



Neutral citation number: [2024] UKFTT 00755 (GRC)

Case Reference: EA/2024/0051

**First-tier Tribunal
General Regulatory Chamber
Information Rights**

**Heard by: remotely by video conference
Heard on: 24 June 2024
Decision given on: 22 August 2024**

Before

**TRIBUNAL JUDGE WILSON
TRIBUNAL MEMBER DR MANN
TRIBUNAL MEMBER WOLF**

Between

ANDREW RONNAN

Appellant

and

INFORMATION COMMISSIONER (1)

COMPANIES HOUSE (2)

Respondents

Decision: The appeal is Dismissed

REASONS

Mode of Hearing

1. The proceedings were held by video link (CVP). The Appellant attended and represented himself. The First Respondent did not attend and was not represented. The Second Respondent was represented by Mr Waller (Counsel). The Tribunal was satisfied that it was fair and just to conduct the hearing in this way.

Background to Appeal

2. This appeal is against a decision of the Information Commissioner (the “Commissioner”) dated 2 February 2024 Ref. IC-251509-L0F7 , (the “Decision Notice”). The appeal relates to the application of the Freedom of Information Act 2000 (“FOIA”). It concerns information about two decisions to discontinue Strike Off Actions in relation to two companies that failed to comply with their legal obligation to file their accounts on time together with associated correspondence.

3. The background to the request is helpfully summarised in the Second Respondent’s response. The companies are Calder Vale Holdings Ltd (CVHL) and Kettering Capital Ltd (KCL). It is understood that CVHL and KCL were incorporated for the purpose of enabling the sale of the Burnley Football Club to new owners which took place in 2020. In his information request, the Appellant states that he is a shareholder and investor in another company connected with the ownership of Burnley Football Club, called Burnley FC Holdings Ltd.

4. Accounts with respect to CVHL for the period ending 31 October 2021 were due on 1 October 2022. Accounts with respect to KCL for the period ending 31 October 2021 were due on 26 October 2021. These accounts have not been provided.

5. As set out within the Second Respondent’s response, the withheld information concerns emails and letters between the Second Respondent and representatives of the two companies.

The Request and Decision Notice

6. On 1 July 2023, the requester wrote to Companies House (‘CH’) and requested information in the following terms:-

“(...) all recorded information held by Companies House that relate to the two decisions by the Registrar on 19 January 2023, to discontinue strike off actions against [CVHL and KCL]

(...) all correspondence between those two companies and/or their authorised agents, and/or their Directors / Company Secretary, and Companies House and / or its authorised agents that relates to the overdue filing of those two companies’ accounts. These were due to be placed on the public record on 1 October 2022 and 26 October 2022 respectively”.

7. On 24 July 2023 the Second Respondent responded to the request. The Second Respondent refused to provide the information held within the scope of the above request. The Second Respondent relied upon the exemptions under sections 30(1)(b), s.41 and s.40(2) FOIA. The Second Respondent maintained its position on internal review.

8. The Appellant complained to the First Respondent. In the Decision Notice, the First Respondent decided that:

- a. The exemption under section 30(1)(b) is engaged on the facts of this case [28];
- b. The public interest in favour of maintaining the exemption under section 30(1)(b) FOIA outweighs the public interest in disclosure of the withheld information [39];
- c. Given the conclusion on section 30(1)(b) FOIA, the Commissioner did not consider it necessary to reach a conclusion on sections 41 and 40(2) FOIA also relied upon by the Second Respondent.

The Hearing, Preliminaries and Evidence

Preliminaries

9. The Appellant produced evidence after the date of his certificate of compliance. The evidence includes a letter from a minister, a document titled “particulars of how and when debt incurred” dated 11 June 2024 and balance sheets/financial information and Company House documents to June 2024. The Appellant applied for these documents to be entered into evidence. The application was resisted by the Respondent’s Representative. This was largely on the basis that the evidence post-dated the date by which the Second Respondent was required to respond to the information request and accordingly would not have been relevant to that decision. The tribunal granted the application on the basis that the documents were relevant to the submissions that the Appellant wished to make. Albeit the Tribunal highlighted the relevant date for consideration was the date that the Second Respondent was required to respond to the request for information. Accordingly, whilst admitted into evidence, the Tribunal’s preliminary indication was that the documents may be of limited evidential value for the issues that fell for determination.

