

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 October 2008

Public Authority: Her Majesty's Revenue and Customs ('HMRC')
Address: 4th Floor
100 Parliament Street
London
SW1A 2BQ

Summary

The complainant requested a number of pieces of information from HMRC about a particular trust and a particular company. HMRC refused to confirm or deny whether it held any information falling within the scope of the request on the basis of section 44(2) of the Act and its interaction with section 44(1)(a) of the Act and sections 18(1) and 23(1) of the Commissioners for Revenue and Customs Act 2005. The Commissioner has concluded that HMRC was correct to refuse to confirm or deny whether it holds any information falling within the scope of the request. However, the Commissioner has concluded that by failing to issue a refusal notice within 20 working days HMRC breached section 17(1) 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 submitted a number of requests in June 2007 and February 2008 seeking access to information that HMRC may hold about two entities called 'lfield Golf Ltd' and 'lfield Golf and Country Club'.
3. It is the Commissioner's understanding that the complainant was not provided with any information in response to these requests, nor was he provided with a confirmation or denial as to whether HMRC held any relevant information.

4. The complainant subsequently submitted a revised version of his requests to HMRC on 3 March 2008. The Commissioner understands that the complainant revised these earlier requests so that, in his opinion, it complied with the Data Protection Act and the Act so as to ensure that he was not requesting information that could identify an individual or individuals.
5. The request of 3 March 2008 read:
 - '1) Does your department hold information regarding a trust that was created by, or between Ifield Golf Club Ltd and Ifield Golf and Country Club?
 - 2) If so, what is the name of that trust?
 - 3) When was that trust created?
 - 4) What property is held by the trust?
 - 5) Does the trust hold any overseas interests, bank accounts or investments?
 - 6) Are any of the beneficiaries of the trust 'named' individuals?'
6. On 23 April 2008 HMRC responded to this request and explained that it was refusing to confirm or deny whether it held information falling within the scope of this request on the basis of the exemption contained at section 44(2) of the Act and the interaction of sections 18(1) and 23(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA). (HMRC provided the complainant with a detailed explanation as to why it considered this exemption to apply.)
7. The complainant asked HMRC to conduct an internal review on 26 April 2008 and highlighted a number of reasons why HMRC could not rely on the exemption cited above. (These reasons are summarised in the 'Analysis' section below - see paragraph 27.)
8. HMRC informed the complainant of the outcome of its internal review on 2 May 2008. The internal review upheld HMRC's initial decision that the Act allowed HMRC to refuse to confirm or deny whether it held information falling within the scope of this request.

The Investigation

Scope of the case

9. On 29 May 2008 the complainant contacted the Commissioner and complained solely about HMRC's handling of his 3 March 2008 request (i.e. he did not complain about HMRC's handling of his earlier requests).

Chronology

10. The Commissioner contacted HMRC on 9 July 2008 and asked to be provided with an explanation as to why it believed section 44(2) of the Act applied to this request – i.e. why it believed that it was exempt from having to confirm or deny

whether it held any information falling within the scope of this request. The Commissioner also asked HMRC to provide him with a copy of any information falling within the scope of the request, should such information in fact be held.

11. On 12 August 2008 HMRC provided the Commissioner with a detailed explanation as to why it believed that section 44(2) of the Act allowed it to refuse to confirm or deny whether it held information falling within the scope of this request. HMRC suggested to the Commissioner that it was possible to judge in this case whether the decision to refuse to confirm or deny to the complainant whether it held any relevant information was correct, without sight of any relevant information itself (should such information in fact be held). This was because in HMRC's opinion, it was clear from the wording of this request that any information which may be held which would fall within the scope of the request, would by definition, fall within the scope of section 44.

Analysis

Section 44 – prohibition on disclosure

12. The Commissioner has outlined in detail below HMRC's reasoning as to why it is correct to rely on section 44(2). The Commissioner has then summarised the complainant's arguments as to why he believes section 44(2) has been incorrectly applied. Finally, the Commissioner has explained his findings, with reference to both HMRC's and the complainant's submissions, as to whether section 44(2) has been correctly applied.

