

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 3 September 2007**

**Public Authority:** Her Majesty's Revenue & Customs ('HMRC') (formerly Her Majesty's Customs & Excise 'HMCE')

**Address:** 1 Parliament Street  
London  
SW1A 2BQ

### Summary

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The complainant requested correspondence with three tobacco firms which led to the signing of a Memorandum of Understanding with HMRC. HMRC refused to disclose this information under section 44 of the Act. The Commissioner investigated the application of section 44 and found that the exemption had been applied correctly. The Commissioner also found that HMCE did not respond to the complainant's request in compliance with sections 17 (1) and 17 (3) of the Act. The Commissioner requires no steps to be taken.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. The complainant has advised that on 4 January 2005 he made the following request for information to Her Majesty's Customs and Excise (HMCE):

*"Correspondence between HMCE and Imperial Tobacco regarding the signing of the Memorandum of Understanding between Imperial and HMCE on 14 July 2003;*

*Correspondence between HMCE and Gallaher regarding the signing of the Memorandum of Understanding between Gallaher and HMCE in April 2002;*

*Correspondence between HMCE and British American Tobacco (BAT) regarding the signing of the Memorandum of Understanding between BAT and HMCE in October 2002.*

3. HMCE responded on 8 February 2005. HMCE confirmed that it held information but informed the applicant that the information may be exempt from disclosure under sections 41 and 43 of the Act. HMCE stated that these are qualified exemptions and that it is therefore required to consider the public interest test, HMCE stated it was considering this issue and would let the complainant know the outcome as soon as possible. HMCE explained that the Act provides that while a request for information should be responded to within 20 working days from its receipt; this time limit may be extended by such time as is reasonable when considering the public interest test for a qualified exemption. HMCE told the complainant it hoped to reply fully by 15 February 2005.
4. On 14 February 2005 HMCE provided a full reply to the complainant. HMCE stated that disclosure would breach its duty of confidence and prejudice the commercial interests of third parties; further HMCE concluded that such harm firmly outweighs any interest in making this information available.
5. The complainant requested an internal review of this decision on 24 February 2005.
6. HMCE completed its internal review and communicated its findings on 11 April 2005. HMCE confirmed its application of sections 41 'Information provided in confidence' and 43 'commercial interests' and that in respect of section 43, the public interest lay in maintaining the exemption.

## **The Investigation**

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### **Scope of the case**

7. On 29 April 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the public interest in disclosure of the information.
8. It is also important to clarify that the complainant submitted a request to HMCE and HMCE dealt with the request and conducted the internal review. However, at the point that the Commissioner began investigating this complaint HMCE's functions had been transferred to Her Majesty's Revenue and Customs ("HMRC") which was established on 18 April 2005. Therefore the Commissioner has corresponded with HMRC about this case. The Commissioner is satisfied that it is

appropriate to issue a decision notice to HMRC in this matter as the responsible public authority.

## Chronology

- 9 The Commissioner began his investigation by writing to HMRC on 3 February 2006. The Commissioner requested more information regarding the application of the exemptions and the public interest test considered, showing the balancing exercise in consideration of the public interest test in relation to the exemption.
10. HMRC responded on 2 March 2006, HMRC explained that in addition to sections 41 and 43 it now also considered the exemptions at section 31 'law enforcement' and 44 'prohibitions on disclosure' also applied. HMRC asserted that it believed that section 44, an absolute exemption, applied to all the information withheld by virtue of sections 18 and 23 of the Commissioners for Revenue and Customs Act 2005 (CRCA). HMRC also provided some background information to the request.
11. On 8 June 2006 the Commissioner wrote again to HMRC requesting a summary of the contents of the withheld information and querying if it would be possible to redact the information.
12. HMRC responded on 26 June 2006 explaining the nature of the documents and informing the Commissioner that HMRC's assertion is that section 44 applies to the documents in their entirety.
13. The Commissioner wrote to HMRC on 27 June 2006 asking HMRC to consider if the exemption at section 44 would still apply if the request for information had not specified a tobacco company.
14. HMRC responded on 14 July 2006 stating that as the customer base is so small, any information in this context would enable the identity of the tax payer to be deduced therefore engaging section 44.
15. On 6 November 2006 HMRC wrote to the Commissioner stating that to provide all the correspondence requested involved a considerable amount of effort and querying with the Commissioner the necessity of providing this information. HMRC reiterated its reliance on all the exemptions and provided some examples of the correspondence requested.
16. On 20 February 2007 the Commissioner wrote to HMRC asking for copies of all the correspondence requested by the complainant.
17. HMRC responded on 19 March 2007, HMRC outlined its position regarding the application of section 44 and also provided to the Commissioner further arguments regarding the balance of the public interest in relation to the other exemptions. HMRC asked the Commissioner whether in light of this and in view of the 'overwhelming' public interest in maintaining the exemptions if he needed to view the information. HMRC asked the Commissioner to explain why he needed to see the information.