10. On 24 May 2024 the Appellant had applied to the Tribunal for a direction that the Joint Liquidators of Calder Vale Holdings Ltd (CVHL) and/or the Second Respondent confirm that CVHL Financial Statements exist; that those Financial Statements were disclosed to all parties and the CVHL Financial Statements are duly filed at Companies House within 7 days. The application remained outstanding as of the date of the hearing and accordingly was considered at the hearing. The application was dismissed at the hearing for the following reasons. There is no evidence that the liquidators of the companies had been served with the application. Procedural fairness required that the liquidator should have the opportunity to respond. There is no evidence to suggest that the financial statements of the company’s exist such that the application was speculative. The tribunal’s case management powers and functions are primarily focused on evidence produced within the context of the relevant proceedings. The tribunal was not directed to any powers that it may have to require a third party to file financial statements with Companies House. The application was likely to cause further delay as, if the direction was granted, there must be an opportunity to comply/respond. There was no indication that the delay would result in the production of financial statements and accordingly such delay was not within the interests of justice. In addition, it is unclear how the production of financial statements, some months after the date required for the response to the request would assist the tribunal in the determination of the issues in dispute between the parties.

11. The tribunal asked the second respondent's representative whether there was any application for the companies in question to be anonymised within the decision. The second respondent's representative confirmed that the companies could be named.

Evidence & Submissions

12. The parties did not give oral evidence. We heard oral submissions from the Appellant and Second Respondent's representative during the open session. The open oral submissions are set out in the record of proceedings and have been considered.

13. We took time and care to ensure all evidence and written submissions were before the Tribunal this included the following evidence:

- a. An agreed bundle of open documents [460 PDF pages]
- b. A closed bundle [29 pdf pages].
- c. The Appellant's and Second Respondent's representatives oral submissions at the hearing which are fully set out in the record of proceedings and have been considered.
- d. Evidence produced by the Appellant after the certificate of compliance to include a letter from a minister, a document titled particulars of how and when debt incurred dated 11 June 2024 and balance sheet and company house documents to June 2024 which were entered into evidence, see above.
- e. Appellant's Skeleton Argument

14. The Second Respondent has produced a closed bundle [29 pdf pages] comprising the withheld information. We held a closed sessions to hear submissions from Mr Waller.

15. The following is a gist of the closed session submissions. The gist was provided to the Appellant during the hearing.

- a. The Tribunal heard submissions in closed session from counsel for the Second Respondent.
- b. Counsel described the correspondence within the closed bundle in broad terms, including that it contains letters and emails between representatives of the two companies and the Second Respondent.
- c. Counsel highlighted key matters of sensitivity in broad terms, and highlighted particular text that is sensitive when going through each item of correspondence.
- d. The Tribunal asked questions to counsel about the documents in the bundle.
- e. The panel asked about the nature of certain documents in the closed bundle. Counsel clarified that his understanding was that the documents referred to are records generated by the Second Respondent's e-filing system with respect to emails that identify key details such as the sender and date.

- f. The panel asked counsel to clarify the reasons why he highlighted certain matters as being sensitive. When answering, counsel offered to reiterate his answer in public open session so far as he is able.
- g. The panel asked whether the closed bundle includes all correspondence before the date the FOI request was responded to, namely 24 July 2023. Counsel confirmed that he was not aware of any further correspondence, that if there was it would have been included in the closed bundle and the Tribunal should make its decision on that basis, inferring there was no further material correspondence during that time.

16. We have considered all the documentary evidence and submissions. However, we do not rehearse all evidence and submissions in detail but include in this decision and reasons such evidence and submissions as were relevant to our decision.

The Appellant's Position

17. The Appellant's position set out within the grounds of appeal, Appellant's reply, appeal skeleton argument other written documents and oral submissions can be summarised as follows:

Is the Section 30(1)(b) Exemption Engaged

18. The Appellant accepts that Section 30(1)(b) is engaged [Appellant's reply to First Respondent's response PDF page 45 [15 & 16]. The Appellant's challenge is on the basis of the balance of the public interest.

Date for Consideration of the Public Interest

19. The Appellant asserts that as the criminal offences "are ongoing" the date for the assessment of the public interest is a moving target. The Tribunal informed the Appellant that the date of assessment of the public interest was a settled area of law (see below). The Appellant reflected on his position and in closing submissions his argument that the relevant date "was a moving target" was not pursued with any force.

The Public Interest Balance

20. The Appellant's submissions in relation to the public interest can be summarised as follows:
- a. The First Respondent erred in assessing the public interest on the basis that there had only been the Appellant's enquiry and did not consider the wider public interest.
 - b. The fact that there may be lasting reputational damage to the companies is a matter that weighs in favour of the public interest in disclosure rather than against. Any reputational damage that is caused is as a result of the company directors' inaction which greatly reduces the weight that should be applied to reputational damage.
 - c. The company's compliance and financial statements are of interest to shareholders of associated companies, of which the Appellant is one.