HMRC's position

13. HMRC has noted that the section 1(1) of the Act provides two rights to those who make requests for information:
 - (a) the right to be informed in writing by the public authority whether or not it holds the information sought in the request (known as the duty to confirm or deny); and
 - (b) if that is the case, the right to have that information communicated.
14. However, HMRC noted that these rights are subject to exemptions and in this case HMRC believed that section 44(2) exempted it from confirming or denying whether it held any information falling within the scope of this request. HMRC's reasoning for reaching this conclusion is the following:
15. Section 44(1)(a) exempts information from disclosure if its disclosure is prohibited by any other enactment or rule of law. Section 18(1) of the CRCA provides that Revenue and Customs officials may not disclose information that it is held by HMRC in connection with one of its functions. The information requested in this case, if held, would be held in connection with HMRC's functions of assessing and collecting tax.

16. Section 23(1) of the CRCA further provides that information relating to a person, the disclosure of which is prohibited by 18(1), is exempt information for the purposes of section 44(1)(a) of the Act if its disclosure would specify the identity of the person to whom the information relates, or would enable the identity to be deduced. HMRC has highlighted the fact that paragraph 110 of the explanatory notes of the CRCA states that 'person' includes both natural and legal persons such as companies. As both specific companies and trusts are identified in the request and would thus be identified in any relevant information, the exemption clearly applies.
17. Section 44(2) of the Act provides that the duty to confirm or deny whether information is held does not apply if the confirmation or denial itself would fall within the provisions of section 44(1). HMRC has argued that if it disclosed whether it held information falling within the scope of the request it would be revealing something about the affairs of the trust and company named in the request. This would fall within section 44(1)(a) and hence section 44(2) exempts HMRC from the duty to confirm or deny.
18. HMRC has acknowledged that section 18(2) sets aside the duty of confidentiality established by section 18(1) in some circumstances. (In essence, a number of gateways to disclosure or exceptions to confidentiality are created by section 18(2)). However, in HMRC's view section 18(2) does not affect the interaction of sections 18(1) and 23 of the CRCA because section 23 makes no mention of sections 18(2) and (3). Consequently, in HMRC's opinion, the only questions to be considered for section 44(1)(a) to be engaged are 'Is the information held by HMRC for one of its functions?' and 'Does it relate to an identifiable person?'. If the answer is yes to both of these questions the information is exempt from the right to know under the Act.
19. Moreover, HMRC has suggested that the clear intention of Parliament was to remove this category of information from the right of access under the Act as shown by the following statement made by the then Paymaster General, Dawn Primaralo on the introduction of section 23 of CRCA. It followed concerns expressed during the passage of the bill through Parliament that information HMRC held about taxpayers might be disclosed under the Act:

'Taxpayer confidentiality remains of paramount importance in the new department. As I have said, for that reason, the Bill ensures that information connected with a taxpayer is not discloseable under the Freedom of Information Act. That was always the intention, but the new clause puts that beyond doubt – that information will not be discloseable under the Act. However, much of the information that Her Majesty's Revenue and Customs will hold is not taxpayer confidential – for example, information about the department's internal processes. The new clause identifies that such information will be subject to the Freedom of Information Act. Therefore, if a person requests information that it is not taxpayer confidential, that request will be considered under the Act'.

