

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 14 April 2010**

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

### Summary

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The complainant requested information from the Financial Services Authority (FSA) on cases where a regulated firm had amended or withdrawn a financial promotion after discussions with or intervention by the FSA. The FSA refused to disclose any of the requested information by virtue of the exemption in section 31 (law enforcement) of the Act and in addition stated the exemption in section 44 ('prohibitions on disclosure') applied to some of the requested information. During the course of the Commissioner's investigation the FSA added that the exemption at section 43 (commercial interests) applied to all of the requested information. The Commissioner has investigated and found that all of the requested information was exempt by virtue of section 44 of the Act. In view of this finding the Commissioner has not considered the application of sections 31 or 43 to the requested information.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. The complainant made an information request to the FSA on 30 May 2008:

*The FSA discussion paper 08/03 "Transparency as a Regulatory Tool" (May 2008 paras 6.3 -6.29) considers the question of revealing more information about financial promotions which are unclear, unfair or misleading. The paper makes it clear that the FSA does not intend to publish a register of the 400 or so cases each year where a firm amends or withdraws a financial promotion at the request of, or after a discussion with, the FSA.*

*Discussion paper 08/03 raises no legal constraints on publishing such a register though it finds that the balance of public interest is in not publishing it.*

*I am writing to request under the Freedom of Information Act 2000 documents showing the details of the cases from 1 January 2007 where a regulated firm has amended or withdrawn a financial promotion at the request of or after discussions with or intervention by the FSA.*

*Information in summary form will fulfil this request provided it makes clear the names of the firms and the dates and details of the financial promotions concerned. The Advertising Standards Authority publishes such information in relation to adverts it regulates – and when financial adverts were included in its remit it published this information in relation to them – and its lists are a model to use.*

*Please make available any information in response to this request as it becomes available and do not delay information which will be made available while awaiting a decision on information*

3. The FSA responded on 30 June 2008 and confirmed it held the information requested but refused to disclose any of it on the basis of the exemption in section 31 of the Act following consideration of the public interest. Furthermore, the FSA refused to disclose some of the information requested because in addition it was covered by the exemption in section 44 of the Act, with reference to section 348 of the Financial Services and Markets Act 2000 (FSMA).
4. The complainant sought an internal review of the FSA's decision on 18 July 2008 and set out reasons why he disagreed with the decision. The FSA replied on 15 August 2008 and stated the original decision to withhold the information was maintained. Responding to the points made by the complainant when requesting an internal review, the FSA agreed section 349 of FSMA provided exceptions to the general restrictions on disclosure of information in section 348. The

complainant had argued that fulfilling its obligations under the Act was one of the FSA's "public functions" and section 349 of FSMA provided exceptions for the disclosure of information in such circumstances. The FSA disagreed because section 44(1)(a) of the Act made clear that disclosure to a requester had to be considered without taking into account any obligations imposed by the Act. Therefore disclosure under the Act was not a "public function" as defined in section 349(1)(a) of FSMA

5. In addition, the complainant had referred to regulation 3 of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 as providing a route to disclosing the requested information. Again, the FSA disagreed, stating the "self help" gateway provided by regulation 3, which allowed the FSA to disclose confidential information to help it carry out its functions under FSMA could not be used to force the FSA to reach a decision as to whether it was prepared to disclose information via a gateway.
6. Concerning section 31, in its reply the FSA amplified the public interest reasons against disclosure set out in its initial refusal letter. In favour of disclosure the FSA noted it would increase public understanding and awareness of the way the FSA interacted with regulated firms concerning the withdrawal and amendment of financial promotions. Disclosure would also inform firms of the standards they were expected to meet. In addition, the public could be reassured the FSA had appropriate measures in place to deal with circumstances where financial promotions might be misleading.
7. Against disclosure, the FSA noted the key importance of being able to have informal contact and discussions with regulated firms. This allowed the FSA to proceed more quickly and more efficiently than if it was required to use formal, statutory routes for action. Disclosure of informal contacts would be likely to make firms less willing to engage informally in future. This would force the FSA to take formal action, which might lead to harmful delays in correcting potentially misleading financial promotions and would also require more FSA resources to achieve the necessary corrections. Taken together these might not only prejudice the achievement of the FSA's consumer protection objective but also endanger delivery of its other objectives if resources were diverted. Also, the FSA was concerned disclosure of the withheld information had the potential to mislead the public because they might conclude incorrectly that impropriety or misconduct had occurred simply because a financial promotion had been amended or withdrawn following FSA involvement.