18. On 19 April 2007 the Commissioner wrote explaining the reasons why he needed to see the information being withheld and requesting the information now be disclosed within 10 working days.
19. HMRC responded on 1 May 2007 enclosing the withheld information.
20. The Commissioner wrote on 27 June 2007 to check that HMRC had supplied all the information held in relation to the request as some of the correspondence supplied referenced other correspondence.
21. HMRC responded on 9 August 2007, HMRC explained that it had conducted a further search and discovered further correspondence falling within the scope of this request. HMRC enclosed copies of the remaining withheld information to the Commissioner.

### **Findings of fact**

22. HMRC has claimed that the statutory prohibition being applied under section 44 of the Act is section 18 of the CRCA. However, at the time the request was made HMCE was acting in accordance with The Finance Act 1989. Therefore the Commissioner has considered whether the statutory prohibition within that legislation applied at the time that the request was made, this is section 182 of the Finance Act. However, the Commissioner has considered the application of the CRCA in the 'other matters' section of this notice.
23. The information being withheld are documents which detail the negotiations HMCE conducted with BAT, Gallaher and Imperial Tobacco which led to the signing of the Memoranda of Understanding.

### **Analysis**

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### **Background**

24. In 2000-2001 the vast majority of cigarettes smuggled into the UK, and seized by Customs, were UK manufactured brands that had originally been exported outside of the UK legitimately. In 2000-01 HMRC estimated that £3.5 billion of revenue was lost as a result of tobacco smuggling into the UK and an estimated 17 billion cigarettes were smuggled into the UK. Most of this smuggled tobacco was produced in the UK by Imperial Tobacco, Gallaher and BAT. In order to deny smugglers access to these stocks HMRC (then HMCE) entered into discussions with the three firms with a view to tackle this problem. This resulted in the three firms entering into a Memorandum of Understanding (MoU) with HMCE. HMCE signed a MoU with Gallaher in April 2002, with BAT in October 2002 and with Imperial in June 2002.

## Section 17 'Refusal of Request'

25. Section 17(1) states that a public authority which is relying on a claim that the information is exempt, must, within the time for complying issue a refusal notice which:
  - (a) states the fact that information is exempt,
  - (b) specifies the exemption in question, and
  - (c) states why the exemption applies.
26. Section 17(3) states that if a public authority is relying on a qualified exemption it must state the reasons for claiming that, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
27. Section 10 of the Act provides that a public authority must comply with section 1 of the Act no later than the twentieth working day following receipt of the request. Section 1 states that a person making a request for information is entitled to be informed in writing if the information is held and if so to have the information communicated to him. Full texts of the relevant sections are included in the 'legal annex' section of this notice.
28. Section 10(3) allows the 20 working day time limited to be extended to a reasonable time where a public authority is considering the public interest test because one of the qualified exemptions may apply. The public authority must, in its refusal notice, inform the applicant that it needs more time to consider the public interest and give an estimate of the date by which it will make its decision.
29. HMCE wrote to the complainant on 8 February 2005 informing him that the exemptions at section 41 and 43 were being applied and that as the exemptions are qualified exemptions more time was required to consider the public interest. This refusal notice was issued outside of the twenty working days. The Commissioner also notes that section 41 is not a qualified exemption and is therefore not subject to the public interest test. The notice of 8 February 2005 should therefore have informed the applicant, in relation to the application of the section 41 exemption, why the exemption applied and informed the applicant his rights for a review and his rights under section 50 of the Act.
30. HMCE issued its substantive refusal notice on 14 February 2005, in the refusal notice HMCE states that it had concluded that disclosure would breach its duty of confidence and prejudice the commercial interests of a third party. HMCE concluded that such harm outweighs any interest in making this information available. The refusal notice also did not inform the complainant that sections 31 and 44 also applied, which it later relied on in its correspondence with the Commissioner.
31. The Commissioner finds the refusal notices of the 8 February 2005 and 14 February 2005 were issued outside of the 20 working days as required by section 10 of the Act, this is in breach of section 17(1). HMRC also breached section 17(1) as the refusal notice of 14 February 2005 did not state the exemptions being applied or explain why they applied. In relation to the section 43 exemption

