

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 February 2012

Public Authority: Royal Mail
Address: 2nd Floor, Royal Mail Sheffield
Pond Street
Sheffield
S98 6HR

Decision (including any steps ordered)

1. The complainant requested the following information
 - 1) *"Approximately how many "Clearance Fees" (whether the amount was for £8.00 or £13.50) were requested/charged by Parcelforce in 2010?*
 - 2) *What is Parcelforce's current policy/position regarding parcel recipients who agree to pay all HMRC customs charged, but dispute paying an administrative fee?"*
2. Royal Mail disclosed the information requested in part 2 of the complainant's request, however it refused to disclose the information requested in part 1 (the withheld information), citing the exemption at 43(2) of the FOIA (commercial interests) as a basis for non-disclosure.
3. The Information Commissioner's decision is that Royal Mail correctly applied the section 43(2) exemption to the withheld information.
4. The Information Commissioner (the Commissioner) requires no steps to be taken.

Request and response

5. On 8 January 2011, the complainant wrote to Royal Mail and requested the information described in paragraph 1.
6. Royal Mail responded on 8 February 2011. It provided the information requested in part 2 of the complainant's request and stated that it was

withholding the information requested in part 1, under section 43(2) of FOIA (commercial interests).

7. Following an internal review Royal Mail wrote to the complainant on 25 March 2011. It stated that it was upholding its initial application of the section 43(2) exemption.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled, specifically Royal Mail's refusal to disclose the information requested in part 1 of his request.
9. The Commissioner has considered Royal Mail's use of the exemption under section 43(2) of FOIA in relation to the withheld information.

Reasons for decision

10. Section 43(2) of the FOIA provides an exemption from a public authority's duty to disclose requested information on the grounds that disclosing the information would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption and is therefore subject to the public interest test.
11. In *Hogan & Oxford City Council v The Information Commissioner*¹ (*Hogan*) the Tribunal stated that,

"The application of the 'prejudice' test should be considered as involving a numbers of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption.. Second, the nature of 'prejudice' being claimed must be considered... A third step for the decision-maker concerns the likelihood of occurrence of prejudice".
(paragraphs 28 to 34).

¹ EA/2005/0026, EA/2005/0030

Commercial Interests of Parcelforce Worldwide and the Royal Mail Group

Step 1 - Identifying the applicable interests within the relevant exemption

12. Royal Mail states that disclosure of the withheld information would be likely to prejudice the commercial interests of the Royal Mail Group and Parcelforce Worldwide. It states that Parcelforce Worldwide, whilst it is a subsidiary of the Royal Mail Group, operates in a fully competitive and unregulated market. Like many of its competitors, Parcelforce Worldwide charges for customs clearance where goods are liable for import duty/tax. This is an area where competitive market prices operate. Rival companies charge either a fixed fee or a percentage of the total value of the goods, whichever amount is higher. Parcelforce Worldwide charges a fixed fee of either £8.00 or £13.50 based on shipping methods and different clearance and delivery speeds. Disclosure of the number of customs charges would reveal current levels of business or market share to Parcelforce Worldwide's competitors. This would place Parcelforce Worldwide at an unfair disadvantage, as its competitors are private companies and would therefore never be required to publish equivalent information.
13. The Commissioner accepts the Royal Mail's position on the above point, that is, that releasing the withheld information would be likely to harm Parcelforce Worldwide's position in the market by preventing it from participating competitively, i.e. competing fairly with rival companies under normal market conditions. This would be likely to prejudice the commercial interests of Parcelforce Worldwide and therefore the Royal Mail Group as a whole, which would clearly be applicable within the relevant commercial interests exemption.

Step 2 – Considering the nature of the prejudice

14. The Tribunal in *Hogan* commented as follows (at paragraph 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 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."
15. The Royal Mail states that disclosure of the withheld information would negatively impact on Parcelforce Worldwide's ability to participate

competitively in a commercial market. The revenue generated from clearance fees applied to imported parcels forms a significant part of the income of all parcel companies. Disclosure of the withheld information would allow rival companies, using information published in the Royal Mail's annual reports and accounts, to calculate the proportion of Parcelforce Worldwide's income from clearance fees and assess the level of business, and competition, being generated by Parcelforce Worldwide's other products and services. They would be able to target their revenues accordingly, thereby placing Parcelforce at a commercial disadvantage in the market.

16. The Commissioner is satisfied that this is the case and that releasing the withheld information could cause the prejudice that section 43(2) seeks to prevent - the prejudice to the commercial interests of any person. Therefore he is satisfied that a causal link has been established between disclosure of the withheld information and harm to the commercial interests of Parcelforce Worldwide and the Royal Mail Group. Having accepted that any such harm would not be trivial or insignificant, the Commissioner has gone on to consider the likelihood of such harm arising.

