

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 30 July 2008

Public Authority: Student Loans Company Ltd
Address: 100 Bothwell Street
Glasgow
G2 7JD

Summary

The complainant made a request to the Student Loans Company Ltd (the "SLC") for a copy of the 'Class Training Manual'. The SLC refused to disclose the manual, stating that it believed that this information constituted a trade secret and was therefore exempt from disclosure under section 43(1). After investigating this complaint the Commissioner decided that the manual did not constitute a trade secret. Therefore the exemption is not engaged, and the information should be disclosed. The Commissioner also decided that the SLC did not meet the requirements of section 17(1)(b). The Commissioner therefore found that the SLC had acted in breach of section 1(1)(b) of the Act. He also found that it had acted in breach of section 17(1)(b) and section 10 of the Act.

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 contacted the SLC in an email dated 28 December 2006 and requested the following information,

"The document held by SLC entitled 'Class Training Manual'...It is understood that this document originates from SLC's training department and is used to train new members of staff. A complete copy is required."

For ease of reference the requested information will be referred to as the 'Manual' throughout the rest of this Notice.

3. The SLC responded in an email dated 26 January 2007. It confirmed that it did hold a copy of the Manual, but that it believed that it constituted a trade secret and was therefore exempt under section 43. It stated that it believed that the public interest in maintaining the exemption outweighed the public interest in disclosure. It argued,

“The reason for this decision is that we do not consider that the access to this information would be of benefit to the public generally or would assist you with the particular issues you have raised with your own case. On the contrary this is an internal training manual which details methods by which our own staff can update accounts. It is considered that this is information which is particular to SLC and which we require to protect to ensure that our systems remain secure.”

It informed him of his right to request an internal review, and his right to appeal to the Commissioner.

4. The complainant requested an internal review in a letter dated 13 February 2007.
5. The SLC carried out an internal review and responded in a letter dated 12 March 2007. It upheld its previous decision to withhold the Manual, but did not advance any further arguments to support this position, although it informed the complainant that,

“I agree...that this document forms part of Student Loans Company's particular systems processes and that there is no benefit to the public in releasing this information.”

The SLC informed the complainant of his right to appeal to the Commissioner.

The Investigation

Scope of the case

6. The complainant contacted the Commissioner on 28 March 2007 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the SLC was correct to withhold the Manual. In support of his complaint, the complainant provided the Commissioner with some information provided to him by the SLC in response to another request under the Act which he alleged was extracts from the Manual.
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

8. The Commissioner wrote to the SLC on 16 May 2008 and asked for a copy of the Manual. In relation to its use of section 43(1) the Commissioner asked the SLC to

provide further submissions as to why it believed that the Manual constituted a trade secret, and why it believed that the public interest in maintaining the exemption outweighed the public interest in disclosure. He also asked the SLC to clarify whether it was its belief that the disclosure of the Manual would endanger the security of its IT system. Finally he drew SLC's attention to the material previously disclosed to the complainant (see paragraph 6 above), and asked it to confirm whether this material was an extract from the Manual. If it was an extract from the Manual, he asked the SLC to explain why it did not also believe that this information fell under section 43(1).

9. In a letter dated 17 June 2008 the SLC responded to the Commissioner and provided him with a copy of the Manual. It provided further arguments as to why it believed that the Manual constituted a trade secret, and also why it believed that the public interest in maintaining the exemption outweighed the public interest in disclosure. In relation to the material previously disclosed to the complainant the SLC confirmed that,

“...excerpts of the Training Manual were provided to the complainant in response to a previous request made by him. However, on assessing his subsequent request for the entire Manual it was thought inappropriate, for the reason outlined above, to release the entire document.”

The 'reason outlined above' referred to here are arguments advanced by the SLC in this letter as to how it believed that the disclosure of the Manual would endanger the security of its IT system.

Analysis

Procedural matters

Section 17

10. The Commissioner considered whether the SLC has complied with its obligations under section 17(1) of the Act.
11. Section 17(1) requires a public authority, which is relying upon an exemption in order to withhold requested information, to issue a refusal notice which
- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
12. In the initial refusal notice (email dated 26 January 2007) the SLC informed the complainant that it believed that,

“This document is being withheld as it falls under the exemption in section 43 of the Freedom of Information Act as the company considers that this constitutes a trade secret.”

13. As the SLC failed to refer to the specific sub-section number of the exemption claimed, the Commissioner believes that the SLC has not complied with section 17(1)(b) of the Act.
14. The full text of section 17 can be found in the Legal Annex at the end of this Notice.

Exemption

Section 43(1)

15. Section 43(1) provides an exemption for information which constitutes a trade secret. This is a qualified exemption, and is therefore subject to the public interest test.
16. The full text of section 43 can be found in the Legal Annex at the end of this Notice.
17. The SLC informed the complainant that it believed that the Manual was exempt from disclosure as it believed that it constituted a trade secret. In providing further submissions to the Commissioner as to why it held this view the SLC explained that,

“The Class system is unique to the [SLC] and is a highly valuable tool used in the carrying out of our business. The Training Manual is only provided to relevant staff within the Company and we would want, at all times, to maintain control of who has access to this Training Manual.