## The Investigation

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### Scope of the case

8. On 20 August 2008, the complainant complained to the Commissioner about the way his request for information had been handled. Specifically, the complainant asked the Commissioner to consider whether the FSA's interpretation of regulation 3 was wrong because the regulation did not contain any consideration of whether the FSA was "prepared" to disclose information, rather the regulation turned on whether doing so would enable or assist the FSA to discharge any of its public functions. The complainant explained why, with reference to the four central regulatory functions of the FSA as set out section 2(2) of FSMA, the disclosure of the requested information would assist the FSA in discharging its public functions of public awareness and protection of customers.
9. On the FSA's section 31 arguments the complainant argued it had reached the wrong conclusion about where the balance of the public interest lay. The complainant referred to the Advertising Standards Authority (ASA), which had previously been responsible for regulating financial promotions now regulated by the FSA. The ASA's practice was and continued to be to publish its decisions on financial promotions. This did not interfere with the ASA's regulatory functions in the way the FSA had argued would happen if it adopted a similar practice.
10. The complainant noted the FSA would control what was published and so would not need to disclose details of e.g. confidential discussions that had taken place. In addition there was no reason to believe firms would reduce their co-operation with the FSA. This had not been the experience of the ASA. There was nothing to support the FSA's contention that disclosure would result in greater use of its formal powers because the presence of those powers would be sufficient. The complainant disagreed strongly with the FSA's claim that disclosure had the potential to mislead the public, arguing information revealed was always to the advantage of the public. Finally, he noted the knowledge that misleading promotions could be listed publicly would act as the strongest deterrent to companies to ensure they made sure they were right in the first place.

### Chronology

11. The Commissioner wrote to the FSA on 18 June 2009 to advise the complaint was being investigated and to request sight of the information that had been withheld to assist with the investigation. With the

Commissioner's agreement, the FSA provided a representative sample of the withheld information on 31 July 2009 and referred to its letter to the complainant dated 15 August 2008, which set out the reasons why all of the information was exempt under section 31 and some was exempt under section 44.

12. In addition to sections 31 and 44, the FSA's reply stated it considered now that all of the requested information was also exempt under section 43 of the Act (commercial interests). It set out its reasons for reaching this conclusion.
13. On the same date, the Commissioner wrote to the complainant to ask whether he wished to pursue the complaint and to give an initial view on the complainant's reading of regulation 3 as set out in his complaint (see paragraph 8 above). The Commissioner explained his reading of regulation 3 was that it was permissive rather than mandatory, which on a preliminary assessment tended to support the FSA's interpretation rather than the complainant's. The complainant was invited to comment further on this point. The complainant replied the same day, confirming he wished to proceed with the complaint but making no comment on the Commissioner's preliminary assessment of regulation 3.
14. On 8 October 2009, the Commissioner wrote to the FSA to ask some further questions arising from its letter of 31 July 2009. In its reply dated 30 October 2009, the FSA explained in more detail why some but not all of the requested information was covered by section 44. It confirmed its view that all the requested information was covered by the exemptions in section 31 and 43. In the case of the former, the FSA clarified that the relevant subsections were section 31(1)(g) and (2)(a-d). The FSA had also been asked to comment on the complainant's points concerning the practice employed by the ASA. The FSA noted the ASA regime was a form of self-regulation and if the firm concerned rejected the ASA's ruling then the matter was referred to the OFT for formal action. Given the differences because the FSA was a statutory regulator with a prescribed procedure that had to be followed before a firm could be censured publicly the FSA did not regard the comparison with a different regime as helpful.

