

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 June 2008

Public Authority: Financial Services Authority
Address: 25 The North Colonnade
Canary Wharf
London
E14 5HS

Summary

The complainant requested information from the FSA about Barclays Private Bank's involvement with Columbian drugs money. The FSA refused to disclose the information under sections 31, 40, 43 and 44 of the Act. The Commissioner investigated and found the exemptions at sections 21, 40 and 44 of the Act are engaged. However, the Commissioner found that the exemption and sections 31 and 43 are not. The Commissioner requires the FSA to disclose the information withheld under sections 31 and 43 within 35 calendar days of this notice.

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. The complainant has advised that on 22 October 2006 she made the following request for information to the Financial Services Authority (FSA):

"I am writing to request under the terms of the FSA's freedom of information policy to be supplied with the information you hold with regard to the matters reported on in the article in the Sunday Times with regard to BPB's involvement with Columbian drugs money."

3. On 22 November the FSA provided a response informing the complainant that it could neither confirm nor deny if information is held by virtue of section 44 and 43 of the Act; and that in respect of section 43 the public interest favoured maintaining the exemption from the duty to confirm or deny.
4. The complainant requested an internal review of this decision on 29 November 2006 and the FSA responded on 10 January 2007. The internal review upheld the original decision to neither confirm nor deny.

The Investigation

Scope of the case

5. On 17 January 2007 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider if the FSA were correct to rely on section 44 and 43 of the Act to neither confirm nor deny if information is held.

Chronology

6. The Commissioner began his investigation by writing to the FSA on 28 November 2007. The Commissioner asked the FSA to provide further explanation regarding the application of both exemptions and for an expansion on the public interest test.
7. On 2 January 2008 the FSA responded informing the Commissioner that it was now prepared to confirm to the complainant that the FSA does hold information which falls within the scope of the request. On 15 January 2008 the FSA wrote to the complainant confirming this but informing the complainant that this information was being withheld from disclosure under sections 21, 31, 40, 43 and 44.
8. The Commissioner responded on 16 January 2008 requested a copy of the withheld information and further arguments on the application of the exemptions.
9. On 4 February 2008 the FSA responded providing further explanation regarding the exemptions at section 44 and 43 and on 25 March 2008 the FSA wrote again providing a copy of the withheld information and further arguments in relation to all the exemptions being applied.

Findings of fact

10. On 17 August 2006 the Sunday Times printed an Article entitled 'Barclays link in drug cash route. The article stated that:

“A subsidiary of Barclays Bank has been used to launder drugs money, according to findings of an undercover ‘sting’ operation by law enforcement agencies in America and Canada.

At one stage in the investigation the British government froze \$54m held with Barclays Private Bank (BPB) at the request of the United States.

It went on to state:

“Senior Managers at BPB, which serves wealthy clients, were questioned by members of Britain’s National Crime Squad (NCS) after a transatlantic investigation identified five accounts linked to a Columbian money laundering scam”

Analysis

Exemption: Section 21 ‘Information accessible to the applicant by other means’

11. Section 21(1) provides that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
12. The FSA have explained that the information being withheld under section 21 is copies of the newspaper articles cited in the complainant’s request, already held by the complainant, and paragraphs within the bundle of information which reflect background information in the public domain from these and other newspaper articles. The FSA have highlighted within the withheld information the paragraphs withheld under section 21. The Commissioner has compared this information with copies of newspaper articles available online through a simple search and provided to him by the complainant and agrees that the information withheld under section 21 reflects the information already held by the complainant and available in online newspaper articles.
www.timesonline.co.uk/tol/new/uk/article620883.ece
13. The Commissioner is therefore satisfied that that the information to which section 21 has been applied is reasonably accessible to the applicant and is therefore exempt from disclosure. As section 21 is an absolute exemption there is no requirement to go on to consider the public interest test.

Section 44 ‘Prohibitions on disclosure’.

14. Section 44 provides that information is exempt if its disclosure by the public authority is prohibited under any enactment. Section 44 has been applied to the majority of the withheld information.

