

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 5 February 2007

Public Authority: The Royal Mail Group Plc
Address: Company Secretary's Office
5th Floor
148 Old Street
London
EC1V 9HQ

Summary

The complainant requested, firstly, the number of complaints made to a delivery office of the Royal Mail over a specific period of time and, secondly, details of how many of these complaints were investigated and what action was taken as a result. Both parts of the request were refused on the basis that the information was exempt from disclosure under section 43(2) (prejudice to commercial interests). The public authority also subsequently argued that responding to the second part of the complainant's request would exceed the appropriate fees limit under section 12. The Commissioner concluded that section 43(2) was not applicable to the first part of the request but that section 12 applied to the second part of the request. In addition, he found that the public authority had not complied with section 17(5) as the refusal notice did not refer to section 12 as a basis for refusing the request.

The Commissioner's Role

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

2. **On 13 June 2005.** Royal Mail Group Plc received the following information request from the complainant

"I would like to know how many complaints were received in each month from January 2004 up to and including May 2005 about the Wythenshawe Post Depot /

Delivery Office on Altrincham Road. In addition, I would like to know how many of these complaints were investigated, and what action was taken as a result.”

3. Royal Mail Group Plc is a publicly owned company wholly owned by the Crown and it is therefore a public authority for the purposes of the Act under section 6.
4. **On 11 July 2005.** Royal Mail issued a refusal notice stating that, whilst information relating to the annual number of complaints for the whole of the Manchester postcode area (the “M” postcode area) was available on the Royal Mail’s website, the release of information relating to local offices covering a smaller area (in this case the “M22” postcode area) was commercially sensitive and therefore exempt from disclosure under section 43(2) of the Act. It believed that the release of this local performance data could be presented out of context by business competitors, who were not themselves required to publish such data, and so prejudice the commercial interests of Royal Mail in a market increasingly being opened up to competition.
5. As regards the public interest test, Royal Mail accepted that there was a public interest in awareness of the level of customer satisfaction with its services but felt that this was satisfied by its reports to Postwatch, its independent consumer watchdog, and publication of details of its performance against national targets. As the Royal Mail Group was a publicly owned company, there was a significant public interest in its financial well being and therefore the public interest did not favour disclosure of the information.
6. **On 19 August 2005.** An internal review upheld the original decision on the basis that the release of the information would be likely to prejudice the commercial interests of the Royal Mail Group. It argued that the release of performance data more detailed than that already published could be used by its business competitors. This would prejudice the ability of the Royal Mail Group to operate as an efficient trading company in a market increasingly being targeted by competitors not subject to the same legislation. It concluded that the public interest did not favour disclosure of the information on the same basis as the original decision.

The Investigation

Scope of the case

7. **On 7 September 2005.** The complainant wrote to the Commissioner to ask him to investigate the decision of the Royal Mail to refuse to release the information he had requested.

Chronology

8. **On 19 August 2006.** The Commissioner wrote to Royal Mail seeking copies of the information which had been requested and also asking for any further submissions it wished to make in relation to the application of section 43(2).

Correspondence followed between the Commissioner and Royal Mail to establish what communications had taken place between Royal Mail and the complainant.