HMCE did not explain the public interest arguments considered. The Commissioner finds that HMCE did not respond to the complainants request in compliance with section 17(3) of the Act.

### **Exemption: Section 44 'Prohibitions on Disclosure'**

32. Section 44 of the Act provides that information is exempt if its disclosure is prohibited by or under any enactment. The statutory prohibition being considered is section 182 of the Finance Act 1989.
33. The statutory prohibition of section 182 of the Finance Act 1989 made it a criminal offence to disclose any information held in the exercise of tax functions if the information is about any matter relevant for the purposes of those functions to tax or duty in the case of any identifiable person. The prohibition does not prevent disclosure of all information held in the exercise of tax functions but it does prohibit the disclosure of anything relevant to tax or duty in the case of any identifiable person.
34. The term 'tax functions' is defined by section 182(2) (a) as 'functions relating to tax and duty ... of the Commissioner's (of Customs and Excise) and their officers'. 'Tax or duty' is defined as meaning 'any tax or duty within the general responsibility of the Commissioners'. According to section 6 of the Customs and Excise Management Act 1979 this would include the collection and accounting for and otherwise managing the revenues of custom and excise as well as specific duties given in other legislation to gather such monies and prevent fraud. Tax functions is wide enough to cover not just the actual collection of duty payable but also to take such actions as are necessary to ensure that the maximum amount of tax or duty is recovered. This would include approaches such as agreeing the Memoranda of Understanding which are intended to assist in the prevention of fraud by ensuring the co-operation of the major tobacco companies over whom HMRC have jurisdiction in order to reach those foreign organisations who may be involved in such frauds, but over whom there is no jurisdiction.
35. The Commissioner is satisfied that the correspondence leading up to the signing of the Memoranda of Understanding was used by HMCE to fulfil its tax functions in relation to the prevention and deterrence of fraud and the collection of tax revenue. He is further satisfied that the requested information was held by HMCE (and continues to be held by HMRC) in exercise of those tax functions.
36. As explained above, the Commissioner has concluded that the requested information was held by HMCE in exercise of its tax functions. However the prohibition in section 182 of the Finance Act only prohibits the disclosure of information about any matter relevant to tax or duty in the case of any identifiable person. Therefore it is also necessary to assess whether the information withheld from the complainant fits this description.
37. The Commissioner has considered how the phrase, "any matter relevant to tax or duty" should be interpreted. It is arguable that it is intended to cover information about the specific tax or duty payable by an identifiable individual. However, the drafting is more general in its terminology, specifying "tax or duty...in the case of



an identifiable person". In the Commissioner's opinion this can be read more widely as being akin to, "information about, acquired as a result of or held in connection with the exercise of a function", in line with section 19(2) of the CRCA.