## Analysis

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### Exemptions

#### Section 44

15. Although the FSA had concluded that section 44 applied to only some of the requested information, having carefully considered the scope of the original request and for the reasons given below the Commissioner is satisfied that section 44 applies to all of the requested information.
16. Section 44(1)(a) of the Act provides information is exempt if its disclosure is prohibited by or under any enactment. The prohibition relied upon by the FSA is that contained within section 348 of FSMA.
17. Section 348 of FSMA prohibits the disclosure of 'confidential information' received by any primary recipient for purposes of or in the discharge of any of the FSA's functions without the consent of the person who supplied the information or, if different, the consent of the person to whom it relates. For the purposes of this part of FSMA, the FSA is a primary recipient. 'Confidential information' means information that relates to the business or other affairs of any person. Information is not 'confidential information' for the purposes of section 348 of FSMA if it has already been made available to the public or it is in summary form so that it is not possible to ascertain from it information relating to a particular person. Section 349 of FSMA sets out the exceptions from the restrictions on disclosure in section 348.
18. The FSA stated in its letter of 15 August to the complainant reporting the outcome of its internal review that the information sought was 'confidential information' as defined in section 348(2) of FSMA because it was received from regulated firms in connection with the FSA's function to supervise those regulated firms, specifically monitoring the firms' compliance with the rules in the in the FSA's Conduct of Business Sourcebooks (COBS). In the same letter the FSA made clear that the firms providing the information had not given consent to its disclosure.
19. Although the FSA stated clearly in writing to the complainant that the information requested was 'confidential information' for the purposes of section 348 of FSMA because it had been received from regulated firms, it became clear during the Commissioner's investigation that in fact the FSA had not regarded the regulated firms as the source of the 'confidential information' when deciding whether some parts of the requested information were exempt under section 44 and other parts were not. When questioned on this point, the FSA noted the requested

information it regarded as exempt under section 44 concerned those financial promotions that had been notified to the FSA by a third party (e.g. a complaint from the public) rather than from the regulated firms concerned. The FSA took the view that it had 'received' this information for the purposes of section 348 of FSMA. Where financial promotions had been identified by the FSA itself (e.g. through internal monitoring of advertisements) it could not be regarded as 'received' and therefore section 348 of FSMA, and by extension section 44(1)(a) of the Act, did not apply.

20. In the Commissioner's view the FSA had not considered the scope of the information request closely enough in reaching its conclusion and consequently had reached the wrong conclusion about when it 'received' 'confidential information' for the purposes of section 348 of FSMA that came within scope of the information request. On the first of these points, the request asked for information about the firms who had run financial promotions that had been amended or withdrawn at the request of or after discussion with or intervention by the FSA. Each part needed to be present for the information to be within scope of the request. Therefore a financial promotion that was notified to the FSA by a third party (e.g. a complaint from the public) but which was not followed up by the FSA with the firm running the promotion was not within scope. In a similar vein, a case where the FSA had followed up with a firm running a financial promotion but it had been decided then that neither amendment nor withdrawal was necessary following the FSA's intervention would not be in scope.
21. Only cases where the FSA intervened with a firm about a financial promotion and the promotion was subsequently withdrawn or amended fall within scope of the information request. The Commissioner checked with the FSA and received confirmation that in each case where this sequence of events occurred the firm running the financial promotion would notify the FSA at the end of the process that it had amended or withdrawn the promotion following the FSA's intervention. The Commissioner is satisfied that it is this notification in each case that is key in deciding whether the information is within scope of the request and not the test applied by the FSA, which was how it learnt about each financial promotion on which it then intervened.
22. Furthermore the Commissioner is satisfied the notification to the FSA from the firm concerned that it had amended or withdrawn the promotion would constitute 'confidential information' 'received' by the FSA within the terms of section 348(2) of FSMA. In reaching this position the Commissioner has followed the reasoning set out by Munby J in the High Court judgment *FSA v Information Commissioner* [2009] EWHC 1548 (Admin). There is also no consent to its disclosure by the

firms involved. It has not been made public and it could not, by virtue of the specific terms of the request asking for information on “the names of firms” involved, be made available in a summary form that would allow for publication without individual firms being identified.