9. **On 30 October 2006.** Royal Mail provided copies of the information relevant to the first part of the complainant's request to the Commissioner. It provided additional information as to why the exemption in section 43(2) was engaged and why the public interest favoured withholding the information. These submissions are discussed at paragraphs 27-30.
10. In addition, Royal Mail argued that, in relation to the second part of the complainant's request for details of how many complaints were investigated and what action was taken, it would exceed the appropriate fees limit of £450 to provide this information. This was because the information relevant to answering this part of the request was contained in individual case records held in relation to each complaint. To provide the information would involve reviewing, extracting and reproducing information from each case record. Given the large number of case records which would need to be reviewed, the cost limit would be easily exceeded.
11. **On 3 November 2006.** The Commissioner queried why Royal Mail had not informed the complainant that compliance with the second part of his request would exceed the cost limit. He also made further enquiries of Royal Mail with regard to the application of the cost limit.
12. **On 13 November and 5 December 2006.** Royal Mail wrote to provide more information as to why it believed that the cost limit would be exceeded. It also provided the Commissioner with a sample of individual case records to assist him in determining the time that it would take to locate, retrieve and extract the requested information.
13. Royal Mail stated that each case record was held on a central database and to be able to retrieve each case involved a series of searches. Having carried out a trial exercise, it estimated that it would take approximately 6 minutes to retrieve each case. The information requested would then have to be identified and extracted from the case record. This would take additional time as each case record typically involved 2 to 3 pages of data, often with attachments. Given the number of cases involved it believed complying with the second part of the request would greatly exceed the appropriate cost limit.
14. Royal Mail also explained that it had not referred to the cost limit in its correspondence with the complainant as it believed the information was exempt from disclosure under section 43. It was only when responding to the Commissioner that it became aware that the cost limit may be of relevance.
15. **On 16 January 2007.** Following a request from the Commissioner for evidence of postcode specific performance data being used by its competitors to gain a competitive advantage, Royal Mail explained that, as such data had not been released in the past, it was not possible to provide evidence of its use by its competitors. However, it reiterated certain points made in earlier correspondence with regard to this issue and that the information could be used, not only to

influence Royal Mail's customers, but also allow competitors to carry out valuable market analyses in relation to Royal Mail, thereby putting it at significant commercial disadvantage.

Findings of fact

16. Royal Mail did not inform the complainant that section 12 was applicable to the second part of his request when it issued its refusal notice.

Analysis

17. The full text of the relevant sections of the Act can be found in the legal annex at the end of this notice, however the salient points are summarised below. The procedural matters are considered initially and then the matters relating to the application of the exemptions.

Procedural matters

Section 12 – exemption where cost of compliance exceeds appropriate limit

18. The Commissioner has considered whether Royal Mail's argument that it did not have to comply with the second part of the complainant's request as section 12 applied. Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

19. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 prescribe the 'appropriate limit' as being £450 for public authorities which are not part of central government, with staff costs calculated at a rate of £25 per hour. In order to avoid exceeding the fees limit Royal Mail would need to be able to complete the location, retrieval and extraction of the requested information within 18 hours of staff time.
20. Having been informed by Royal Mail of the total number of complaints received for the period to which the request relates and having inspected a sample of case records provided by Royal Mail, the Commissioner is satisfied that to extract the necessary information from all of these case records is likely to exceed 18 hours. In addition, he has taken into account Royal Mail's comments about the time taken to retrieve each case record on its database before it could commence extracting the requested information. The Commissioner has concluded that it would take far in excess of 18 hours to locate, retrieve and extract the relevant information from all of the case records. The Commissioner is therefore satisfied that to provide the information in question would exceed the appropriate limit under section 12(1) of the Act and that Royal Mail was not obliged to comply with the second part of the complainant's request.

Section 17 – refusal notice

21. Section 17(5) of the Act requires that, where a public authority is relying on a claim that section 12 applies to a request, it should state this in its refusal notice. In this case, the public authority failed to do so and therefore breached section 17(5).

Exemption

22. The Commissioner, having determined that Royal Mail was entitled to withhold the information related to the second part of the complainant's request, went on to consider whether the information requested by the complainant in the first part of his request was exempt from disclosure under section 43(2).