38. Having satisfied himself that the requested information is relevant to tax or duty, the Commissioner also considered how the term 'person' should be interpreted. As there is no specific definition within the 1989 Act he has referred to Schedule 1 of the Interpretation Act 1978. This states that a 'person' includes a body of persons corporate or unincorporated which would include companies.
39. The complainant has requested copies of the correspondence between HMCE and the three tobacco companies leading up to their signing of the MoU's. Therefore, the Commissioner is satisfied that the requested information relates to an identifiable person, in this case the relevant tobacco manufacturers. The Commissioner has considered the possibility of redacting the correspondence; this would mean removing names, dates and any other references which could lead to the deduction of the firm's identities. The Commissioner considers that due to the small number of firms involved even with redaction it would be possible to deduce who the 'person' is.
40. Section 182(5) provides that subsection (1) does not apply to any disclosure of information where: (a) there is lawful authority; (b) with the consent of any person in whose case the information is about a matter relevant to tax or duty; or (c) which has been lawfully made available to the public before the disclosure is made.
41. The Commissioner has considered whether any of these exceptions to the prohibition apply to the requested information.
42. Section 182(6) outlines that disclosure of any information is made with lawful authority if, and only, if it is made: (a) by a crown servant in accordance with his official duty; (b) by any other person for the purposes of a function in the exercise of which he holds the information and without contravening any restriction duly imposed on the person responsible; (c) to, or in accordance with any authorisation duly given, by the person responsible; (d) in pursuance of any enactment or of any order of the court, or; (e) in connection with the institution of or otherwise for the purposes of any proceedings relating to any matter within the general responsibility of the Commissioners or, as the case requires the Board.
43. The Commissioner does not consider that disclosure of the requested information under the Act would constitute a disclosure with lawful authority. He has given particular consideration to points (a) and (d) within the subsection and has concluded that although public authority employees are required to comply with the Act, disclosing information under it does not comprise an official duty of a Crown servant for the purposes of this section. Further, he does not consider that a disclosure under the Act falls within subsection 182(6)(d).
44. HMRC has indicated that the three tobacco firms have been approached to consider the possibility of agreeing to allow disclosure of the information. HMRC state that in the case of all three firms they have unequivocally stated that they do

not consent. The Commissioner is therefore satisfied that the exception at section 182(5)(b) does not apply.

45. Whilst the MoU's themselves are in the public domain, the discussions and correspondence leading up to their signing have not previously been made available. The Commissioner is therefore satisfied that the exception at section 182(5)(c) is not applicable.
46. The Commissioner finds that section 182 of the Finance Act does apply to the requested information and that none of the exceptions at section 182(5) are applicable. The exemption at section 44 is therefore engaged and the information requested is exempt. As section 44 is an absolute exemption there is no requirement to consider the public interest test.
47. The Commissioner did not consider the application of the other exemptions cited by HMRC, sections 31, 41, and 43, as he is satisfied that section 44 applies to all the requested information.

## The Decision

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48. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - (i) The application of section 44 to the information requested.
49. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - (i) The issue of a refusal notice within the requirements of 17 (1) and (3) of the Act.

## Steps Required

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50. The Commissioner requires no steps to be taken.

## Other matters

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51. As explained in the findings of fact section above, when considering this matter, the Commissioner has given some thought as to whether section 23 of the CRCA applies to the requested information which he has determined is subject to section 182 of the Finance Act.
52. Section 23 of the CRCA states that 'Revenue and Customs information relating to a person the disclosure of which is prohibited by section 18 (1), is exempt



- information by virtue of section 44(1) (a) of the Freedom of Information Act 2000 if its disclosure would (a) specify the identity of the person to whom the information relates or (b) enable the identity of the person to be deduced'. Section 18(1) states that 'Revenue and Customs official may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs'.
53. In order to engage this prohibition the Commissioner first considered if the information is held in connection with a function of the Revenue and customs. The functions of the Commissioners for Revenue and Customs are relatively loosely defined. Section 5 of the CRCA states that the Commissioners shall be responsible for "the collection and management of revenue for which the Commissioners of Customs and Excise were responsible before the commencement of this section".
  54. The Commissioner is satisfied that the MoU's and the correspondence leading up to the signing of the MoU's were entered into in furtherance of HMCE's duty to prevent evasion of Excise Duty. The result is that HMRC (and formally HMCE) is able to tackle Excise Duty Fraud and ensure collection of optimum levels of revenue from the correct liable party. The Commissioner has considered the meaning of 'functions' and is satisfied that this incorporates any activity which HMRC has the power and/or duty to carry out.
  55. Section 19 of the CRCA defines, "revenue and customs information relating to a person" as, "information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by section 18(4) (c) in respect of the person; but it does not include information about internal administrative arrangements of Her Majesty's Revenue and Customs (whether relating to Commissioners, officers or others).
  56. As already mentioned the Commissioner is satisfied that the requested information is held by HMRC in connection with the exercise of its functions. He is further satisfied that the term 'person' includes a legal person such as a limited company, in this case a tobacco manufacturer.
  57. The requested information relates to three specific firms and their correspondence with HMRC. The Commissioner is therefore satisfied that the requested information relates to a person or persons. Further, the Commissioner is also satisfied that if the requested information were provided to the complainant it would specify the identity of the person to whom the material relates.
  58. Subsection (2) of section 18 provides a number of exceptions to the prohibition. For example, where disclosure is made to a prosecuting authority in accordance with section 21, or is made in the public interest in accordance with prescribed conditions set down in section 20.
  59. The Commissioner has reviewed whether any of the conditions in subsection (2) are applicable so that section 18 (1) is not relevant. He is satisfied that none of the exceptions to section 18 (1) are satisfied in this case. In particular, he understands that HMRC has approached the tobacco manufacturers to whom the

