitors.

17.

This appeal was initially listed for paper determination on 11 July 2023. The Tribunal (differently constituted) considered the papers but decided that it did not have sufficient information to be able to decide the appeal. RM was directed to provide further submissions, supported by a witness statement and such other evidence as it deemed appropriate, to explain to the Tribunal the manufacture and supply of bullion coins and the international bullion market, and the prejudice caused by disclosure of the requested information, bearing in mind that the Tribunal members may have no previous knowledge of these specialist areas.

18.

RM filed witness evidence but no further submissions. The witness evidence is from Andrew Dickey, who is the Precious Metals Division Director at RM. The important part of his evidence, in our view, concerned the demand and supply of so-called 'blanks' for the production of bullion coins. Essentially, RM does not produce its own blanks for producing bullion coins (unlike some other mints around the world (but not the US)), and so must purchase the blanks on the open market. Mr Dickey says that:-

13.

'Core' bullion coins typically represent upwards of 70% of total demand for all bullion coins. In market conditions where demand is exceeding the capacity of blank suppliers to produce blanks, it is my opinion, having regard to my experience and knowledge, that publication [of the requested information] would likely lead to suppliers increasing prices.

14.

There are two reasons for this. Firstly, suppliers would be able to broadly calculate how reliant TRM is on their supply of blanks. In a tight market, they would then be likely to increase costs which TRM would be forced to reflect in the retail price, harming sales in a price-sensitive market; most other major mints produce their own blanks and so do not face this issue. Secondly, most of TRM's suppliers are direct competitors in the wholesale and/or retail markets for finished bullion coins and bars. Understanding both TRM's total demand for blanks, and the true size of TRM's coin sales, would likely further lead these suppliers to increase blank prices if they felt TRM was particularly dependent on their blanks. This would reduce TRM's ability to compete in the retail market and significantly impact both the profitability of TRM's business, and the ability of UK investors to purchase Capital Gains Tax exempt bullion coins at a price close to the metal value.

...

16...Publishing the mintage figures for Britannia coins between 2013 and 2021 would enable a competitor to gauge the extent to which TRM's suppliers of 102 blanks (the most popular size) were able to adapt to meet demand as other mints may have struggled to secure sufficient blanks. TRM has worked closely with a number of suppliers over this time to build capacity in a mutually beneficial way. The publication of mintage figures would likely reveal to competitors how successful or otherwise this has been, and may lead to competitors seeking to 'poach' some of this capacity at TRM's expense. This may either push up blank costs, or reduce the availability of blanks to TRM, or both. In any event, this would be likely to prejudice TRM's ability to produce bullion coins at a cost in line with the wider market, and ultimately negatively impact TRM's profitability.

19.

Mr Dickey explains that, given the volatility in the market for bullion 'in response to economic and geopolitical events that impact the financial markets' and thus volatility in demand poses a challenge for producers of bullion items:-

23...Blank suppliers who spend a significant amount of time and capital scaling up to meet peak demand may find themselves with a significant amount of unused capacity when the market quietens down. The supplier is then left with the costs of owning and maintaining those unutilised assets. For this reason, it is my understanding that blank suppliers have historically been reluctant to invest significantly in expending capacity when demand for bullion products is high. This results in periods of an insufficient supply of blanks to meet the demand from investors.

20.

Mr Dickey sets out in his witness statement and exhibits that this phenomenon is an issue also in the US (which also does not produce its own blanks) (see paragraphs 24-28, and 33 of the witness statement). The release of the requested information would provide the US, as a competitor in the market for blanks, with useful information about the current capacity of blank suppliers and 'place additional pressure on the blank supplier to allocate more of its output to them, at TRM's expense'.

21.

Neither Respondent exercised a right to reply to this further evidence. The Tribunal was surprised that the Commissioner had not reviewed his position, but upon checking the Tribunal was informed that both Respondents had received the further evidence and we have seen emails confirming that it was sent to both Respondents.

DISCUSSION

22.

The Tribunal understands why on the previous consideration of this case, the panel adjourned to obtain further information. The request concerns a specialised area which needs detailed explanation as to how it works, and Mr Dickey's witness statement provides important further detail.

23.

Without that further information, in the main, the Tribunal would be in agreement with the Commissioner's reasoning as to why the exemption in s43 FOIA does not apply in this case. In particular, it seems clear that it is common knowledge that RM's precious metal division has achieved significant growth, particularly in the last five years, not least because Mr Dickey says exactly that in his witness statement at paragraph 34 (and see paragraph 18 of the decision notice). Disclosure of information which confirmed this would be unlikely to engage s43 FOIA.

24.

The Commissioner, in the decision notice, did deal with the issue of the shortage of blanks in the bullion market. Paragraph 17 of the decision notice sets out the issue raised by the RM. At paragraph 22 the Commissioner considers that 'those manufacturing the blanks to sell to RM, the US Mint and others are operating in a free market place as well, looking to maintain existing relationships with current buyers, but also attract new customers'.