15. Section 348 of the Financial Services and Markets Act 2000 (FSMA) provides that confidential information must not be disclosed by the FSA without consent. In order to establish if the information is covered by the statutory bar the Commissioner must consider the following questions, these questions relate to the wording of the bar: is the information confidential under the terms of the FSMA; has consent been given; has the information already been disclosed to the public and could the information be provided in the form of an anonymised summary.
16. The Commissioner first considered whether, for the purposes of section 348 of the FSMA, the information is confidential information. Confidential information as defined by section 348 must have been obtained by the FSA as part of its functions as the regulatory body overseeing the financial services industry and be information which relates to the business or other affairs of any person. The legal definition of 'person' includes corporations and limited companies.
17. The FSA explained that the information has been received from [REDACTED]. This information has either been recorded in documents created by these parties or provided to the FSA orally. The FSA also explained that the information was received for the purpose of carrying out its supervision of that firm, in this instance for assessing the effectiveness of its anti-money-laundering controls, so falls within Section 348.
18. The Commissioner is satisfied that where section 44 has been applied in this case the information was received by the FSA from [REDACTED] for the purpose of its functions in relations to the supervision of firms.
19. Section 348 (1) states that confidential information must not be disclosed without the consent of the person from whom the information was obtained; and if different, the person to whom the information relates. The FSA explained that in this case it has received information from [REDACTED] and it does not feel that consulting the external sources in questions would be likely to produce their consent to disclosure. Section 348 does not require consent to be sought. However, the Information Tribunal found in decision EA/2005/0019 Slann v Financial Services Authority, that where has not been given that the FSA should consider the likelihood that it would be. In this case it is the opinion of the FSA that consent from the parties would not be given.
20. Section 348 (4) recognises that information is not confidential if it has already been disclosed to the public or is in the form of a summary or collection of information framed so that it is not possible to ascertain information relating to a particular person. The information requested has not already been disclosed to the public and the information is about a specific firm and it would therefore not be possible to provide the information in any form which would not enable the person to be identified.
21. Section 349 of the FSMA states that section 348 does not prevent disclosure of confidential information which is made for the purpose of the carrying out of a public function and permitted by regulations made by the Treasury under this section. In the Information Tribunal decision EA/2005/0019 Slann v Financial

Services Authority, the tribunal found that the term public functions related to powers conferred on the FSA by legislation and not legislation such as FOIA, to which it was subject. Therefore making a disclosure under FOI was not carrying out a public function.

22. The Commissioner therefore finds that the information is covered by section 348 of the FSMA and that section 44 of the Act is engaged where applied. Section 44 is an absolute exemption and there is no requirement to consider the public interest test.

Section 43 'Commercial Interests'

23. Section 43 provides that information is exempt if its disclosure would or would be likely to prejudice the commercial interests of any person.
24. In considering whether the exemption applies in this case, the Commissioner has applied the tests for 'would or would be likely to prejudice' as set out in the Tribunal decision EA/2005/005 John Connor Press Associates v the Information Commissioner. The 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). This was further expanded in the Tribunal decision EA/2005/0026 Hogan v The Information Commissioner and EA/2006/0060 Bexley v the Information Commissioner.
25. In these cases the Tribunal considered what was meant by "would be likely to prejudice" and when a prejudice based exemption might apply. The Tribunal found that 'prejudice must be real, actual and of substance'. It went on to explain that there are two alternative ways in which disclosure can be said to prejudice and that one of these must be shown. Where prejudice 'would be likely to occur' the likelihood need not be more probable than not, though it should be real and significant; where prejudice 'would' occur, the chance should be greater – more probable than not. In this case the Commissioner has applied the test for 'would be likely to prejudice'.
26. The FSA have stated that the commercial interest of BPB is likely to be harmed by disclosing the information requested in certain ways. The information held by the FSA was obtained by it for the purpose of carrying out its supervision of BPB, in particular assessing the effectiveness of the firm's anti money laundering controls. Disclosure of the information could lead to unfair or unjustified comment and speculation about the firm i.e. that a connection with Columbian drugs money does, or may exist or that the FSA has concerns regarding BPB activities, which could affect the firm's brand and reputation in the market in which they operate and undermine the confidence of existing and potential customers. The firm's ability to secure new funding for its business could also be affected.
27. Furthermore, the FSA argue that the information withheld under section 43 is intrinsically linked to the information withheld under section 44. The FSA explained that to provide the information withheld under section 43 without the information withheld under section 44 would provide the information without any context. The analysis and opinions of the FSA would therefore be seen without

the benefit of any underlying information with which to contextualise or interpret the analysis or opinions. This could result in the public gaining a false impression that BPB's anti money laundering controls are in some way inadequate, which in turn could encourage fraudsters to target the firm. All of the above could affect the firm's brand and reputation in the market in which they operate and undermine the confidence of existing and potential customers.

28. The Commissioner has viewed the information withheld under section 43 and considered the arguments presented by the FSA. Whilst the Commissioner does not accept that 'misinterpretation' of the information is a valid reason for withholding information, he does note that in this case he has upheld the application of section 44 to the majority of the withheld information. However, the Commissioner considers that this still does not provide sufficient justification to withhold the information under section 43. The FSA would be free to provide context to the information if it were disclosed or an explanation to the public to help clarification.
29. The FSA also argued that disclosure would bring unwarranted attention to the firm as it does not publish this sort of information routinely. Whilst the Commissioner appreciates the concerns of the FSA he does not accept that this is a valid argument for withholding the information under section 43.
30. For the reasons above the Commissioner finds that section 43 is not engaged as he does not consider that disclosure would, or would be likely to prejudice the commercial interests of any party.