requested information relates to try to obtain their consent to the disclosure and they have declined to provide it.

60. In light of the above, the Commissioner is satisfied that if the complainant made a request today for the information that material would be exempt under section 44 of the Act by virtue of section 23 of the CRCA.

## Right of Appeal

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61. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 3<sup>rd</sup> day of September 2007**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

### Freedom of Information Act 2000

#### General Right of Access

**Section 1(1)** provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

**Section 1(2)** provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

### **Time for Compliance**

**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.”

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

**Section 10(6)** provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or

- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

## **Refusal of Request**

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

**Section 17(2)** states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2, the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

## **Section 44**

“(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –



- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1 (1) (a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1)".

## **The Finance Act 1989**

### **Section 182**

“(1) A person who discloses any information which he holds or has held in the exercise of tax functions is guilty of an offence if it is information about any matter relevant, for the purposes of those functions, to tax or duty in the case of any identifiable person.

(2) In this section "tax functions" means functions relating to tax or duty—

- (a) of the Commissioners, the Board and their officers,
- (b) of any person carrying out the administrative work of any tribunal mentioned in subsection (3) below, and
- (c) of any other person providing, or employed in the provision of, services to any person mentioned in paragraph (a) or (b) above.

(3) The tribunals referred to in subsection (2)(b) above are—

- (a) the General Commissioners and the Special Commissioners,
- (b) any value added tax tribunal,
- (c) any referee or board of referees appointed for the purposes of section 80(3) of the [1970 c. 9.] Taxes Management Act 1970 or under section 26(7) of the [1968 c. 3.] Capital Allowances Act 1968, and
- (d) any tribunal established under section 463 of the Taxes Act 1970 or section 706 of the Taxes Act 1988.

(4) A person who discloses any information which—

- (a) he holds or has held in the exercise of functions—
  - (i) of the Comptroller and Auditor General and any member of the staff of the National Audit Office, or
  - (ii) of the Parliamentary Commissioner for Administration and his officers,
- (b) is, or is derived from, information which was held by any person in the exercise of tax functions, and
- (c) is information about any matter relevant, for the purposes of tax functions, to tax or duty in the case of any identifiable person, is guilty of an offence.

(5) Subsections (1) and (4) above do not apply to any disclosure of information—

- (a) with lawful authority,
  - (b) with the consent of any person in whose case the information is about a matter relevant to tax or duty, or
  - (c) which has been lawfully made available to the public before the disclosure is made.
- (6) For the purposes of this section a disclosure of any information is made with lawful authority if, and only if, it is made—
- (a) by a Crown servant in accordance with his official duty,
  - (b) by any other person for the purposes of the function in the exercise of which he holds the information and without contravening any restriction duly imposed by the person responsible,
  - (c) to, or in accordance with an authorisation duly given by, the person responsible,
  - (d) in pursuance of any enactment or of any order of a court, or
  - (e) in connection with the institution of or otherwise for the purposes of any proceedings relating to any matter within the general responsibility of the Commissioners or, as the case requires, the Board,
- and in this subsection "the person responsible" means the Commissioners, the Board, the Comptroller or the Parliamentary Commissioner, as the case requires.
- (7) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence—
- (a) he believed that he had lawful authority to make the disclosure in question and had no reasonable cause to believe otherwise, or
  - (b) he believed that the information in question had been lawfully made available to the public before the disclosure was made and had no reasonable cause to believe otherwise.
- (8) A person guilty of an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both, and
    - (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
- (9) No prosecution for an offence under this section shall be instituted in England and Wales or in Northern Ireland except—
- (a) by the Commissioners or the Board, as the case requires, or
  - (b) by or with the consent of the Director of Public Prosecutions or, in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.
- (10) In this section—
- "the Board" means the Commissioners of Inland Revenue,
  - "the Commissioners" means the Commissioners of Customs and Excise,