20. In HMRC's view, if Parliament had intended for section 23 of the CRCA to take account of section 18(2) and section 18(3) exceptions it would have expressly said so.
21. Furthermore, HMRC argued that if it was the intention of Parliament that section 18(2) conditions should be considered then section 23 would become unnecessary. If section 18 read as a whole prohibits disclosure then it is obvious that the exemption in section 44(1)(a) of the Act can be relied upon and there is no need to add that it is exempt information if it would specify the identity of the person to whom the information related or would enable the identity of such a person to be deduced. Consequently, in HMRC's opinion on such a construction section 23(1) becomes a provision whose purpose would be to provide a needless reassurance.
22. However, HMRC noted that it may on a discretionary basis and outside the terms of the Act, disclose information (if held) where it received the necessary consent of the customer because of the exception to the duty of confidentiality contained in section 18(2)(h) of the CRCA. However, HMRC explained that it would only consider such a disclosure to (a) the customer itself where the request is made by an appropriate officer; or (b) to a person who has provided HMRC with the company's or other customer's specific authority permitting HMRC to disclose its information to them.
23. Finally, HMRC explained why even if the exceptions contained in 18(2) were applicable it did not believe that any of them would apply in this case. In its submissions to the Commissioner, HMRC noted that the complainant had highlighted why he considered a number of the exceptions to apply. The Commissioner has detailed below HMRC's views on these issues:
24. Section 18(2)(b) provides that section 18(1) does not apply to a disclosure made in accordance with section 20 or 21 of the CRCA. In particular, section 20(2) applies to disclosures made:
 - (a) to a person exercising public functions (whether or not in the UK)
 - (b) for the purposes of the prevention or detection of crime, and
 - (c) in order to comply with an obligation of the UK, or Her Majesty's Government, under an international or other agreement relating to the movement of persons, goods or services.
25. HMRC has noted that for section 20(2) to apply all three conditions listed above must be met. Furthermore, HMRC has noted that the complainant is not, as far as it is aware, a person exercising public functions (and thus section 20(2)(a) is not met), nor would disclosure to him be for the purposes specified in 20(2)(c). Therefore, HMRC does not believe that the exception contained at section 18(2)(b) is met.
26. Section 18(2)(c) and 18(2)(d) provide that section 18(1) does not apply to a disclosure made for the purposes of civil or criminal proceedings relating to a matter in respect of which HMRC has functions. However, HMRC has suggested that it is not aware of any proceedings relating to matters in respect of which

HMRC has functions in relation to this request and therefore disclosure could not be for one of these purposes.

The complainant's position

27. In his correspondence with HMRC and the Commissioner the complainant advanced a number of arguments which supported his position that section 44(2) did not apply to his request. The Commissioner has summarised his reasons as follows:
- (i) Section 18(1) cannot be relied upon because the exceptions contained at sections 18(2)(b), 18(2)(c) and 18(2)(d) are engaged.
 - (ii) The request is being made for the purposes of the prevention and detection of crime under section 20(2) of the CRCA.
 - (iii) The trustees cannot be contacted regarding this matter in order to seek consent as to do so would alert them to the ongoing investigations and prevent the detection and prevention of crime.

The Commissioner's position

28. The Commissioner is satisfied that the requested information, if held, would fall within the scope of section 18(1) of the CRCA because it would have been acquired as a result of, or held in connection with, the exercise of HMRC's taxation functions (i.e. income tax, corporation tax and/or capital gains tax) in respect of the settlors and trustees of the trust named in the request.
29. The Commissioner is also satisfied that the settlors of the trust (if any) are identified in the request, as is the company Ifield Golf Club Ltd, and furthermore the trustees could be identifiable from the information that has been requested (if, of course, such information was held). Therefore, the Commissioner is satisfied that the requested information, if held, meets the requirements of section 23(1) of the CRCA.
30. Furthermore, the Commissioner agrees with HMRC's position as outlined above that if it confirmed that it held information of the nature requested then it would be revealing something about the affairs of trustees and the company named in this request. Consequently simply providing confirmation that it held this information (if indeed it did hold such information) would fulfil sections 18(1) and 23(1) of the CRCA.
31. Given the construction of section 44 of the Act – i.e. the duty to confirm or deny contained at section 1(1)(a) of the Act is removed by section 44(2) simply if confirmation or denial would fall within the scope of sections 44(1)(a) to 44(1)(c) - the Commissioner agrees with HMRC's conclusion which is that section 44(2) provides that the duty to confirm or deny does not arise in this case.
32. However, in the Commissioner's opinion the application of section 44 is not as simple as HMRC's position outlined above suggests. The Commissioner disagrees with HMRC's position that section 18(2) of CRCA does not affect the interaction of sections 18(1) and 23(1) of the CRCA. Rather the Commissioner

believes that it is not possible to determine whether or not section 18(1) is engaged without reference to section 18(2).

