

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 3 July 2007**

**Public Authority:** UK Intellectual Property Office (formerly Patent Office)  
**Address:** Concept House  
Cardiff Road  
Newport  
South Wales  
NP10 8QQ

### Summary

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The Complainant requested all the information in files relating to his complaint to the Patent Office. The Patent Office disclosed all the information it held apart from one statement. The Patent Office refused to release the statement as it was created solely for the purpose of an inquiry under the Register of Patent Agent Rules 1978 and therefore exempt under section 32(2)(a) Court Records. The Patent Office also stated the information was provided in confidence from the Patent Agent and section 41 of the Act was also engaged. The Commissioner investigated the application of both exemptions and has found that the exemption under section 32(2)(a) is engaged in respect of the information requested and has therefore not investigated the application of section 41. The Commissioner finds that the Patent Office dealt with the request in accordance with the requirements of Part 1 of the Act and therefore requires no steps to be taken.

### 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 has advised that on 2 February 2005 he requested that The Patent Office disclose to him all information contained in files relating to his complaint to TheThe Patent Office.

3. On 24 March 2005 The Patent Office responded to the complainants request and disclosed all the information it held with the exception of a statement made by a Patent Agent, in response to the complainant's complaint. The Patent Office withheld this information under section 32(2)(a) 'Court Records' as the documents was supplied for an inquiry under the Register of Patent Agent Rules Act 1978 and under section 41 'Information Provided in Confidence' as the statement was made with an expectation of confidentiality.
4. The complainant requested a review of the decision to withhold the Patent Agent's statement on 22 November 2005.
5. The outcome of the internal review was communicated to the complainant on 6 December 2005 upholding the original decision on the grounds that disclosure would breach sections 32(2)(a) and 41 of the Act.

## The Investigation

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### Scope of the case

6. On 14 December 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant wished to complain that the documents released to him did not include The Patent Agent's statement and asked the Commissioner to investigate the Patent Office's refusal to disclose this document.

### Chronology

7. The Commissioner began by writing to The Patent Office on 20 December 2006 requesting further clarification regarding the application of the exemptions. Specifically the Commissioner asked The Patent Office to clarify if the inquiry has already taken place and the purpose for which the statement was made.
8. On 5 January 2007 the Commissioner wrote again to The Patent Office to clarify the statute under which the inquiry had been conducted.
9. On 30 January 2007 The Patent Office responded confirming the inquiry had taken place under the Patent Agent Rules 1978.
10. On 15 February 2007 The Patent Office responded in full to the Commissioner. They explained that the background to the information requested and why the statement by the Patent Agent was covered by the exemptions in section 32 and 41 of the Act.

## Analysis

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### Exemption 32 – Court Records

11. Section 32(2)(a) of the Act allows a public authority to withhold information if it is held only by virtue of being placed in the custody of the person conducting an inquiry. The term 'only by virtue' implies that if the public authority holds the information elsewhere it may not rely on the exemption.
12. An inquiry under the Patent Agent Rules 1978 and the subsequent Patent Agent Rules 1990 is an inquiry for the purposes of section 32(4)(c).
13. In the course of the investigation The Patent Office explained to the Commissioner that the complainant lodged a statement of complaint against the Patent Agent on 27 October 1989. On receipt of the complainant's allegations of misconduct against the Patent Agent, an inquiry was initiated under the Patent Agent Rules 1978. Under the procedures of The Patent Agent Rules 1978, rule 14, the Assistant Comptroller of The Patent Office wrote to the Agent formally inviting him to make written representations on the complaint. The Agent lodged a response on the 21 November 1989 and sent it directly to the Assistant Comptroller who was the person conducting the inquiry on behalf of the Secretary of State. It is this document which has been withheld.
14. The inquiry was concluded on the 17 January 1990 and the document requested is now solely held on Patent Office files relating to the inquiry.
15. The Commissioner is therefore satisfied that the exemption at section 32(2)(a) is engaged and the information requested is therefore exempt from disclosure. The Commissioner has not investigated the application of the exemption at section 41 as all the information requested is covered by section 32. As this is an absolute exemption no public interest test applies and therefore no further investigation is needed.

### 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.

### Steps Required

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17. The Commissioner requires no steps to be taken.

## Right of Appeal

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19. 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 3<sup>rd</sup> day of July 2007**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

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

## Legal Annex

### General Right of Access

**Section 1(1)** provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

**Section 1(2)** provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

## **Court Records**

**Section 32(1)** provides that –

“Information held by a public authority is exempt information if it is held only by virtue of being contained in-

- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
- (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
- (c) any document created by-
  - (i) a court, or
  - (ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.”

**Section 32(2)** provides that –

“Information held by a public authority is exempt information if it is held only by virtue of being contained in-

- (a) any document placed in the custody of a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration, or
- (b) any document created by a person conducting an inquiry or arbitration, for the purposes of the inquiry or arbitration.”

**Section 32(3)** provides that –

“The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of this section.”

**Section 32(4)** provides that –

“In this section-

- (a) "court" includes any tribunal or body exercising the judicial power of the State,
- (b) "proceedings in a particular cause or matter" includes any inquest or post-mortem examination,
- (c) "inquiry" means any inquiry or hearing held under any provision contained in, or made under, an enactment, and
- (d) except in relation to Scotland, "arbitration" means any arbitration to which Part I of the Arbitration Act 1996 applies.

**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.”

**Section 41(2)** provides that –  
“The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.”