23. In his letter seeking internal review the complainant referred to regulation 3(1)(a) of the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001, made under section 349 of FSMA, which permits the disclosure of confidential information when it will enable or assist the discharge of any of the public functions of the FSA. The complainant noted that in the discussion paper that had led to the present information request the FSA had considered the case for disclosing information of the type requested but was not minded to do so. The complainant argued that on his reading of regulation 3(1)(a) where the disclosure of confidential information would enable or assist the FSA to discharge any of its public functions then information should be disclosed. The complainant provided further argument to show how the information requested would assist the FSA in discharging its public functions.
24. In considering the complainant's comments about the applicability of regulation 3(1)(a), the Commissioner agrees that disclosure of information of the type requested could assist or enable the FSA in discharging its public functions with regard to public awareness and protection of consumers. However, as noted in his letter of 18 June 2009, the Commissioner reads regulation 3(1)(a) as being permissive rather than mandatory. It provides the FSA with a “gateway” that permits the disclosure of confidential information where that will enable or assist the FSA in discharging any of its public functions. However nothing in regulation 3(1)(a) requires the FSA to disclose confidential information on every occasion that such disclosure might enable or assist the FSA to discharge its public functions. Taking into account the approach taken by the Information Tribunal in *BECTU v the Information Commissioner and Ofcom* (EA/2009/0067) and *Hoyte v Information Commissioner and the Civil Aviation Authority* (EA/2007/101) the Commissioner finds that the position of the FSA on Regulation 3(1)(a) was not *Wednesbury* unreasonable, irrational or perverse.
25. For these reasons, the Commissioner has concluded that the FSA would have been entitled to rely on the exemption at section 44(1)(a) of the Act to withhold all of the information requested. In view of this finding the Commissioner has not considered whether the FSA was entitled to rely on the exemptions at section 31(1)(g) and section 43 to withhold all of the requested information.



## **The Decision**

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26. The Commissioner has decided that the FSA was in breach of section 17(1)(b) of the Act for failing to specify in its refusal notice that all of the information requested was exempt by virtue of section 44(1) of the Act.
27. However, the Commissioner's decision is that otherwise the public authority dealt with the request for information in accordance with the Act as it was entitled to rely on the exemption at section 44(1)(a) to withhold the requested information.

## **Steps Required**

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28. The Commissioner requires no steps to be taken.

## Right of Appeal

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29. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://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 14<sup>th</sup> day of April 2010**

**Signed .....**

**Steve Wood**  
**Head of Policy Delivery**

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

## Legal Annex

### Freedom of Information Act 2000

#### 1 General right of access to information held by public authorities

(1) 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.

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

(3) 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.

(4) 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.

(5) 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).

(6) 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”.

#### 31 Law enforcement

(1) 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 [1976 c. 14.] 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.
- (2) 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.

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

### **43 Commercial interests**

(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).

### **44 Prohibitions on disclosure**

(1) 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.

(2) 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**

### ***Disclosure of information***

#### **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.

## **THE FINANCIAL SERVICES AND MARKETS ACT 2000 (DISCLOSURE OF CONFIDENTIAL INFORMATION) REGULATIONS 2001**

### **DISCLOSURE OF CONFIDENTIAL INFORMATION GENERALLY**

#### **Disclosure by and to the Authority, the Secretary of State and the Treasury etc.**

**3.** - (1) A disclosure of confidential information is permitted when it is made to any person -

(a) by the Authority or an Authority worker for the purpose of enabling or assisting the person making the disclosure to discharge any public functions of the Authority or (if different) of the Authority worker;

(b) by the Secretary of State or a Secretary of State worker for the purpose of enabling or assisting the person making the disclosure to discharge any public functions of the Secretary of State or (if different) of the Secretary of State worker;

(c) by the Treasury for the purpose of enabling or assisting the Treasury to discharge any of their public functions.

(2) A disclosure of confidential information is permitted when it is made by any primary recipient, or person obtaining the information directly or indirectly from a primary recipient, to the Authority, the Secretary of State or the Treasury for the purpose of enabling or assisting the Authority, the Secretary of State or the Treasury (as the case may be) to discharge any of its, his or their public functions.

(3) Paragraphs (1) and (2) do not permit disclosure in contravention of any of the directive restrictions.