

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 28 March 2007

Public Authority: Royal Mail Group PLC
Address: 148 Old Street
London
EC1V 9HQ

Summary

The complainant requested information from Royal Mail in relation to its Smart Stamp service. Royal Mail confirmed that the requested information was held but withheld it from disclosure under section 43(2) of the Freedom of Information Act (Prejudice to commercial interests). The Commissioner has concluded that Royal Mail correctly applied this exemption. He considers the exemption to be engaged in respect of all the requested information with the public interest favouring the maintenance of the exemption.

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 7 June 2005, the complainant requested the following information from Royal Mail in relation to its Smart Stamp service:
 1. The specification of the postage impression / indicia.
 2. The specification of the interface to the Royal Mail Smart Stamp server on the internet to purchase postage.
3. Royal Mail responded to the complainant on 1 July 2005, refusing to supply the information through the application of section 43 (prejudice to commercial interests). Royal Mail claimed that "the disclosure of these technical specifications could prejudice its commercial interests as it could be of interest to its competitors to copy, inspire or compare to their own products." It further

stated that “the public interest in withholding the information outweighs the public interest in disclosing it for the reason that the Royal Mail is a publicly owned company and therefore there is a real and direct public interest in its commercial performance and financial well-being.”

4. The complainant requested that Royal Mail conduct an internal appeal against its decision. In his appeal, the complainant pointed out that much of design and functionality of Smart Stamp software is already visible to competitors, and that making the technical data available to enable third parties to make compatible software for other mailing applications would increase revenue from Smart Stamp and is therefore in the direct commercial interest of Royal Mail.
5. Royal Mail responded to the complainant's appeal on 19 August 2005, in which it confirmed that its Review Panel had considered the request in full and decided to uphold its original decision. In its response, Royal Mail stated that:

Application of section 43(2)

The software was developed by an independent commercial organisation and enabling it to be freely re-created by others would limit its future marketing potential and damage our relationship with the developers.

Opening the design of the system up to existing and potential competitors would also remove any competitive advantage Royal Mail Group could gain from its investment in this area.

The proliferation of unsupported software accessing the Smart Stamp service will lead to technical problems for those users and ultimately damage the reputation of Royal Mail Group.

Public Interest Test

There is some public interest in increasing the range of systems available to users.

It is firmly in the public interest for Royal Mail Group to offer effective, competitive and viable postal services, and that disclosing the information requested would inhibit this by damaging Royal Mail Group's reputation and commercial investments.

There is also public interest in the ability of the private sector to develop and protect commercial products, as this plays an important role in the general health of the economy.

The Investigation

Scope of the case

6. On 23 August 2005 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
 - i. Competitors and third party application developers can already access the requested information. The postage impression is visible on envelopes and labels produced by the application and so easily reproduced.
 - ii. The interface to the Royal Mail Smart Stamp server to purchase postage is an industry standard XML/SOAP request and reply sent over https. This is also evident by observation of the Windows PC application.
 - iii. Encouraging third parties will encourage take up of the technology which is currently severely limited and cannot easily be integrated in to contact management systems. It will create additional revenue for the Royal Mail.
 - iv. Royal Mail already publish related technical specifications for postage paid impression, Royal Mail 4 State Bar codes for postcodes and delivery point suffix printing, and freepost impressions.
7. In a letter to the Commissioner of 21 June 2006, the complainant further stated that “users of alternative systems made to the specification requested would still pay Royal Mail for the annual fee and setup for Smart Stamp (and the stamps), so the Windows application would still be sold.”
8. The Commissioner therefore decided to focus his investigation upon whether Royal Mail was correct to withhold the requested information under section 43, by investigating the arguments put forward by both parties.

Chronology

9. On 11 October 2006, the Commissioner contacted Royal Mail, putting forward the complainant's arguments and asking for Royal Mail's response, together with any further representations it wished to make. Royal Mail responded on 8 November 2006, in which it stated the following:
 1. It is not possible for competitors to make use of the same technology without publication because the source code is held in commercial confidence and to replicate it the complainant would have to access software owned by a third party.
 2. It may be possible for third party application developers to design and produce electronic stamps but without access to software owned by third parties, and interfacing with Royal Mail Accounts and Revenue Protection via that software, the electronic stamps could not be used as evidence that postage had been paid.....Publication will not lead to increased revenue for Royal Mail.