- d. The severity of the penalty, as imposed by parliament, is indicative of the seriousness of the offence/behaviour and as such there is a public interest in transparency in relation to such behaviour.
- e. The corporate and financial structuring of the companies, reducing share capital in its ownership of Burnley FC while at the same time exposing the club to significant debts, is such that there is significant a public interest in disclosure of the information. This is both in terms of those who have a financial interest in associated companies but also more widely.
- f. There is a wider public interest in understanding the financial arrangements which are used to fund assets in which the community has a significant interest such as football clubs.
- g. There is a public interest in enforcement because if directors fail to comply they should face consequences and if they do not the public should know why.
- h. The obligation to file financial statements is to ensure transparency and as such correspondence and information filed as a consequence of not producing financial statements should also be subject to similar transparency.
- i. The defence is that all reasonable steps were taken to file on time. Given the passage of time it is difficult to see how any defence could be available to the company. The delay in prosecution is manifestly a failure of the process and accordingly requires disclosure to ensure scrutiny.
- j. Given the limited defences to the offence contained within the Companies Act, there is a public interest in transparency so that the public, and those who do file accounts on time, are aware of the decision-making to not prosecute those who fail to serve in time.
- k. The criminal sanctions are intended to create a deterrent effect, so that companies will file and serve for fear of sanctions if they do not. Transparency enables the public to understand when sanctions may not be applied and supports the deterrent effect. Without transparency companies may feel that they can get away without filing financial statements promptly.

The First Respondent's Position

21. The Respondent's position as set out in the Decision notice and response is summarised below

Is the Section 30(1)(b) Exemption Engaged

22. The First Respondent notes the Appellant's grounds of appeal do not challenge the conclusion of the First Respondent that section 30(1)(b) the FOIA exemption is engaged. However, for the avoidance of doubt the First Respondent concludes that the exemption is engaged because:

- a. The Second Respondent had commenced compliance action which may have led to consideration of prosecution against officers of the companies.
- b. At the time of the request, the process was to gather information that would form the basis of referring to the prosecuting solicitor's office at Companies House if documents remained outstanding.

- c. The Second Respondent had the necessary power to prosecute pursuant to a delegated authority issued by the Secretary of State to investigate possible criminal breaches and institute proceedings under section 451 of the Companies Act 2006.
- d. Having seen the withheld information the First Respondent accepts that it was held for the purposes of allowing the Second Respondent to take appropriate action to ensure compliance including criminal investigations.

Date for Consideration of the Public Interest

23. The First Respondent asserts that the Appellant is wrong in law to assert that the relevant date for consideration of the public interest balance can be a “moving target”. The First Respondent relies upon Montague v IC and DIT [2022] UKUT 104 (AAC) at [47]-[90] which provides that in FOIA cases the public interest balance should be considered as at the time of the response to the request.

The Public Interest Balance

24. The First Respondent accepts that the following public interest factors weigh in favour of disclosure:

- a. The Company House register is made available to the public and is accessed frequently via millions of searches. Accordingly, there is a clear public interest in the register and that the information on that register is up-to-date to allow those who conduct searches to conduct proper due diligence which in turn supports the UK economy.
- b. There is a general public interest in openness and transparency to ensure public confidence in public authorities particularly those tasked with upholding the law. Public confidence would be increased by allowing scrutiny of public authorities performance and this may involve examining investigations that public authorities carried out.

25. The First respondent considers that the following public interest factors weigh against disclosure and are determinative:

- a. The purpose of Section 30 is to preserve the ability of public authorities to carry out effective investigations. The disclosure of the withheld information would have a harmful effect on the Second Respondent’s ability to carry out investigations. It is not in the public interest to jeopardise the ability of the Second Respondent to investigate crime.
- b. It is not a proper argument to say that because the company’s reputation has been called into question that disclosure without restriction could not cause further harm.
- c. At the relevant time the investigation/proceedings were ongoing.
- d. There were no requests other than that of the Appellant. This is indicative that there was no wider public interest in disclosing the withheld information.

The Second Respondent’s Position

Is the Section 30(1)(b) Exemption Engaged

26. The second respondent concurs with the first respondent's analysis and asserts that the Section 30(1)(b) exemption is engaged.

Date for Consideration of the Public Interest

27. The Second Respondent concurs with the First Respondent that the public interest must be assessed with regard to the circumstances that applied at the time the Second Respondent made its decision to refuse request on 24 July 2023.