33. In the Commissioner's opinion the correct application of this particular statutory bar is the following: first whether the information is held in connection with a function of HMRC and thus meets the requirements of section 18(1); second, where none of the exceptions in section 18(2) apply; and third, whether the information relates to an identifiable person and thus the requirements of section 23(1) are met.
34. In the recent Information Tribunal decision *Mr Andrew John Allison v Information Commissioner and HMRC* (EA/2007/0089; 22 April 2008) the Tribunal agreed with the Commissioner's interpretation of the application of this statutory bar:

'The Tribunal feels that on balance the arguments of the Commissioner are to be preferred. First, the Tribunal finds it difficult to find any ambiguity on the face of section 18(1) and section 18(2) of the 2005 Act such as to import the necessity to have recourse to Hansard under the well known principles considered in *Pepper v Hart*. The language of the relevant provisions in the 2005 Act is clear. It is simply not possible to determine whether or not section 18(1) is engaged without reference to section 18(2). Moreover, on a clear reading of the statute, in the Tribunal's view, it is only if the information is such that none of the exceptions in section 18(2) apply that it can be said that section 18(1) is fully engaged and that the information may not be disclosed. Next and perhaps crucially, section 18(1) whether or not coupled with section 18(2) does not represent a complete code whereby the question as to whether disclosure should be made can be answered. As the Additional Party [HMRC] itself accepts, whether information prohibited from disclosure under section 18(1) is in fact exempt depends on section 23. As a matter of statutory construction, therefore, the Tribunal finds that in the absence of clear words which would expressly distance the operation of section 18(2) from section 18(1) such as to make section 18(1) a complete code in the way suggested, it is necessary to consider whether any of the exceptions in section 18(2) apply before an answer can be given to the question of whether disclosure is prohibited under section 18(1).'

35. Therefore, the Commissioner believes that he has to consider whether any of the exceptions contained within section 18(2) of the CRCA apply before he can conclude that the withheld information is exempt on the basis of section 44(1)(a).
36. In the circumstances of this case the exceptions that the Commissioner considers may be relevant are those contained at section 18(2)(a) to 18(2)(d) and 18(2)(h).
37. With regard to the exception contained at section 18(2)(a) of the CRCA the Commissioner is satisfied that making a disclosure of information under section 1(1) of the Act cannot be correctly described as a 'function' of HMRC. Rather complying with statutory obligations, including those imposed by the Act is one of HMRC's general responsibilities as a public authority but is not a specific or unique function of HMRC. This position is supported by the Tribunal decision in

the case *Mr N Slann v Information Commissioner* (EA/2005/0019; 11 July 2008). Therefore the Commissioner is satisfied that the exception contained at section 18(2)(a) cannot be relied upon.

