

Freedom of Information Act 2000 (Section 50)

Decision Notice

5 February 2008

Public Authority: Companies House
Address: Crown Way
Cardiff
South Glamorgan
CF14 3UZ

Summary Decision

The complainant asked Companies House to tell him the identity of an informant who had made allegations, he believed maliciously, about his company which had proved to be unfounded. Companies House had refused the request citing the section 41 exemption. The Commissioner found that, in refusing the request, Companies House had dealt with it in accordance with part 1 of the Freedom of Information Act; he also found no evidence of malicious intent on the part of the informant.

The Commissioner's Role

1. The Commissioner's role 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

2. The complainant is managing director of a named company (the company) which is registered with Companies House (CH). On 6 December 2006, acting on information received from an informant (the informant), CH wrote to an officer of the company (not the complainant) to say that it had been informed that the company was in breach of the Companies Act 1985 by failing to display its name outside its premises. On 7 December 2006 the complainant replied, saying that this information was incorrect as the company's name was displayed correctly and always had been at all relevant times. He asked CH to let him know who had maliciously made the allegations contained in the letter from CH as the matter had been passed to the company's solicitor for action to be taken against the informant.

3. On 4 January 2007 the complainant wrote again to CH, this time with a formal request under the Act for disclosure of the full details of the informant who had made the allegations contained in the CH letter of 6 December 2006.
4. On 12 January 2007 CH told the complainant that it had not received his 7 December 2006 letter and acknowledged his complaint under the Act. On 16 January 2007 CH told the complainant that it accepted his version of events and would close its file.
5. On 18 January 2007 CH told the complainant that its policy was to treat with the strictest confidentiality sources of information regarding possible breaches of the Companies Act. CH said that the information was exempt from disclosure under section 41 of the Act (Information provided in confidence).
6. On 19 January 2007 the complainant asked CH to reconsider its decision, adding that the information supplied had been knowingly false and was obviously malicious. He had no intention of going away and allowing CH to protect the person who had maligned his company in this way. On 25 January 2007 CH replied, maintaining its position under section 41 of the Act.
7. On 31 January 2007 the complainant asked for an internal review of the decision. On 22 February 2007 CH replied maintaining the section 41 exemption.

The Investigation

Scope of the case

8. On 1 March 2007 the complainant appealed to the Commissioner against CH's refusal to identify the informant whose allegations against the company had, he said, been knowingly false, malicious and a total misrepresentation.

Chronology of the case

9. On 31 October 2007 the Commissioner began his investigation.
10. On 2 November 2007, in response to an enquiry from the Commissioner's staff, the complainant reiterated to the Commissioner his belief that the allegations against the company had been neither reasonable nor made in good faith but had been malicious. He said that his belief was founded upon the fact that the name of the company had been prominently and continuously displayed since its first occupation of its premises; there was no scope for misunderstanding, nor could an honest mistake have arisen.
11. On 28 November 2007 CH told the Commissioner that the exemption contained in section 41 still applied and added that the section 30 (Investigations and proceedings conducted by public authorities) and section 31 (Law enforcement) exemptions might also apply. CH told the

Commissioner that it had not approached the informant to seek consent to disclose their identity as the informant had no apparent direct connection with the company.

12. CH provided the Commissioner with copies of the information that had been provided to it in confidence by the informant – containing allegations against the complainant's company and other named businesses – and which had prompted CH to write to the company on 6 December 2006.
13. On 29 November 2007 the Commissioner's investigator told the complainant that he had examined relevant correspondence for evidence of malice on the part of CH's informant but had found none. On 5 December 2007 the complainant replied, saying that he found that conclusion perverse as he believed the allegations had been made while knowing them to be false; he referred to the possibility of a commercial body being out to cause problems for himself and the company.

Findings of the case

14. The Commissioner has examined the correspondence between the informant and CH but found within it no evidence of malicious intent against either the company or the complainant himself.

Analysis

15. The Commissioner has considered the public authority's response to the complainant's request for information.

Exemptions

Section 41

16. The complainant said that a malicious informant had contacted CH and made allegations which were demonstrably false. There could not, in his view, have been a misunderstanding or an honest mistake in his view. He said that the informant could not reasonably have believed that malpractice was occurring as the company's name had been properly displayed and was in the public domain. The allegations had been neither reasonable nor could they have been made in good faith but had been malicious. CH should therefore disclose the identity of the informant to him so that he could take appropriate action.
17. CH said that it currently had 2.3 million companies on its register so that it was not practicable for it to monitor them all to ensure that they met their legal obligations. Information received regarding alleged breaches of the legislation was an extremely useful aid in policing the Companies Act. CH said that it received a large number of letters each year enquiring whether companies were in breach of the Companies Act. It accepted information from informants in good faith and investigated every case. In this case, CH had accepted the

- complainant's assurance that the allegations were unfounded and had closed the matter.
18. CH had brought its procedures into line with those of the Department for Business, Enterprise and Regulatory Reform (its sponsoring department) when handling complaints relating to similar regulatory functions. CH now refused to disclose the identity of informants who would, in its view, have an expectation of confidentiality. CH had had past experience of individuals who had expressed surprise and concern that CH would even consider disclosing their identities. For CH to jeopardise this source of valuable information could result in its loss and ultimately affect public confidence in the integrity of its company register. CH considered that there was an overriding public interest in maintaining informants' confidentiality.
 19. CH said that the occasions when confidential information might be disclosed were: with consent; where required by law; and where there was an overriding public interest. CH said that the first two categories did not apply and that there was no overriding public interest in disclosure. CH said that it had decided not to seek the consent of the informant to disclosure.
 20. The Commissioner has seen that the informant approached CH in the expectation of confidence and has decided that the section 41 exemption is therefore engaged.
 21. The Commissioner has seen that CH decided not to approach the informant to seek disclosure of the informant's name. The Commissioner has reviewed the evidence that led CH to this decision and concurs with it.
 22. The Commissioner has considered whether there is an overriding public interest leading to the need to disclose the informant's identity but he has seen none on the facts since he found that the complainant's suspicions of malicious intent on the part of the informant had not been substantiated.

Sections 30 and 31

23. During the Commissioner's investigation CH said that, while it had not initially relied on the exemptions contained in sections 30 or 31, it had subsequently considered that they were also likely to apply. As the Commissioner found that CH had applied the section 41 exemption correctly, he did not proceed to consider the application of the section 30 and 31 exemptions.

The Decision

24. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

25. The Commissioner requires no steps to be taken.

Right of Appeal

26. 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

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 5th day of February 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Extracts from the Freedom of Information Act 2000.

Investigations and proceedings conducted by public authorities.

Section 30(1) provides that –

“Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-
 - (i) whether a person should be charged with an offence, or
 - (ii) whether a person charged with an offence is guilty of it,
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or
- (c) any criminal proceedings which the authority has power to conduct.”

Section 30(2) provides that –

“Information held by a public authority is exempt information if-

- (a) it was obtained or recorded by the authority for the purposes of its functions relating to-
 - (i) investigations falling within subsection (1)(a) or (b),
 - (ii) criminal proceedings which the authority has power to conduct,
 - (iii) investigations (other than investigations falling within subsection (1)(a) or (b)) which are conducted by the authority for any of the purposes specified in section 31(2) and either by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under any enactment, or
 - (iv) civil proceedings which are brought by or on behalf of the authority and arise out of such investigations, and
- (b) it relates to the obtaining of information from confidential sources.”

Law enforcement.

Section 31(1) provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),

....

Section 31(2) provides that –

“The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

Information provided in confidence.

Section 41(1) provides that –

“Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”