A great deal of work went into producing, not only the Training Manual, but also the Class system itself and to release such information into the public domain would leave the [SLC] open to potential security breaches in relation to the unauthorised access of our systems which could have serious consequences given the nature of the information held on the system.”

18. The Commissioner’s own guidance on section 43 (“Awareness Guidance No. 5”) points out that what is meant by the term “trade secret” is not defined by the Act. However, it advises that there are certain questions that should be considered in determining whether something is a trade secret. These include:-
 - i. Is the information used for the purpose of trade?
 - ii. Is it obvious from the nature of the information or, if not, has the owner made it clear that he or she considers releasing the information would cause them harm or be advantageous to their rivals?
 - iii. Is the information already known?

iv. How easy would it be for competitors to discover or reproduce the information for themselves?

The Commissioner has considered each of these questions in turn.

Is the information used for the purpose of trade?

19. The Commissioner's awareness guidance indicates that information may be commercially sensitive without being the sort of secret which gives a company a competitive edge over its rivals, and therefore constituting a trade secret. In relation to the information contained in the Manual the Commissioner is not persuaded that its contents equate to the sort of information which would give the SLC a competitive edge, as he does not believe that it is in competition with any other company for the administration of student loans. The Manual is an internal training manual for the computer system used by the SLC's staff for the administration of customer accounts, and the Commissioner is not persuaded that the disclosure of this information would give competitors a competitive edge.

Is it obvious from the nature of the information or, if not, has the owner made it clear that he or she considers releasing the information would cause them harm or be advantageous to their rivals?

20. In considering this question the Commissioner has noted that in *Lansing Linde Ltd v Kerr [1991]*, the court defined a trade secret as "...information which, if disclosed to a competitor, would be liable to cause real (or significant) harm to the owner of the secret. I would add first, that it must be information used in a trade or business, and secondly that the owner must limit the dissemination of it or at least not encourage or permit widespread publication."
21. In its correspondence with the complainant and with the Commissioner the SLC has stated that it believes that the disclosure of the Manual would leave the SLC open to potential security breaches in relation to the unauthorised access of its IT systems.
22. However, as the Commissioner has already noted, he does not believe that the SLC is in competition with any other company for the administration of student loans.
23. Further to this, the SLC has not provided any further arguments as to how the release of the Manual would compromise the security of its IT systems. The Commissioner believes that as this document is used in the training of SLC staff in the use of the software used to administer customer accounts the Manual would be widely disseminated within the organisation. After considering the contents of the manual the Commissioner notes that there is no evidence of a security notice in the Manual, warning staff of the sensitivity of the document and/or warning about the dissemination of the material. Furthermore apart from stating that the Manual "is only provided to relevant staff," the SLC has not provided any evidence to suggest this. Therefore he is not persuaded by the SLC's arguments as to the sensitivity of this document.

24. In reaching this view the Commissioner has also noted that the SLC has previously disclosed extracts from the Manual to the complainant in response to an earlier request under the Act. The SLC has not argued, or provided any evidence that, the disclosure of these extracts from the Manual has led to any harm to the company, or given any advantage to any rival.

Is the information already known?

25. In his awareness guidance for section 43(1) the Commissioner noted that, “it may be a statutory requirement for the information to be published in some form...The information may already be common knowledge in the business community. If the information is known beyond a narrow circle, it is unlikely to constitute a trade secret.”
26. After considering the circumstances of this case the Commissioner has again noted that the SLC has already disclosed extracts from the Manual to the complainant in response to an earlier request under the Act.

How easy would it be for competitors to discover or reproduce the information for themselves?

27. As the Commissioner has already noted, he does not believe that the SLC is in competition with any other company for the administration of student loans.
28. Having considered all the factors above, and given the lack of compelling arguments provided by the SLC, the Commissioner is not satisfied that the Manual constitutes a trade secret. Therefore he does not accept that section 43(1) of the Act is engaged.
29. As he has decided that the exemption is not engaged, the Commissioner has not gone on to consider the application of the public interest test.

The Decision

30. The Commissioner’s decision is that the SLC did not deal with the request for information in accordance with section 1(1)(b) of the Act in that it inappropriately relied upon section 43(1) to withhold the Manual. In failing to comply with the requirements of section 1(1)(b) within twenty working days it also breached section 10.
31. The SLC also acted in breach of section 17(1)(b) in that it did not specify in the refusal notice which sub-section number of the exemption it was seeking to rely upon.

Steps Required

32. The Commissioner requires the SLC to take the following steps to ensure compliance with the Act:

The Manual should be disclosed to the complainant within 35 calendar days of the date of this Notice.

Failure to comply

33. 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

34. 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.

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 30th day of July 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

Section 17

- (1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -
- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies.
- (2) Where—
- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—
 - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
 - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
 - (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2, the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.
- (3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -
- (a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or
 - (b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

- (4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.
- (5) 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.
- (6) Subsection (5) does not apply where –
 - (a) the public authority is relying on a claim that section 14 applies,
 - (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
 - (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.
- (7) A notice under section (1), (3) or (5) must –
 - (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
 - (b) contain particulars of the right conferred by section 50.

Section 43

- (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).