38. Turning to the exception contained at section 18(2)(b), in the Commissioner's opinion none of the requirements of section 20 or 21 of the CRCA can be met. With regard to the particular requirement contained at section 20(2) which the complainant argues allows for disclosure, the Commissioner agrees with HMRC's analysis outlined in paragraph 25. The construction of section 20(2) means that all three sub-sections have to be met for the requirements of 18(1) to dis-apply. Even if the Commissioner accepted that the disclosure was necessary for the prevention or detection of crime (thus fulfilling sub-section 20(2)(b)) it is clear that the complainant is not a person exercising public functions, but a private individual. Therefore sub-section 20(2)(a) is not met.
39. With regard to the exceptions contained at sections 18(2)(c) and 18(2)(d), in light of any contradictory evidence, the Commissioner accepts HMRC's position that there are no ongoing civil or criminal proceedings in relation to the information requested. However, even if HMRC has disclosed the requested information (if it of course held such information) for the purposes of legal proceedings, and in doing so relied on the exceptions contained at sections 18(2)(c) and/or 18(2)(d), the Commissioner does not believe that these exceptions could be relied upon to allow disclosure of the requested information to the complainant. This is because the purpose of the gateways contained at sections 18(2)(c) and section 18(2)(d) is simply to allow for information to be disclosed for the purpose of legal proceedings; the purpose of disclosure to the complainant would be to comply with an information request. In the Commissioner's opinion it would therefore be an incorrect interpretation of the CRCA to argue that simply because a gateway has been relied upon in the past it will always be correct to rely on that gateway in the future when the purposes of that disclosure may be fundamentally different.
40. Finally, with regard to the exception contained at section 18(2)(h), the Commissioner understands that HMRC's position is that if the complainant received the necessary consent to disclosure from those persons named in the requested information, HMRC would consider disclosure of the requested information on a discretionary basis outside the scope of the Act. In the Commissioner's opinion it would appear that if such consent was granted, then conditions set out in 18(2)(h) would be met and consequently section 18(1) would not apply. Disclosure could then be made under the Act, not as HMRC has argued, on a discretionary basis outside the scope of the Act.
41. However, the Commissioner does not intend to speculate whether the persons named in the request and therefore included in the requested information (if such information was held) if consulted, would consent to disclosure of the requested information under the Act. Nor has he taken steps to contact these parties in order establish whether they would provide such consent.
42. The Commissioner has taken this approach because the Tribunal in *Allison* indicated that in terms of consent under section 18(2)(h) of CRCA the key issue was that such consent was in place, or sought, at the time of the request:

'In paragraph 61 [of decision notice FS50079644], the Commissioner made the point, again in the view of the Tribunal perfectly properly, that with regard to the need to seek consent for the purposes of section 18(2)(h) of the 2005 Act [the CRCA], it was entirely clear that at the time the Appellant [Mr Allison] had made his original request, quite apart from any later period, no consent had been given. Moreover, section 18(2)(h) did not impose any obligation on the Additional Party [HMRC] to seek consent.' (Tribunal at paragraph 23).

43. HMRC received this request on 3 March 2008 and on the basis of the facts outlined in the chronology it is clear to the Commissioner that at this time no consent, in terms of the consent required for the exception contained at section 18(2)(h) of the CRCA to apply, was given, or indeed sought. Therefore the Commissioner is of the opinion that the exception contained at 18(2)(h) cannot apply in this case.
44. Although the Commissioner accepts that the complainant's argument at paragraph 27 (iii) above, is not without some logic (e.g. he does not believe that this affects the application of section 18(2)(h)), it is clear that for section 18(2)(h) to be engaged, consent to disclosure must be given by all persons named in the requested information and this consent must be granted regardless of the prejudicial consequences of seeking such consent.
45. The Commissioner is therefore satisfied that none of the exceptions listed in section 18(2) of the CRCA are applicable in this case.
46. Consequently, the Commissioner has concluded that HMRC was correct to refuse to confirm or deny whether it held information falling within the scope of the request on the basis of section 44(2) and the interaction of section 44(1)(a) of the Act and sections 18(1) and 23(1) of the CRCA.

Procedural matters

47. The complainant submitted his request on 3 March 2008 and HMRC did not provide the complainant with a refusal notice until 23 April 2008. By failing to issue this refusal notice within 20 working days the Commissioner has concluded that HMRC breached section 17(1) of the Act.

The Decision

48. The Commissioner's decision is that HMRC was correct to rely on section 44(2) of the Act to refuse to confirm or deny whether it holds any information falling within the scope of this request.
49. However, the Commissioner has also concluded that HMRC breached section 17(1) by failing to provide the complainant with a refusal notice within 20 working days of his request.

Steps Required

50. The Commissioner requires no steps to be taken.

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 22nd day of October 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

The Freedom of Information Act 2000

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 17(1) provides that -

“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

(a) states (if that would not otherwise be apparent) why the exemption applies.”

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).”

Commissioner for Revenue and Customs Act 2005

Section 18 provides that -

“18. Confidentiality

- (1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.
- (2) But subsection (1) does not apply to a disclosure –
 - (a) which –
 - (i) is made for the purposes of a function of the Revenue and Customs, and
 - (ii) does not contravene any restriction imposed by the Commissioners,
 - (b) which is made in accordance with section 20 or 21,
 - (c) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
 - (d) which is made for the purposes of a criminal investigation or criminal proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
 - (h) which is made with the consent of each person to whom the information relates.
- (3) Subsection (1) is subject to any other enactment permitting disclosure.”