The Public Interest Balance

28. The Second Respondent accepts that the following public interest factors are capable of weighing in favour of disclosure:

- a. There is a general interest in disclosure which can promote good government through transparency, accountability increased public confidence in government and constructive public debate.
- b. The disclosure of the information would enable the public to gain a better understanding of the Second Respondent's decision-making generally and the specific decision-making in relation to this particular case. That would help secure accountability and public confidence.
- c. Disclosure may provide insight into the Companies and Burnley Football club.

29. The second respondent considers that the following public interest factors weigh against disclosure and are determinative:

- a. There is a general public interest in the effective investigation and prosecution of crime which can be undermined by disclosure as it can inhibit the making of statements or reports for fear that they may be publicised. This could lead to the effectiveness of investigations in relation to these companies and other companies being adversely affected;
- b. Similarly, a regulator must be able to consider all appropriate regulatory responses, including alternatives to prosecution, prior to a final decision, free from the public gaze. Disclosure could affect the independence of the investigation /prosecution process;
- c. Disclosure may adversely affect the criminal court's role as the sole forum for determining guilt;
- d. The stage that the investigations has reached is a relevant factor because as at the date for response investigations were ongoing. Disclosure of information in relation to an investigation which is not concluded may undermine that investigation.
- e. Disclosing details of an ongoing investigation would cause reputational damage to the company. The consequences would be great if a decision was subsequently made not to prosecute because a defence is available and has the potential to disrupt the investigation.
- f. The public interest in disclosure is not enhanced simply because this is a football club. The public interest is no greater than any other company. The football club

does not undertake public services or receive tax payers money. Parliament did not when enacting the Companies Act require greater transparency in the financial affairs of companies that relate to football clubs.

- g. There is no indication within the withheld information that the Second Respondent has failed to follow proper process such that the public interest in disclosure is enhanced to ensure transparency and scrutiny.

Applicable law

30. Section 30 FOIA, so far as relevant to this appeal, provides:

(1) 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,

31. The Section 30 exemption is subject to the public interest test under section 2(2)(b) FOIA.

32. In Alan Digby-Cameron v The Information Commissioner (EA/2007/0025) [14] the First-Tier Tribunal set out public interest factors that can weigh against the disclosure of information when s30 is engaged:

*“The general public interest served by the section 30(1) exemption is the effective investigation and prosecution of crime, which itself requires in particular (a) the protection of witnesses and informers to ensure that people are not deterred from making statements or reports by the fear that they may be publicised, (b) the maintenance of the independence of the judicial and prosecution processes and (c) the preservation of the criminal court as the sole forum for determining guilt. In assessing where the public interest balance lies in a section 30(1) case relevant matters are therefore likely to include (a) the stage a particular investigation or prosecution has reached, (b) whether and to what extent the information is already in the public domain, (c) the significance or sensitivity of the information requested and (d) whether there is any evidence that an investigation or prosecution has not been carried out properly which may be disclosed by the information (see: *Toms v Information Commissioner* EA/2005/0027 19.6.06 at para 7 and *Guardian Newspapers v Information Commissioner, Chief Constable of Avon and Somerset* EA/2006/0017 5.3.07 at para 34)” [14]*

Issues

33. The Appellant accepts that section 30(1) is engaged, see above.

34. Accordingly, the issues for determination by the Tribunal are as follows:

- a. Whether the balance of the public interest falls in favour of disclosure of the withheld information; and
- b. If so, whether the exemption at Section 41 of FOIA is engaged because disclosure of the information would likely make the Second Respondent liable for breach of the equitable obligation of confidence.

Discussion and Conclusions

35. In accordance with section 58 of FOIA, our role is to consider whether the Commissioner's Decision Notice was in accordance with the law. As set out in section 58(2), we may review any finding of fact on which the notice in question was based. This means that we can review all of the evidence provided to us and make our own decision.

Is the Section 30(1)(b) Exemption Engaged

36. The Appellant has indicated that it is undisputed that the Section 30(1)(b) exemption is engaged. In the interest of completeness, we find that the Section 30(1)(b) exemption is engaged. The evidence before us, indicates that the withheld information was obtained for the purposes of an investigation with the purpose of ensuring compliance with the requirement to file financial statements. The options available to the Second Respondent to ensure compliance included prosecution through a delegated authority to investigate and issue proceedings for criminal breaches pursuant to section 451 of the Companies Act 2006. For these reasons, on the evidence before us, we find that section 30(1)(b) is engaged.