3. The publication of specifications for Royal Mail Postage Paid Impressions, 4 State Bar Codes for postcodes and delivery point printing and freepost impressions is wholly different because these products are designed for the customers themselves to build their own software which can create the barcode to access the product. This is not true with Smart Stamp.
10. Royal Mail also emphasised to the Commissioner that in this case both Royal Mail Group's commercial interests and those of the third party software developers would be prejudiced if the information is released. It further stated that following further input from their technical advisors, it has become apparent that the information requested can reasonably be considered to be a trade secret under s43(1) of the Act.
11. It also informed the Commissioner that during the internal review it also considered the application of s41 (Information provided in confidence) on the grounds that in many cases software protocols remain the intellectual property of third party software developers and therefore are provided to Royal Mail Group in confidence under contract. It stated that Royal Mail was in continuing negotiations with the software developers at that time and it was unable to establish during the period of review whether or not this was the case for the specific requested. (The Commissioner therefore understands that section 41 was considered in respect of the requested information but was not applied.)
12. Following receipt of Royal Mail's response, the Commissioner was satisfied that he had sufficient detail to reach a decision on the case.

Findings of fact

13. In order to investigate the complaint, it was necessary for the Commissioner to be aware of the definition, purpose and nature of the Smart Stamp service. He understands the service to be a PC application which allows customers to use the internet to securely purchase postage from the Royal Mail Smart Stamp server, which then prints an indicia on an envelope or label which the Royal Mail can validate electronically within the postal system.

Analysis

Section 43(2) – Prejudice to commercial interests

14. Section 43 provides that –
 - (1) Information is exempt information if it constitutes a trade secret.
 - (2) 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).
 - (3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

15. The Commissioner agrees that the Smart Stamp service is a significant commercial product offered by Royal Mail to increase revenue and allow customers more channels through which to purchase postage. From his understanding of the way in which the system works, he is satisfied that the information requested by the complainant is not publicly available and that making this information available would be likely to damage the commercial interests of Royal Mail. This is because the Commissioner believes that disclosure would be likely to:
- allow competitors to use the technology which could take business away from Royal Mail,
 - harm Royal Mail's relationship and reputation with third party suppliers and restrict its ability to undertake such work in the future,
 - undermine the integrity of the system.
16. The Commissioner is therefore satisfied that section 43 is engaged in respect of all the withheld information.

Public Interest Test

17. For the exemption under section 43 apply, the public interest test must be considered. This test is set out in section 2(2)(b) of the Act and states that the obligation to disclose information under section 1(1)(b) does not apply if or to the extent that "in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information."
18. The Commissioner took into account the following public interest arguments in relation to the effect of disclosing the requested information:

For

- i. Disclosure would allow for other companies in the market place to more easily adopt the Smart Stamp service, encouraging a greater use of the technology.
- ii. Disclosure would facilitate a greater understanding and knowledge of the technical specifications of the service.

Against

- i. The information is commercially sensitive. Royal Mail no longer has a monopoly over postal delivery and must now operate in a fully liberalised market place. Disclosure of the requested information is likely to harm its competitive position.
- ii. There is a public interest in having a level playing field between companies in the postal sector. The Royal Mail has invested significant resources in developing the Smart Stamp service and its success is an important factor in the future performance of the company. Disclosure of this information

would harm its position vis-à-vis its competitors by undermining the commercial advantage this service gives to Royal Mail.

- iii. The Commissioner does not consider the Smart Stamp service to provide the Royal Mail with an unfair business/commercial advantage.
 - iv. There is a public interest in protecting the Royal Mail's relationship and reputation with third parties, in addition to the commercial interests of the third parties themselves. Disclosure of this particular information could undermine business confidence in Royal Mail.
 - v. The Smart Stamp service is a commercial product and there is a public interest in ensuring that Royal Mail obtains value for money for the product in which it has invested.
19. The Commissioner considers that the arguments against disclosure are not sufficiently strong override those in favour. Significantly, he does not believe that disclosure of this technical information would facilitate accountability and transparency of the service or for the resources Royal Mail has invested in any meaningful sense. He also considers that damage that disclosure of the information would cause Royal Mail in respect of its competitiveness and reputation significantly outweighs the public interest in any benefits it could bring to Royal Mail's competitors.
20. The Commissioner therefore believes that on balance, the public interest in maintaining the exemption under section 43 outweighs that in disclosure.

Section 43(1) – Trade Secret

21. In its letter to the Commissioner of 11 October 2006, Royal Mail stated that following further input from their technical advisors, it has become apparent that the information requested can reasonably be considered to be a trade secret under s43(1) of the Act. Given that Royal Mail did not rely on this provision prior to the Commissioner's investigation and that the Commissioner is satisfied that Royal Mail correctly applied section 43(2), he did not consider the application of section 43(1).

The Decision

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

Steps Required

23. The Commissioner requires no steps to be taken.

Right of Appeal

24. 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 28th day of March 2007

Signed

**Graham Smith
Deputy Commissioner**

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