Section 31 'Law enforcement'

31. Section 31(1) (g) provides that information is exempt if its disclosure would, or would be likely to prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2). The FSA states disclosure of the information would prejudice:
 - (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; and
 - (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become authorised to carry on.
32. The FSA has also applied section 31 to the information withheld under section 43. The FSA argue that disclosure would be likely to result in firms being less open with it and so adversely affect its ability to monitor their compliance with its requirements. The FSA explained that the purposes listed in 31 (2) relate to the FSA's monitoring function under the FSMA. The FSA monitors whether regulated firms are complying with any requirements imposed on them by the FSMA.

33. The Commissioner is satisfied that the FSA has functions in relation to section 31(2) (a,b,c and d). In order to engage the exemption the Commissioner must decide if disclosure of the information would prejudice any of these functions. The Commissioner has considered the definition of prejudice as discussed in Tribunal decision EA/2005/005 John Connor Press Associates v The Information Commissioner. (see paragraphs 24 and 25).
34. Disclosure of such information, the FSA argues, would harm its effectiveness as regulator. Although the FSA has powers of compulsion that can be used against firms the use of such powers has disadvantages. These include the time and resources necessary to ensure their effective deployment and the presumption that the FSA knows in advance what information it is seeking.
35. The Commissioner recognises the concerns of the FSA that disclosure could impact on its relations with firms, impinge on the free and candid exchange of views and therefore on its effectiveness as a regulator. However, the Commissioner does not consider that any of these arguments directly relate to a prejudice to any of the functions in section 31(2)(a),(b),(c) and (d). The Commissioner notes that the FSA does have powers under the FSMA to compel firms to comply with it and provide it with information and whilst the FSA may find it easier to maintain an informal relationship it is not necessary for these informal relations to continue for the FSA to maintain its ability to effectively regulate. The Commissioner also notes that it is in firms' interests to maintain good relationships with the FSA in order to resolve problems swiftly without the need for more formal, public action being taken against them. The Commissioner does not consider that the 'disadvantages' cited by the FSA for the use of its powers demonstrate any prejudice to its functions as regulator.
36. The Commissioner finds that the exemption at section 31 is not engaged as the FSA have failed to demonstrate that disclosure would, or would be likely to prejudice any of the purposes specified.

Section 40(2) 'Personal data'

37. Section 40(2) provides that information is exempt if the information is the personal data of someone other than the applicant, (third party data), and disclosure of the information would breach any of the data protection principles. The term 'personal data' includes information about a living individual from which that individual can be identified.
38. In order for the Commissioner to reach a decision as to whether section 40(2) has been applied correctly the Commissioner must first consider if the information is personal data and then decide if disclosure would breach any of the data protection principles.
39. Section 40 has been applied to information [REDACTED]. Having viewed the information the Commissioner is satisfied that the information is personal data.

40. The Commissioner must therefore decide if disclosure of the information would breach any of the data protection principles. The first data protection principle requires that personal data be processed fairly and lawfully. When considering compliance with the First Data Protection Principle it is necessary to consider, among other things, if the disclosure is necessary for a legitimate interest of the recipient (the public), and then even if it is necessary would it nevertheless be unwarranted by reason of prejudice to the rights and freedoms of the data subject.
41. The FSA explained that in deciding if disclosure of the information would be fair to the individuals concerned it took into account a number of factors. In favour of disclosure it considered that such transparency and openness allows the public to be able to make more informed decision about how the FSA responds to concerns expressed about regulated firms. [REDACTED].
42. Furthermore, the FSA explained that the release of such information could be seen as publicly naming the individuals concerned. This would cause distress to the individuals, in particular because there was no formal determination that any of the individuals involved were guilty of misconduct or had failed to comply with FSA requirements, and it would also be damaging to their professional life to be so publicly named in such a way without having been given an opportunity to rebut the allegations by going through the disciplinary process.
43. The FSA also stated that the information about the family members involved in the investigation had been received from third parties this, it states, means that it is likely that they are not aware that the FSA holds the information and so therefore would not expect the information to be disclosed.
44. The Commissioner accepts that to release this kind of personal data about the individuals would contravene the fairness element of the first data protection principle.
45. The Commissioner therefore finds that section 40 is engaged.