"Crown servant" has the same meaning as in the [1989 c. 6.] Official Secrets Act 1989, and  
"tax or duty" means any tax or duty within the general responsibility of the Commissioners or the Board.

(11) In this section—

- (a) references to the Comptroller and Auditor General include the Comptroller and Auditor General for Northern Ireland,
- (b) references to the National Audit Office include the Northern Ireland Audit Office, and
- (c) references to the Parliamentary Commissioner for Administration include the Health Service Commissioner for England, the Health Service Commissioner for Wales, the Health Service Commissioner for Scotland, the Northern Ireland Parliamentary Commissioner for Administration and the Northern Ireland Commissioner for Complaints.

(12) This section shall come into force on the repeal of section 2 of the [1911 c. 28.] Official Secrets Act 1911

## **Commissioners for Revenue and Customs Act 2005**

### **Section 18**

- “(1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.
- (2) But subsection (1) does not apply to a disclosure –
- (a) which –
    - (i) is made for the purposes of a function of the Revenue and Customs, and
    - (ii) does not contravene any restriction imposed by the Commissioners,
  - (b) which is made in accordance with section 20 or 21,
  - (c) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
  - (d) which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
  - (e) which is made in pursuance of an order of a court,

- (f) which is made to Her Majesty's Inspectors of Constabulary , the Scottish inspectors or the Northern Ireland inspectors for the purpose of an inspection by virtue of section 27,
  - (g) which is made to the Independent Police Complaints Commission, or a person acting on its behalf, for the purpose of the exercise of a function by virtue of section 28, or
  - (h) which is made with the consent of each person to whom the information relates.
- (3) Subsection (1) is subject to any other enactment permitting disclosure.
- (4) In this section –
- (a) a reference to the Revenue and Customs officials is a reference to any person who is or was -
    - (i) a Commissioner,
    - (ii) an officer of Revenue and Customs,
    - (iii) a person acting on behalf of the Commissioners or an officer of Revenue and Customs, or
    - (iv) a member of a committee established by the Commissioners,
  - (b) a reference to the Revenue and Customs has the same meaning as in section 17,
  - (a) a reference to a function of the Revenue and Customs is a reference to a function of -
    - (i) the Commissioners, or
    - (ii) an officer of Revenue and Customs,
  - (b) a reference to the Scottish inspectors or the Northern Ireland inspectors has the same meaning as in section 27, and
  - (c) a reference to an enactment does not include –
    - (i) an Act of the Scottish Parliament or an instrument made under such an Act, or
    - (ii) an Act of the Northern Ireland Assembly or an instrument made under such an Act”.

## Section 20

“ (1) Disclosure is in accordance with this section (as mentioned in section 18 (2) (b) if-

- (a) it is made on the instructions of the Commissioners (which may be general or specific),
- (b) it is of a kind –
  - (i) to which any of subsections (2) to (7) applies, or
  - (ii) specified in regulations made by the Treasury, and
- (c) the Commissioners are satisfied that it is the public interest.

(2) This subsection applies to a disclosure made –

- (a) to a person exercising public functions (whether or not within the United Kingdom),
- (b) for the purposes of the prevention or detection of crime, and
- (c) in order to comply with an obligation of the United Kingdom, or Her Majesty's Government, under an international or other agreement relating to the movement of persons, goods or services.

(3) This subsection applies to a disclosure if -

- (a) it is made to a body which has responsibility for the regulation of a profession,
- (b) it relates to misconduct on the part of a member of the profession, and
- (c) the misconduct relates to a function of the Revenue and Customs.

(4) This subsection applies to disclosure if –

- (d) it is made to a constable, and
- (e) either –
  - (i) the constable is exercising functions which relate to the movement of persons or goods into or out of the United Kingdom, or
  - (ii) the disclosure is made for the purposes of the prevention or detection of crime.