25.

However, what is clear from Mr Dickey's evidence, which is unchallenged, is that there are specific reasons why the manufacturers of blanks are unlikely to increase the supply of blanks simply on the basis that demand has increased at a particular time. There is a reluctance to invest in the infrastructure for increased production when it is believed that the market is volatile, and demand may reduce again at some point in the future. In a contested market for blanks, we understand why the release of the requested information would lead to the risks identified in Mr Dickey's statement - namely the risk that suppliers will increase prices, or that competitors (in particular the US) would seek to obtain part of RM's market share.

26.

In relation to Mr Clarke's view that good estimates can be made from information already available (see paragraph 16 above and page A34 in the bundle), the Tribunal has had the opportunity to view the withheld material and we can see that Mr Clarke's views are not supported by the material.

27.

Applying the approach in Hogan it is our view that the withheld information clearly concerns the commercial interests of RM in its performance over a number of years in relation to its production and sale of Britannias.

28.

In terms of the second Hogan test, the decision maker must be able to show that some causal relationship exists between the potential disclosure and the prejudice and that the prejudice is 'real, actual or of substance'. In this case, in our view RM has established that there is a causal relationship between the potential disclosure and its concern that the information could be used to undermine its access to continued supply of blanks, for the reasons set out in Mr Dickey's statement.

29.

The third step described in Hogan concerns the likelihood of occurrence of prejudice. The term "likely to prejudice" has been interpreted (as set out in Hogan) as meaning that the chance of prejudice being suffered should be more than a hypothetical or remote possibility; there must be a real and significant risk.. The degree of risk must be such that there 'may very well' be prejudice to commercial interests, even if the risk falls short of being more probable than not.

30.

Thus, there are two possible limbs on which a prejudice-based exemption such as s43(2) FOIA might be engaged. Firstly, the occurrence of prejudice to the specified interest is more probable than not, and secondly there is a real and significant risk of prejudice, even if it cannot be said that the occurrence of prejudice is more probable than not.

31.

In Hogan it was said that the difference between these two limbs may be relevant in considering the balance between competing public interests. In general terms, the greater the likelihood of prejudice, the more likely that the balance of public interest will favour maintaining the qualified exemption in s43(2) FOIA.

32.

In our view, this is a case where there is a real and significant risk of prejudice, rather than a case where prejudice is more likely than not to occur. The volatility described by Mr Dickey in the bullion market, based at least to an extent on geopolitical events, makes it hard to say that the prejudice feared will probably happen. But on the basis of Mr Dickey's evidence we accept that disclosure of information about RM's bullion operation would involve a real and significant risk that blank manufacturers may seek to put pressure on pricing and/or competitors will have important information to be help them put pressure on suppliers to move supply away from RM.

33.

Having reached that conclusion we must go on to consider the public interest balance if the information were disclosed even though it would be likely to prejudice the commercial interests of the Trust. We note that the Commissioner did not address the public interest test in the decision notice (having found that the exemption did not apply), and neither is it referred to in the Commissioner's response to the appeal.

34.

We accept that transparency and accountability about RM's bullion business are issues in favour of disclosure. Other than that we note that Mr Clarke in this case has not raised other public interest issues in favour of disclosure.

35.

In its correspondence with the Commissioner, RM argues that disclosure 'may lead to fractious relations with our blank suppliers'. RM said that it 'may find it difficult to negotiate with its blank suppliers if they are being targeted and approached for the supply of the same items by our competitors, especially at a time when such items are in short supply'. RM referred to the following extract from the Commissioner's guidance:-

Revealing information such as a pricing mechanism can be detrimental to your negotiations on other contracts and procurements. If an organisation knows how you cost an item or service, for example, then it can exploit this for profit or other gain. There is a public interest in public authorities not being disadvantaged by their FOIA obligations when in commercial negotiations with the private sector.

36.

RM also argued that the information withheld:-

...is in no way pressing or vital information in need of disclosure - particularly when balanced with the probable and adverse commercial impact of such a disclosure. For example, it is not a debate concerning public expenditure or value for money - rather, it stems from an individual's interest in ascertaining our mintage figures for a particular product.

37.

Taking all these factors into account, including the Commissioner's guidance set out above (which can at least be applied by analogy to RM's position), our conclusion is that the public interest favours non-disclosure given (a) the real and substantial risk to the commercial interests of RM as identified above; (b) the lack of a pressing need for disclosure; (c) the absence of other reasons beyond general transparency and accountability reasons in favour of disclosure.

38.

On that basis, the appeal is allowed and a decision notice is substituted to the effect that the exemption in s43(2) FOIA applies, the public interest test favours non-disclosure, and the withheld information need not be disclosed.

Signed Recorder Stephen Cragg KC Date: 22 January 2024