

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 4 April 2007**

**Public Authority Address** Department for Trade and Industry  
1 Victoria Street  
London  
SW1H 0EP

### Summary

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The complainant requested information from the public authority about its investigation into his company. The public authority refused to disclose, relying upon section 44 of the Freedom of Information Act 2000. As this is an absolute exemption the public authority did not have to consider the public interest test. The Commissioner has considered the exempt information in question and is satisfied that the public authority has applied section 44 correctly.

### 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 wrote to the Fair Markets Group of the Department for Trade and Industry (DTI) on 13 April 2005. The Company of which he was a Director had gone into liquidation and he had cited the actions of a named individual, employed by a named company, as being responsible for the liquidation. He made a request for feedback on the outcome of the DTI's investigation into the matter.
3. The DTI replied on 10 May 2005 refusing the request, citing the exemption under section 44 (1) (a) of the Act on the basis that section 449 of the Companies Act 1985 (CA 85) prohibited disclosure of the information. The DTI did however advise the complainant that the Small Business Services Team, part of the DTI, had been informed of the outcome of the investigation.

4. The complainant asked for an internal review of the decision on 18 May 2005. In response the DTI informed the complainant that the review would be completed by 16 June 2005.
5. On 9 June 2005 DTI wrote to the complainant upholding the original decision to withhold the information. The letter did explain, however, that the individual in question was no longer employed by the named company.

## **The Investigation**

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### **Scope of the case**

6. On 19 August 2005 the complainant contacted the Commissioner to complain about the way in which his request for information had been handled. He said that investigations he had carried out indicated that the named individual had behaved in a similar way towards other companies.

### **Chronology**

7. On 3 November 2006 the Commissioner asked DTI to justify its use of the section 44 exemption and to provide the relevant information. DTI responded on 7 December 2006. In its reply DTI said that, although it was continuing to rely on s44 to justify its decision to withhold the information, it took the view that section 30(1) (b) (Investigations and proceedings conducted by public authorities) was also applicable. DTI also cited section 36 (Prejudice to the effective conduct of public affairs) although the views of the qualified person had not been sought. Reference was made also to the decision of the Commissioner in case FS50071795.
8. The Commissioner has considered all the documentation and arguments submitted by both parties, including the exempt information.

### **Finding of Fact**

9. The Commissioner has taken into account the information contained in paragraphs 37 and 38 of the Information Tribunal's decision of 10 November 2006 in DTI v ICO. These paragraphs refer to the way in which the Companies Investigation Branch (CIB) conducts investigations. CIB is part of the regulatory arm of DTI and it has the power to investigate companies. Information on its website makes it clear that its investigations are confidential and that CIB will not tell complainants whether or not it will investigate a complaint.

## Analysis

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10. The Commissioner has considered DTI's use of the section 44 exemption in dealing with this request. The full text of section 44 is contained in the legal annex.

## Exemption

11. The section 44 (1) exemption applied by DTI relates to information that is prohibited from disclosure by or under another enactment. Section 44 is absolute and therefore not subject to the public interest test.
12. The information at issue was obtained in the course of a Companies Investigation Branch (CIB) investigation under section 447 of the Companies Act 1985 (CA 85).
13. The relevant parts of sections 447 and 449 of the Companies Act 1985 (as amended) read as follows:

### **Section 447 Power to require documents and information**

- (1) The Secretary of State may act under subsections (2) and (3) in relation to a company.
- (2) The Secretary of State may give directions to the company requiring it –
- (a) to produce such documents (or documents of such description) as may be specified in the directions;
  - (b) to provide such information (or information of such description) as may be so specified.
- (3) The Secretary of State may authorise a person (an investigator) to require the company or any other person –
- (a) to produce such documents (or documents of such description) as the investigator may specify;
  - (b) to provide such information (or information of such description) as the investigator may specify.
- (7) The Secretary of State or the investigator (as the case may be) may take copies of or extracts from a document produced in pursuance of this section.
- (8) A "document" includes information recorded in any form.

### **Section 449 (Provision for security of information obtained)**

This section applies to information (in whatever form) obtained-

- (a) in pursuance of a requirement imposed under section 447;
- (b) by means of a relevant disclosure within the meaning of section 448A (2);
- (c) by an investigator in consequence of the exercise of his powers under section 453A

- (2) Such information must not be disclosed unless the disclosure-
- (a) is made to a person specified in schedule 15C, or

(b) is of a description specified in schedule 15D.

(6) A person who discloses any information in contravention of this section-

(a) is guilty of an offence, and

(b) is liable on conviction to imprisonment or a fine or to both.

(9) This section does not prohibit the disclosure of information if the information is or has been available to the public from any other source.

### **Schedule 15C**

Section 449

#### **Specified Persons**

- 1 The Secretary of State.
- 2 The Department of Enterprise, Trade and Investment for Northern Ireland.
- 3 The Treasury.
- 4 The Lord Advocate.
- 5 The Director of Public Prosecutions.
- 6 The Director of Public Prosecutions for Northern Ireland.
- 7 The Financial Services Authority
- 8 A constable.
- 9 A procurator fiscal.
- 10 The Scottish Ministers.
- 11

### **Schedule 15D**

Section 449

#### **Disclosures**

1. A disclosure for the purpose of enabling or assisting a person authorised under section 245C to exercise his functions.
2. A disclosure for the purpose of enabling or assisting an inspector appointed under Part 14 to exercise his functions.
3. A disclosure for the purpose of enabling or assisting a person authorised under section 447 of this Act or section 84 of the Companies Act 1989 to exercise his functions.
4. A disclosure for the purpose of enabling or assisting a person appointed under section 167 of the Financial Services and Markets Act 2000 (general investigations) to conduct an investigation to exercise his functions.
5. A disclosure for the purpose of enabling or assisting a person appointed under section 168 of the Financial Services and Markets Act 2000 (investigations in particular cases) to conduct an investigation to exercise his functions.
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48. A disclosure in pursuance of any Community obligation.
  
14. The Commissioner is satisfied that all of the information sought by the complainant in this instance falls within the absolute protection of section 44. This

includes not only information relating to the investigation itself but information created subsequent to the investigation, namely information relating to the referral of this matter to other agencies within DTI, as such disclosure would inevitably reveal protected information.

The Commissioner is further satisfied that disclosure as a response to an FOIA request is neither disclosure to a person specified in schedule 15C nor of a description specified in schedule D.

15. In coming to this decision the Commissioner has taken into account his earlier decision in case FS50071795, to which reference was made by DTI. In that case agreement was reached that DTI would disclose some information to the complainant that did not fall within the statutory protection afforded by sections 447 and 449 CA 85. It is the Commissioner's view that none of the information sought in this case is of the type disclosed in case FS50071795, namely that it is not information available to the public which influenced or informed the decision to take no further action following the investigation; information obtained from the company or any other person otherwise than under a section 447 requirement; analysis and recommendations of the investigators; or analysis and recommendations of those advising the Secretary of State.

## **The Decision**

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16. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act. He has not therefore considered the applicability or otherwise of sections 30(1) (b) and 36(2) (b).

## **Steps Required**

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17. The Commissioner requires no steps to be taken.

## Right of Appeal

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18. 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 4<sup>th</sup> day of April 2007**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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