(5) This subsection applies to a disclosure if it is made -

- (a) to the National Criminal Intelligence Service, and
- (b) for a purpose connected with its functions under section 2 (2) of the Police Act 1997 (c.50) (criminal intelligence).

(6) This subsection applies to a disclosure if it is made -

- (a) to a person exercising public functions in relation to public safety or public health, and
- (b) for the purposes of those functions.

(7) This subsection applies to a disclosure -

- (a) is made to the Police Information Technology Organisation for the purpose of enabling information to be entered in a computerised database, and
  - (b) relates to –
    - (i) a person suspected of an offence,
    - (ii) a person arrested for an offence,
    - (iii) the results of an investigation, or
    - (iv) anything seized.
- (8) Regulations under subsection (1) (b) (ii) -
- (a) may specify a kind of disclosure only if the Treasury are satisfied that it relates to -
    - (i) national security,
    - (ii) public safety,
    - (iii) public health, or
    - (v) the prevention or detection of crime;
  - (b) may make provision limiting or restricting the disclosures that may be made in reliance on the regulations; and that provision may, in particular, operate by reference to-
    - (i) the nature of the information,
    - (ii) the person or class of person to whom the disclosure is made,
    - (iii) the person or class of person by whom the disclosure is made,
    - (iv) any other factor, or
    - (vi) a combination of factors;
  - (c) shall be made by statutory instrument;
  - (d) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (9) Information disclosed in reliance on this section may not be further disclosed without the consent of the Commissioners (which may be general or specific); (but the Commissioners shall be taken to have consented to further disclosure by use of the computerised database of information disclosed by virtue of subsection (7))”.

## Section 21

- “ (1) Disclosure is in accordance with this section (as mentioned in section 18 (2) (b)) if made-
- (a) to a prosecuting authority, and
  - (b) for the purpose of enabling the authority-
    - (i) to consider whether to institute criminal proceedings in respect of a matter considered in the course of an investigation conducted by or on behalf of Her Majesty's Revenue and Customs, or



(ii) to give advice in connection with a criminal investigation (within the meaning of section 35 (5) (b)) or criminal proceedings.

- (2) In subsection (1) “prosecuting authority” means-
  - (a) the Director of Revenue and Customs Prosecutions,
  - (b) in Scotland, the Lord Advocate or a procurator fiscal, and
  - (c) in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.
- (3) Information disclosed to a prosecuting authority in accordance with this section may not be further disclosed except -
  - (a) for a purpose connected with the exercise of the prosecuting authority’s functions, or
  - (b) with the consent of the Commissioners (which may be general or specific).
- (4) A person commits an offence if he contravenes subsection (3).
- (5) It is a defence for a person charged with an offence under this section to prove that he reasonably believed -
  - (a) that the disclosure was lawful, or
  - (b) that the information had already and lawfully been made available to the public.
- (6) A person guilty of an offence under this section shall be liable -
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (7) A prosecution for an offence under this section may be instituted in England and Wales only -
  - (a) by the Director of Revenue and Customs Prosecutions, or
  - (b) with the consent of the Director of Public Prosecutions.
- (8) A prosecution for an offence under this section may be instituted in Northern Ireland only -
  - (a) by the Commissioners, or
  - (b) with the consent of the Director of Public Prosecutions for Northern Ireland.
- (9) In the application of this section to Scotland or Northern Ireland the reference in subsection (6) (b) to 12 months shall be taken as a reference to six months”.

## Section 23

- “(1) Revenue and customs information relating to a person, the disclosure of which is prohibited by section 18 (1), is exempt information by virtue of section 44 (1) (a) of the Freedom of Information Act 2000 (c.36) (prohibitions on disclosure) if its disclosure –
- (a) would specify the identity of the person to whom the information relates, or
  - (b) would enable the identity of such a person to be deduced.
- (2) Except as specified in subsection (1), information the disclosure of which is prohibited by section 18 (1) is not exempt information for the purposes of section 44 (1) (a) of the Freedom of Information Act 2000.
- (3) In subsection (1) “revenue and customs information relating to a person” has the same meaning as in section 19”.