Section 19 provides that -

“19. Wrongful Disclosure

- (1) A person commits an offence if he contravenes section 18(1) or 20(9) by disclosing revenue and customs information relating to a person whose identity –
 - (a) is specified in the disclosure, or
 - (b) can be deduced from it.
- (2) In subsection (1) “revenue and customs information relating to a person” means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by section 18(4)(c)) in respect of the person; but it does not include information about internal administrative arrangements of Her Majesty’s Revenue and Customs (whether relating to Commissioners, officers or others)”.

Section 20 provides that –

“20. Public interest disclosure

(1) Disclosure is in accordance with this section (as mentioned in section 18(2)(b)) if—

- (a) it is made on the instructions of the Commissioners (which may be general or specific),
- (b) it is of a kind—
 - (i) to which any of subsections (2) to (7) applies, or
 - (ii) specified in regulations made by the Treasury, and
- (c) the Commissioners are satisfied that it is in the public interest.

(2) This subsection applies to a disclosure made—

- (a) to a person exercising public functions (whether or not within the United Kingdom),
- (b) for the purposes of the prevention or detection of crime, and
- (c) in order to comply with an obligation of the United Kingdom, or Her Majesty's Government, under an international or other agreement relating to the movement of persons, goods or services.

(3) This subsection applies to a disclosure if—

- (a) it is made to a body which has responsibility for the regulation of a profession,
- (b) it relates to misconduct on the part of a member of the profession, and
- (c) the misconduct relates to a function of the Revenue and Customs.

(4) This subsection applies to a disclosure if—

- (a) it is made to a constable, and
- (b) either—
 - (i) the constable is exercising functions which relate to the movement of persons or goods into or out of the United Kingdom, or
 - (ii) the disclosure is made for the purposes of the prevention or detection of crime.

(5) This subsection applies to a disclosure if it is made—

- (a) to the National Criminal Intelligence Service, and
- (b) for a purpose connected with its functions under section 2(2) of the Police Act 1997 (c. 50) (criminal intelligence).

(6) This subsection applies to a disclosure if it is made—

- (a) to a person exercising public functions in relation to public safety or public health, and
- (b) for the purposes of those functions.

(7) This subsection applies to a disclosure if it—

(a) is made to the Police Information Technology Organisation for the purpose of enabling information to be entered in a computerised database, and

(b) relates to—

- (i) a person suspected of an offence,
- (ii) a person arrested for an offence,
- (iii) the results of an investigation, or
- (iv) anything seized.

(8) Regulations under subsection (1)(b)(ii)—

(a) may specify a kind of disclosure only if the Treasury are satisfied that it relates to—

- (i) national security,
- (ii) public safety,
- (iii) public health, or
- (iv) the prevention or detection of crime;

(b) may make provision limiting or restricting the disclosures that may be made in reliance on the regulations; and that provision may, in particular, operate by reference to—

- (i) the nature of information,
- (ii) the person or class of person to whom the disclosure is made,
- (iii) the person or class of person by whom the disclosure is made,
- (iv) any other factor, or
- (v) a combination of factors;

(c) shall be made by statutory instrument;

(d) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

(9) Information disclosed in reliance on this section may not be further disclosed without the consent of the Commissioners (which may be general or specific); (but the Commissioners shall be taken to have consented to further disclosure by use of the computerised database of information disclosed by virtue of subsection (7)).

Section 23 provides that -

“23. Freedom of Information (1) Revenue and Customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000 (c. 36) (prohibitions on disclosure) if its disclosure –

- (a) would specify the identity of the person to whom the information relates, or
- (b) would enable the identity of such a person to be deduced.

(2) Except as specified in subsection (1), information the disclosure which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.

(3) In subsection (1) “revenue and customs information relating to a person” has the same meaning as in section 19.”