Date for Consideration of the Public Interest

37. It is a matter of settled law that the date for consideration of the public interest balance must be assessed on the basis of how matters stood at the time the authority was required to respond in accordance with the requirements and statutory timeframes in Part I of FOIA. We find that, for the purposes of this appeal, that is the time that Companies House made its decision to refuse the request on 24 July 2023.

The Public Interest Balance

38. The Tribunal has considered the submissions made by the parties. The Tribunal considers that the factors that weigh in favour of the public interest in disclosure are as follows:

- a. There is a clear public interest that the Companies House register is up-to-date to allow those who conduct searches to conduct proper due diligence, which in turn supports the UK economy.
- b. There is a general public interest in openness and transparency to ensure public confidence in public authorities particularly those tasked with upholding the law because:
 - i. Public confidence would be increased by allowing scrutiny of public authorities performance and decision making processes and this may involve examining investigations that public authorities carried out.

- ii. Disclosure can promote good government through transparency, accountability increased public confidence in government and constructive public debate.
- c. Disclosure would provide insight into the companies and Burnley Football Club. This is of particular interest to shareholders of associated companies of which the Appellant is one.
- d. The criminalisation of the activity by Parliament is such that the failure to produce accounts is considered serious and there is a consequent interest in transparency. In addition, the criminalisation of the activity is to ensure a deterrent effect. The deterrent effect will be undermined if there is no transparency when sanctions are not applied.
- e. There is a public interest in understanding the corporate and financial arrangements of companies who hold assets of significant interest to the community such as football clubs.

39. The tribunal considers that the following factors weigh against disclosure.

- a. The purpose of section 30 is to preserve the ability of public authorities to carry out effective investigations. There is a general public interest in the effective investigation and prosecution of crime which can be undermined by disclosure as it can inhibit the making of statements or reports for fear that they may be publicised. This could lead to the effectiveness of investigations in relation to these companies and more generally other companies being adversely affected.;
- b. Similarly, a regulator must be able to consider all appropriate regulatory responses, including alternatives to prosecution, prior to a final decision, free from the public gaze. Disclosure could affect the independence of the investigation /prosecution process;
- c. Disclosure may adversely affect the criminal court's role as the sole forum for determining guilt;
- d. The stage that the investigations has reached is a relevant factor because as at the date for response investigations were ongoing. Disclosure of information in relation to an investigation which is not concluded may undermine that investigation.
- e. Disclosing details of an ongoing investigation would cause reputational damage to the company. The consequences would be great if a decision was subsequently made not to prosecute because a defence is available. Whilst we accept that the reputation of the companies has already in some way been damaged because it clear that they failed to comply with their regulatory obligations, the criminal offences nonetheless are subject to defences. It is not a strict liability offence. It would be possible for the investigation to conclude that no crime had been committed because for example reasonable steps had been taken to produce the financial statements on time. It may also be decided on any given set of facts that even if a criminal offence had been committed it was not in the public interest to prosecute. It would be disproportionately damaging to the company's reputation for the details of an investigation to be disclosed when no further action was taken.
- f. In addition, disclosure before an investigation is concluded has the potential to disrupt the investigation.

- g. There is no indication within the withheld information that the Second Respondent has failed to follow proper process such that the public interest in disclosure is enhanced to ensure transparency and scrutiny.

40. Drawing these threads together, we place weight on the public interest of Companies House registers and information being up-to-date; the general public interest in transparency and openness of public bodies, particularly those enforcing criminal law sanctions) and the importance of transparency in enforcement of criminal law in relation to filing financial statements, given its intended deterrent effect. We place less weight upon the interest of the public in the financial affairs of companies that hold assets of community interest, such as football clubs and the interest of individuals who hold shareholdings in companies associated with the companies that are the subject of this request. That said we do nonetheless afford these factors weight. These factors weigh in favour of the public interest in disclosure. However, a number of factors weigh against disclosure and are very weighty indeed. These include the ability of public authorities to carry out investigations, maintenance of the independence and integrity of the investigation process, and preservation of the criminal court as the sole forum for determining guilt. These factors, of themselves, carry such weight that they are determinative of the public interest. However, when combined with the potential reputational damage to the companies caused by disclosure of information before an investigation is complete and that there is no indication of a flawed process, we find that the public interest balance weighs overwhelmingly in favour of withholding the relevant information.

15. It follows that it is unnecessary to consider Section 41 of FOIA.

16. For the reasons set out above the appeal is dismissed and the decision notice is maintained.

Signed G Wilson

Date: 10 August 2024

Judge of the First tier Tribunal