Section 43(2) – Commercial Interests

23. Section 43(2) provides an exemption from the disclosure of information which would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
24. In this case, Royal Mail maintained that its own commercial interests would, or would be likely, to be prejudiced by the release of the information. It argued that the information requested related directly to Royal Mail Group's commercial and competitive activities. It pointed out that from February 2004 limited competition was allowed in relation to the collection and sorting of mailings of 4,000 items or more. Since January 2006 competitors are allowed to offer full collection, sorting and delivery services. Following this full liberalisation it had faced much greater competition with competitors particularly targeting certain geographical areas, such as Manchester.
25. The Commissioner accepts that the Royal Mail is a publicly owned company which is engaged in commercial activities and that the information requested relates to those activities. The information held therefore falls within the scope of this exemption.
26. In addition to considering whether the information could relate to commercial activities, the Commissioner also needs to determine the likelihood of the release of the information prejudicing those activities. In dealing with the issue of prejudice, or the likelihood of prejudice, the Commissioner notes that, in the case of *John Connor Press Associates Limited v The Information Commissioner*, the Information Tribunal confirmed that "the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk." (para 15)
27. Royal Mail argued that the disclosure of the information requested could result in its commercial interests being prejudiced as it would involve the release of more detailed performance data than that already published. This information could easily be utilised by its business competitors. It felt that this was particularly true at the present time as it was increasingly being targeted by private sector and

- overseas competitors who are not subject to the Act and therefore not subject to the same obligations to disclose information.
28. Royal Mail informed the Commissioner that it been advised by its sales and marketing specialists that one of the main factors a competitor would consider before deciding whether to target a particular part of the market was “propensity to switch” and a key measure of this was the number of complaints received in a particular area. Information about complaints and performance for specific areas of its business was of significant value to its competitors, enabling them to target the most profitable or vulnerable customers. Disclosing this information would put Royal Mail at a commercial disadvantage and weaken its positioning in the market as competitors are not obliged to publish similar information.
 29. It believed that business customers placed great emphasis on quality of service when choosing a postal operator. The release of the requested information would allow competitors to choose and target local businesses on the basis of performance data specific to a particular postcode and customer in order to persuade them to transfer their business. This would clearly have a detrimental impact on Royal Mail's commercial revenue.
 30. Royal Mail also felt that the release of detailed local information could lead to the information being used to damage its reputation and the public's confidence in its business and its staff.
 31. The Commissioner accepts that there are arguments that the release of this information could potentially impact on Royal Mail's commercial interests. However, he notes that, at the time the request was made, Royal Mail was only subject to limited competition to its mail collection and sorting services. Given the small geographical area to which the request related, the M22 postcode area in Manchester, and the limited nature of the information sought, it is not apparent that the release of the information would have been likely to have had a prejudicial effect on its business.
 32. It is also not clear that the disclosure of this type of information to Royal Mail's customers by its competitors would, on its own, result in a significant risk of competitors gaining business at the expense of Royal Mail. It is arguable that other factors, such as cost and the speed of delivery of mail, are likely to be of much greater importance to customers.
 33. As Royal Mail pointed out itself, it already made public, at the time of the request, details of the annual number of complaints for the whole Manchester postcode area, with a detailed breakdown of the categories within which the complaints fell. It also published other performance information on an annual and quarterly basis. A competitor who wished to make use of performance information about Royal Mail, would, therefore, already have been able to readily locate relevant information. It is difficult to see that the release of this additional limited information would provide competitors with information which would have been of significantly greater benefit to them than that which was already available.
 34. Having considered the information requested, the Commissioner is not satisfied that there was a real and significant risk to the commercial interests of Royal Mail

by its disclosure and therefore does not believe that the exemption in section 43 is engaged.

35. Having determined that the exemption in section 43 is not engaged, the Commissioner did not feel it necessary to consider the public interest arguments.

The Decision

36. The Commissioner's decision is that the public authority dealt with the following element of the request in accordance with the requirements of the Act:
- section 12 as it correctly estimated that responding to the second part of the complainant's request would exceed the appropriate limit.
37. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- section 17(5) as it failed to state in its refusal notice that section 12 was applicable to the second part of the complainant's request;
 - section 43(2) as it in incorrectly applied the exemption to the first part of the complainant's request.

Steps Required

38. The Commissioner requires the public authority to disclose to the complainant the information he requested in the first part of his request.
39. The Commissioner does not require the public authority to take any steps in relation to the breach of section 17 as the complainant has subsequently been informed of the public authority's reliance on section 12.
40. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

41. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

42. 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 2007

Signed

**Graham Smith
Deputy Commissioner**

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

Legal Annex

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Refusal of a request

Section 17(5) provides that -

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

Commercial interests

Section 43(2) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”