Step 3 – Considering the likelihood of the prejudice

17. In the case of *John Connor Press Associates Limited v The Information Commissioner*² the Tribunal confirmed that would be likely to prejudice meant that "*the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.*" (paragraph 15). In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote. The Commissioner accepts that disclosure of the withheld information would be likely to harm Parcelforce Worldwide's ability to compete under normal market conditions. This would interfere with what would previously have been a level playing field and would be likely to undermine Parcelforce Worldwide's ability to compete fairly within that field. This prejudice is amplified by the fact that Parcelforce Worldwide's rival companies could not be required to disclose information regarding their own customs clearance charges.
18. Disclosing the number of clearance fees charged by Parcelforce would clearly reveal business levels to other parcel carriers. This would enable rival companies to assess the level of competition and adjust their own business practices and targets accordingly, which would

² EA/2005/0005

place Parcelforce at a competitive disadvantage. The Commissioner's decision is, having regard to the evidence, that releasing the information would be likely to harm the commercial interests of Parcelforce Worldwide and therefore the Royal Mail Group.

19. As to the damaging of a third party's commercial interests the Commissioner's view is that Royal Mail must adduce evidence or arguments originating from that third party itself to support its contention. This view concurs with that of the Information Tribunal as stated at paragraph 39 of *Keene v the Information Commissioner & the Central Office of Information*³ However, the Commissioner recognises that Parcelforce Worldwide, although a separate brand, is part of the Royal Mail Group. It is, therefore, a commercial, unregulated part of the Royal Mail Group's business rather than a third party. At the time of the initial request and also at internal review stage, Royal Mail consulted colleagues from Parcelforce Worldwide and asked for their input into whether disclosure would be likely to prejudice the commercial interests of Parcelforce Worldwide and the wider Royal Mail Group. They concluded that it would be likely to prejudice the commercial interests of Royal Mail, particularly in respect of its business carried out under the Parcelforce Worldwide brand.
20. Having found that the commercial interests exemption is engaged in relation to the withheld information, the Commissioner must next consider the application of the public interest test.

Public interest arguments in favour of disclosing the withheld information

21. Royal Mail considered the following arguments in favour of disclosure of the withheld information:
 - accountability and transparency in the decision-making of public authorities; and
 - promoting public understanding of the management of the Royal Mail Group and the provision of its services to the public

However, it concluded that disclosure of the number of customs clearance charges applied by Parcelforce Worldwide would not further any public understanding of the management of Royal Mail, the provision of public mail services or any use of public funds. Royal Mail

³ EA/2008/0097

operates on the basis of profit and loss and does not receive state funding. It has secured loans from the government on a commercial basis and it is not permitted to secure loans from any other source. Royal Mail argued that, as the public purse is not subsidising its door to door service, the public spending argument is unsustainable.

22. Further Royal Mail argued that it would not promote or increase fair competition as it would leave Parcelforce Worldwide at a disadvantage. Therefore it would not inform public choice as to which company to use for parcel delivery, due to the lack of comparable information about rival companies.
23. Royal Mail also considered the complainant's arguments that disclosure of the withheld information would allow individuals to understand and, in some cases challenge, decisions by public authorities which affect their lives. However, it stated to the Commissioner that it was not clear how disclosure of the number of charges applied would increase individuals' understanding of the policies and procedures behind the application of those charges. It accepted that disclosure of the number of charges could arguably, when combined with other information such as costs information, allow the public to ascertain whether the charges were set at an appropriate level. However, that information in isolation would not serve the wider public interest.

Public interest arguments in favour of maintaining the exemption

24. Royal Mail considers that there is a public interest in maintaining fair competition in an unregulated market, allowing rival companies to operate on a level playing field. Disclosure of the withheld information would mean that the playing field was no longer level, however it would not provide the public with an informed choice of which company to use, since rival companies would not be disclosing their own information regarding customs clearance charges. The Commissioner accepts that it would not be in the public interest to allow one company to be at a competitive disadvantage, simply because it is part of a wider public authority.
25. The Commissioner also accepts that there is a strong public interest in maintaining the financial and commercial well-being of the Royal Mail Group as a publicly owned company. Royal Mail has secured loans from the government on a commercial basis and is reliant on all revenue, particularly that generated from commercial unregulated areas such as Parcelforce Worldwide's clearance fees, to maintain its business and to continue to provide the public with a universal, economically viable daily postal collection and delivery service.

26. It is the success of Royal Mail's commercial services such as Parcelforce Worldwide which subsidises the universal service. The universal service makes a loss. The universal service is reliant on the long- term viability of Royal Mail. There is an increasing vulnerability of the universal postal service which is bound up with the survival of Royal Mail. Any damage done to Royal Mail's commercial interests would, in turn, damage its financial health and have detrimental consequences for the delivery of the universal service. None of Royal Mail's competitors in this market is covered by the Freedom of Information Act so release of Parcelforce Worldwide's clearance fees would mean that it was not competing on a level playing field.

Balance of the public interest arguments

27. Given the very limited public interest which may be served by disclosure of the withheld information, the Commissioner is satisfied that, on balance, this is outweighed by the public interest in maintaining fair market competition and in maintaining the Royal Mail's financial well-being so that it can continue to provide a universal postal service. Therefore the Commissioner is satisfied that the public interest in maintaining the exemption, in all the circumstances of the case, outweighs that in disclosure of the withheld information.

Right of appeal

28. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:
- First-tier Tribunal (Information Rights)
 - GRC & GRP Tribunals,
 - PO Box 9300,
 - LEICESTER,
 - LE1 8DJ
- Tel: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm
29. 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.
30. 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

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