The Decision

46. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - (i) the application of section 44(1) to the withheld information
 - (ii) the application of section 40(2).
 - (iii) the application of section 21(1).
47. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - (i) The FSA breached section 1(1) (b) the the Act as it misapplied sections 43(2) and 31(1) (a), (b), (c) and (d) to the withheld information.

- (ii) The FSA breached section 1(1)(a) for failing to confirm it held information prior to the complaint being made to the Commissioner and section 10(1) for failing to do so within the required time limit.
- (ii) The FSA, during the course of the investigation, sought to rely on exemptions which were not referred to in the refusal notice or at the internal review. This is in breach of section 17(1) (b).

Steps Required

48. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Disclose the information withheld under section 43(2) and 31(1) (a),(b), (c) and (d)

49. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

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

Right of Appeal

51. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 26th day of June 2008

Signed

**Gerrard Tracey
Assistant 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”.”

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Information Accessible by other Means

Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 21(2) provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

Section 21(3) provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”

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),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority

- by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

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,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,
- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.”

Section 31(3) provides that –

“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 any of the matters mentioned in subsection (1).”

Personal information.

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 40(5) provides that –

“The duty to confirm or deny-

- (a) 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 subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) he giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
 - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).”

Section 40(6) provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.

Commercial interests.

Section 43(1) provides that –

“Information is exempt information if it constitutes a trade secret.”

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).”

Section 43(3) provides that –

“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).”

Prohibitions on disclosure.

Section 44(1) provides that –

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.”

Section 44(2) provides that –

“The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).”

Financial Services and Markets Act 2000

348 Restrictions on disclosure of confidential information by Authority etc

(1) Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of—

- (a) the person from whom the primary recipient obtained the information; and
- (b) if different, the person to whom it relates.

(2) In this Part “confidential information” means information which—

- (a) relates to the business or other affairs of any person;
- (b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the Authority, the competent authority for the purposes of Part VI or the Secretary of State under any provision made by or under this Act; and
- (c) is not prevented from being confidential information by subsection (4).

(3) It is immaterial for the purposes of subsection (2) whether or not the information was received—

- (a) by virtue of a requirement to provide it imposed by or under this Act;
- (b) for other purposes as well as purposes mentioned in that subsection.

(4) Information is not confidential information if—

- (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section; or
- (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.

(5) Each of the following is a primary recipient for the purposes of this Part—

- (a) the Authority;
- (b) any person exercising functions conferred by Part VI on the competent authority;
- (c) the Secretary of State;
- (d) a person appointed to make a report under section 166;
- (e) any person who is or has been employed by a person mentioned in paragraphs (a) to (c);
- (f) any auditor or expert instructed by a person mentioned in those paragraphs.

(6) In subsection (5)(f) “expert” includes—

- (a) a competent person appointed by the competent authority under section 97;
- (b) a competent person appointed by the Authority or the Secretary of State to conduct an investigation under Part XI;
- (c) any body or person appointed under paragraph 6 of Schedule 1 to perform a function on behalf of the Authority.

349 Exceptions from section 348

(1) Section 348 does not prevent a disclosure of confidential information which is—

- (a) made for the purpose of facilitating the carrying out of a public function; and

(b) permitted by regulations made by the Treasury under this section.

(2) The regulations may, in particular, make provision permitting the disclosure of confidential information or of confidential information of a prescribed kind—

(a) by prescribed recipients, or recipients of a prescribed description, to any person for the purpose of enabling or assisting the recipient to discharge prescribed public functions;

(b) by prescribed recipients, or recipients of a prescribed description, to prescribed persons, or persons of prescribed descriptions, for the purpose of enabling or assisting those persons to discharge prescribed public functions;

(c) by the Authority to the Treasury or the Secretary of State for any purpose;

(d) by any recipient if the disclosure is with a view to or in connection with prescribed proceedings.

(3) The regulations may also include provision—

(a) making any permission to disclose confidential information subject to conditions (which may relate to the obtaining of consents or any other matter);

(b) restricting the uses to which confidential information disclosed under the regulations may be put.

(4) In relation to confidential information, each of the following is a “recipient”—

(a) a primary recipient;

(b) a person obtaining the information directly or indirectly from a primary recipient.

(5) “Public functions” includes—

(a) functions conferred by or in accordance with any provision contained in any enactment or subordinate legislation;

(b) functions conferred by or in accordance with any provision contained in the Community Treaties or any Community instrument;

(c) similar functions conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom;

(d) functions exercisable in relation to prescribed disciplinary proceedings.

(6) “Enactment” includes—

(a) an Act of the Scottish Parliament;

(b) Northern Ireland legislation.

(7) “Subordinate legislation” has the meaning given in the [1978 c. 30.] Interpretation Act 1978 and also includes an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation.