

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 18 March 2010

Public Authority: Cornwall Council
Address: County Hall
Treyew Road
Truro
Cornwall
TR1 3AY

Summary

The complainant requested information from the Council regarding its investigation into Ambient Pressure Diving Ltd. The Council refused to disclose the information on the basis that it was exempt under section 30 of the Act. During the course of the Commissioner's investigation, some information was disclosed, and the Council also sought to rely on the exemptions contained at sections 43 and 44 of the Act to withhold the remaining information. The Council cited section 237 of the Enterprise Act 2002 as the relevant statutory bar on disclosure. The Commissioner found that the withheld information was exempt under section 44 of the Act. As section 44 is an 'absolute' exemption, there was no requirement to determine whether the public interest in maintaining the exemption outweighed the public interest in disclosure.

The Commissioner has identified a number of procedural shortcomings in the way the Council handled the complainant's request but he does not require the Council to take any further steps in relation to this request.

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.

Background

2. This case relates to concerns raised by the complainant in respect of the safety of rebreathers manufactured in the UK. A rebreather is a type of breathing apparatus that provides the user with a breathable gas containing oxygen and recycled, exhaled gas. The complainant also raised concerns about the CE marking shown on rebreathers manufactured in the UK.
3. A CE marking on a product is a manufacturer's declaration that the product complies with the essential requirements of the relevant European health, safety and environmental protection legislation. EN 14143 is a European Standard relating to respiratory equipment which specifies the minimum requirements for self contained breathing apparatus to ensure a minimum level of safe operation of the apparatus. EN 61508 is an international standard for the functional safety of electrical/electronic, programmable electronic safety-related systems.
4. The Commissioner has set out below a summary of the legislation that places a duty on the Council to investigate a complaint about rebreathers manufactured by Ambient Pressure Diving Ltd ('APD'). This section is relevant to the Council's application of section 44 of the Act that is covered later in this Notice (see paragraphs 40 to 66).
5. EC Directive 89/686/EEC¹ is a CE marking directive which is intended to ensure that all personal protective equipment ('PPE') and manufacturers of such equipment meet common standards of quality and performance. The Directive was implemented into UK law by the Personal Protective Equipment (EC Directive) Regulations 1992 (the 'Principal Regulations'). These regulations have since been amended three times. In 2002, the Principal Regulations and the three amendments were consolidated. The consolidated regulations called the Personal Protective Equipment Regulations 2002² ('PPE02') came into effect on 15 May 2002.
6. The PPE02 place a duty on any 'responsible person' who places PPE on the market to comply with the following requirements:
 - The PPE must satisfy the basic health and safety requirements that are applicable to that type or class of PPE.
 - The appropriate conformity assessment procedure must be carried out.
 - A CE mark must be affixed on the PPE.
7. The rebreather at the centre of the Council's investigation and the subject of this request is classed a "complex PPE", as provided by in regulation 2(2) of PPE02. For simple, complex and intermediate categories of PPE the manufacturer or his authorised representative must apply relevant conformity and assessment procedures that include drawing up technical documentation in accordance with

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1989L0686:20031120:EN:PDF>

² <http://www.opsi.gov.uk/si/si2002/20021144.htm>

Schedule 3 of the PPE02. This documentation must comprise all relevant data or means used by the manufacturer to ensure that the PPE complies with the basic requirements relating to it. For PPE of 'complex' design, the manufacturer or his authorised representative must also:

- submit the product for EC type examination procedure, as described in Schedule 7 of the PPE02;
 - apply one of the two checking of PPE manufactured procedures laid down in Schedule 8 of the PPE;
 - prepare the EC Declaration of Conformity, and;
 - prepare an EC Declaration of Conformity as described in Schedule 5 of the Regulations and affix the CE mark to the product as laid down in Schedule 6 of the PPE02.
8. Regulation 16 of the PPE02 provides for the enforcement of the regulations by the relevant "enforcement authority", which is defined in Schedule 10 of the PPE02 as the local weights and measures authorities (i.e. local authority Trading Standards Departments) in Great Britain. Enforcement of the PPE02 is achieved through the application of certain provisions of the Consumer Protection Act 1987.
9. To ensure that only compliant PPE is placed on the market, enforcement authorities carry out their own surveillance and investigate complaints to establish whether there are justifiable grounds for taking enforcement action in such cases. In response to complaints, Trading Standards Departments seek evidence (with the assistance of technical experts where necessary) that the PPE02 have been complied with and consider what action should be taken where they find breaches.
10. APD are based within the Cornwall Council geographical boundary and, as such, the Council's Trading Standards Department is the "enforcement authority" as defined in the PPE02 with responsibility for investigating complaints about APD rebreathers to establish whether there are justifiable grounds for taking any enforcement action under the PPE02.
11. The General Product Safety Regulations 2005³ ('the GPSR') came into force on 1 October 2005 and replaced the General Product Safety Regulations 1994. The Regulations were made under section 2(2) of the European Communities Act 1972 and transposed General Product Safety Directive 2001/95/EC into UK law. The purpose of GPSR is to ensure that all products intended for or likely to be used by consumers, under normal or reasonably foreseeable conditions, are safe.
12. The GPSR maintain the general duty placed on producers and distributors to place on the market or supply only products that are safe in normal or reasonable foreseeable use. The principal responsibility for day-to-day enforcement of the GPSR lies with local authorities.

³ <http://www.opsi.gov.uk/SI/si2005/20051803.htm>

13. The Trade Descriptions Act 1968⁴ ('the TDA') came into effect on 30 November 1968. It replaced and expanded the old Merchandise Marks laws dealing with mis-description of goods in general and its particular job is to ensure, as far as possible, that people tell the truth about goods, prices and services. The TDA makes it an offence if a trader –
 - Applies a false trade description to any goods; or
 - Supplies or offers to supply any goods to which a false trade description is applied; or
 - Makes certain kinds of false statement about the provision of any services, accommodation or facilities.
14. Local authority Trading Standards Departments are under a statutory duty to enforce the provisions of the TDA and it provides them power of entry, inspection and seizure to help them carry out this duty.

The Request

Request 1

15. On 12 December 2008 the complainant contacted the council and requested:

“a copy of any CE Certificate of Conformity for UK rebreathers, whatever Directive or Harmonysed Standard they may refer to”.
16. The Council responded to the request on 17 December 2008 by providing some background information concerning its investigation into rebreathers manufactured within the Cornwall Council geographical boundaries by Ambient Pressure Diving Ltd ('APD'). The Council stated that, as it had to comply with legal obligations, it was not in a position to disclose information or provide copies of documentation during the investigation process. The Council also confirmed that complaints about rebreathers manufactured outside of the Cornwall Council geographical area would need to be investigated by the relevant Trading Standards Department in whose area the manufacturer is based.

Request 2

17. On 17 December 2008, the complainant requested the following information from the Council:

“...all communications between yourself and APD and HSE and any other third party relating to the subject matters of rebreathers, PPE, EN14143, and EN61508.”

The Council's response to this request is outlined at paragraphs 20 to 22 below.

⁴ http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1968/cukpga_19680029_en_1

Request 3

18. Between 18 December 2008 and 14 January 2009 various exchanges took place between the complainant and the Council in relation to general issues relevant to his complaint about rebreathers. On 14 January 2009, the complainant asked the Council to confirm that it had requested copies of the CE Certificates of Conformity for APD rebreathers from the appropriate authorities and to provide copies of the certificates.

Request 4

19. On 27 January 2009 the complainant contacted the Council to chase a formal response to his requests for information. He also made a new request (relating to rebreathers manufactured by APD) for a "...copy of the 'Technical File' which by now you [the Council] should have also requested and obtained from the manufacturer and/or SGS".
20. On 28 January 2009 the Council issued a refusal notice in relation to request 2. The Council provided some information relevant to the request and confirmed that other information it held was exempt from disclosure by virtue of section 30(1) of the Act. The Council stated that it considered the public interest in maintaining the exemption to outweigh the public interest in disclosure.
21. On 28 January 2009 the complainant contacted the Council to complain about its refusal to disclose the requested information. The Council treated this communication as a request for an internal review.
22. The Council wrote to the complainant on 25 February 2009 with the outcome of its internal review. The Council upheld its decision not to disclose the information requested and maintained the information was exempt under section 30(1) of the Act.
23. On 26 February 2009, the complainant contacted the Council stating that if - once it had concluded its investigation into APD rebreathers - it agreed to provide him with "the undisclosed documentation and information to the inclusion of the CE Certificate of conformity and the CE Technical File", he would defer any complaint to the Commissioner about the way the Council handled his information request.
24. The Council responded on 2 March 2009 stating that it could not agree to disclose any information prior to the completion of the investigation and a decision would have to be made in response to any information request received at that time.

Request 5

25. On 2 March 2009 the complainant contacted the Council and asked it to confirm that it held the following information for all APD rebreathers and APD ancillary products:
 1. The CE Declaration of Conformity

2. The CE Certificate of Conformity
3. The CE Technical File

26. On 2 March 2009 the Council confirmed that it held those documents.

The Investigation

Scope of the case

27. On 10 March 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following:
- In relation to the Council's refusal to disclose copies of the CE Declaration of Conformity, the CE Certificate of Conformity and the CE Technical File (for all APD Rebreathers and APD ancillary products) the complainant stated that these documents constituted certification information which predated his request and formed part of the pre-existing CE approval documentation. In his opinion, the disclosure of these documents would not affect any prosecution or ongoing investigation by the Council. The complainant also stated that, in his view, disclosure of the documents would not prejudice the manner in which they were acquired and confirmed he had not requested information regarding the manner in which the documents were acquired.
28. The Commissioner was provided with a copy of the withheld information on 16 October 2009. The CE technical file, which the complainant requested on 27 January 2009 (request 4) contains copies of the CE Certificates of Conformity and the CE Declarations of Conformity which the complainant referred to in requests 1, 3 and 5, and so in effect request 4 encompasses requests 1, 3 and 5.
29. During the course of the Commissioner's investigation, the following matters were resolved informally and therefore these are not addressed in this Notice:
- The Council agreed to disclose some information relating to request 4, which comprised of publicly available information contained within the CE Technical File, such as copies of user instruction manuals, the publicly available CE Declarations of Conformity, and other information already in the public domain. The Commissioner has therefore not considered this information further.
30. The remaining disputed information, to which this Notice refers, is covered by requests 2 and 4 and comprises:

Request 2

- Communications between the Council, APD and HSE and any other third party relating to the subject matter of rebreathers PPE, EN14143, and EN61508; consisting of:
 - Correspondence between the Council and the Department for Business Enterprise and Regulatory Reform ('DBERR').
 - Correspondence between the Council and the Health and Safety Executive ('HSE') regarding the investigation into rebreathers.
 - Correspondence between the Council and the HSE regarding a similar complaint from a third party about APD.
 - Correspondence between the Council and the Health and Safety Laboratory.
 - Correspondence between the Council and SGS (the certifying body for the rebreather).
 - Correspondence between the Council and Ambient Pressure Diving Ltd.
 - Correspondence between the Council and Lloyds Register Quality Assurance.

Request 4

- Copies of the CE Technical File (for all APD Rebreathers and APD ancillary products), with the exception of information contained within the Technical File already in the public domain which the Council agreed to disclose during the Commissioner's investigation.

31. The scope of the Commissioner's investigation has been to determine whether the Council was correct to refuse to disclose the remaining disputed information.

Chronology

32. The Commissioner wrote to the Council on 12 August 2009 and requested a copy of the withheld information and clarification of the reasoning behind its application of section 30. The Commissioner also asked the Council to confirm which subsection(s) of section 30(1) it had relied on.
33. The Council responded to the Commissioner on 15 September 2009 apologising for the delay in responding to his letter. The Council confirmed that its Trading Standards Department were dealing with the case and that a further update would be provided by 25 September 2009.
34. The Commissioner contacted the Council on a number of occasions by telephone between 15 and 17 September 2009 to chase a response to his letter and to ascertain the progress of the case. The Council was unable to confirm the status of its response to the Commissioner or confirm when a substantive response would be provided.

35. In the absence of any indication from the Council as to when it would be able to provide a substantive response to his letter, on 17 September 2009, the Commissioner issued an Information Notice in accordance with section 51 of the Act. The Commissioner asked the Council to provide him with copies of the withheld information falling within the scope of the requests. The Commissioner also asked the Council to clarify the subsection(s) of section 30(1) it had relied on, provide a full explanation as to why the information was exempt by virtue of section 30(1) and to explain why the Council considered that the public interest in maintaining the exemption outweighed the public interest in disclosure.
36. The Council responded to the Information Notice on 16 October 2009 and explained its position in respect of each piece of information it had identified as falling within the scope of the requests. The Council also provided a copy of the withheld information and a schedule clarifying the exemptions it was relying on in respect of each class of information and its representations in respect of the exemptions being claimed. The Council confirmed that it was relying on the exemptions under sections 30(1)(a)(i), 30(1)(b), 30(1)(c).
37. In its letter of 16 October 2009 the Council also introduced two new exemptions. It explained that it was seeking to withhold the CE Technical File under section 43(2) and section 44(1)(a) and all of the other remaining withheld information relevant to the requests under section 44(1)(a) of the Act. The Council stated that the requested information constituted “specified information” as defined in section 238 of the Enterprise Act 2002 (EA02) and as such disclosure was prohibited under Part 9 of the EA02. The Council stated that the requested information was “specified information” because it related to the affairs of a business and had been received in connection with the exercise of its functions to investigate complaints made to it under the following legislation:
- The Personal Protective Equipment Regulations 2002
 - The General Product Safety Regulations 2005, and
 - The Trade Descriptions Act 1968
- The Council stated that these enactments were specified in Schedule 14 of the EA02.
38. The Commissioner therefore widened his investigation to consider whether sections 44(1)(a) and 43 applied to the withheld information.
39. On 7 December 2009 the Commissioner sent a further letter to the Council pointing out that some information contained within the CE Technical File was similar to information already in the public domain. The Commissioner asked the Council whether it would be prepared to disclose such information.
40. On 22 December 2009 the Council responded to the Commissioner confirming it would disclose information contained within the CE Technical File that was publicly available.

Analysis

Exemptions

Section 44 'Prohibitions on Disclosure'

41. In this case the Commissioner recognises that the Council applied the exemption at section 44 of the Act at a late stage in the process and after a formal complaint had been submitted to the Commissioner.
42. Factors which the Information Tribunal has accepted as being reasonable justifications for the application of exemptions before the Commissioner and/or the Tribunal for the first time include:
 - i. Where some of the disputed information is discovered for the first time during the Commissioner's investigation, and therefore the public authority has not considered whether it is exempt from disclosure.
 - ii. Where the authority has correctly identified the harm likely to arise from disclosure however applies these facts and reasoning to the wrong exemption.
 - iii. Where the public authority had previously failed to identify that a statutory bar prohibited disclosure of the requested information, and therefore ordering disclosure would put the public authority at risk of criminal prosecution.
 - iv. Where the refusal notice was issued at an early stage of the implementation of the Act when experience was limited, although this factor is becoming less relevant as time passes.
43. As this case falls into the criteria described at paragraph 42 (iii), above, the Commissioner decided to accept the late application of the section 44 exemption.
44. Section 44(1)(a) of the Act provides that information is exempt information if its disclosure is prohibited by or under any enactment. This is commonly known as a statutory bar to disclosure. In this case, the Council stated that section 237 of the EA02 provided a statutory bar to disclosure, as the withheld information constituted 'specified information' as defined by that Act.
45. Part 9 of the EA02 came into force on 20 June 2003 and reflects the Government's strategy to widen and harmonise the regimes for protecting confidential information and for defining the gateways through which such information can be disclosed. Sections 237 to 245 of the EA02 fall within Part 9.
46. Section 237 of the EA02 prevents the disclosure of 'specified information' that relates to the affairs of an individual or business which a public authority has obtained in connection with the performance of certain functions. Specified information must not be disclosed during the lifetime of the individual or while the business continues to exist unless the disclosure is permitted under sections 239 to 243 of the EA02.

47. Section 238 of the EA02 defines specified information as information that has come to a public authority in connection with the exercise of any function it has under or by virtue of:
 - i. Part 1, 3, 4, 6, 7 or 8 of the EA02,
 - ii. An enactment listed in Schedule 14 of the EA02, or
 - iii. Any secondary legislation specified by the Secretary of State.
48. The Commissioner is satisfied that in this instance the requested information relates to the affairs of a business. The Commissioner is also satisfied that the Council had a duty to conduct an investigation into the complaint about APD under the TDA, the GPSR and the PPE02, previously referred to in this Notice, and these enactments are listed in Schedule 14 of the EA02.
49. As section 238 of the EA02 defines specified information as information that “comes to” a public authority, the Commissioner has considered the source of the communications; i.e. whether the information was provided to the Council or whether the Council provided the information to another party.
50. The withheld information, as detailed at paragraph 30, in this case falls within two categories:
 - i. Information which has come to the Council in the exercise of its functions which relate to the affairs of the business of an undertaking, and
 - ii. Information generated internally by the Council as a result of the investigation it is undertaking.
51. The Commissioner is satisfied that the CE Technical file falls within the definition of specified information as it was obtained by (i.e. it ‘came to’) the Council from the certifying body (SGS UK Ltd) using its powers under the PPE02, TDA and GPSR.
52. In respect of the Council's communications with third parties, the Commissioner notes that some were generated by the Council. However, having considered the content of these particular communications, the Commissioner notes that some are entirely comprised of information that came to the Council while others contain a mixture of information that came to the Council and information that the Council generated. The Commissioner's view is that all the exchanges of correspondence from the Council to third parties are intrinsically linked to the information that came to the Council during its investigation and he considers that it would be nonsensical and unhelpful to the complainant to try to extract the small parts of innocuous information that may not strictly speaking fall within the definition of “specified information”. The Commissioner therefore considers that all of the correspondence to and from the Council and various third parties effectively ‘came to’ it in connection with its functions under section 238 of the EA02 and falls within the definition of “specified information”. The Commissioner finds that disclosure is therefore prohibited under section 237 of the EA02.
53. Section 245 of the EA02 creates a statutory bar on disclosure by making it an offence to disclose information that falls within section 237. Sections 239 to 243

of the EA02 set out various circumstances or “gateways” under which a public authority may disclose information despite the general prohibition on the release of information under section 237.

54. The Commissioner considers that the only two gateways which could apply are section 239 and section 241. Section 239 allows for disclosure if a public authority has obtained consent and section 241 provides that a public authority may disclose information for the purpose of facilitating the exercise by it of any function it has under or by virtue of the EA02 or any other enactment.
55. The Commissioner notes that the gateways to disclosure under EA02 do not impose a duty on the Council to disclose information but enable it to do so in certain circumstances. Therefore, the Commissioner’s view is that the Council is not under a duty to consider whether a gateway to disclose applies. This point has been confirmed in the Information Tribunal case of *Malcolm James Dey v Information Commissioner (Appeal No EA/2006/0057)* where the Tribunal stated in respect of the gateway provided by section 241 of the EA02 that:

“Section 241 is one of the gateways under which a public authority may disclose information under the Enterprise Act for the purpose of facilitating its functions. It gives the public authority a power to disclose, not a duty. The exercise of that power is a matter for the public authority to consider; it must first decide that it would facilitate the exercise of its functions to disclose the information, and then it must apply the various tests set out in section 244. That process, with its own version of a public interest test, set out in an Act passed two years after the Freedom of Information Act, cannot be short circuited by invoking the Freedom of Information Act provisions.”

In any event, the Council has advised that until the investigation is completed it is unable to confirm what level of disclosure it would apply to the withheld information.

56. The Commissioner accepts, as a fact, that while these gateways for the disclosure of specified information exist under the EA02, the Council was under no duty to consider them.
57. The Commissioner has concluded that section 44(1)(a) of the Act is engaged, through the provisions of section 237 of the EA02, and that the Council was correct to refuse to disclose the information requested. As section 44 is an absolute exemption there is no need to consider the public interest test.

Other exemptions claimed

58. The Council also sought to rely on sections 30(1)(a)(i), 30(1)(b) 30(1)(c) and 43 in relation to the withheld information. As the Commissioner is satisfied that all the remaining withheld information is exempt by virtue of section 44, he is not required to make a decision relating to the Council’s application of the other exemptions in this case.

Procedural Requirements

Request 2

59. The Commissioner notes that the Council failed to confirm or deny whether the information in respect of this request was held within 20 working days in accordance with its obligations under section 1(1)(a). The Council therefore breached section 10(1) of the Act.
60. The complainant made this request on 17 December 2008 but it was not until 28 January 2009 that the Council issued its refusal notice, citing section 30(1) of the Act. The Commissioner therefore considers that as the Council failed to issue a refusal notice within 20 working days, it breached section 17(1).
61. During the Commissioner's investigation, the Council sought to rely on section 44 in respect of the information requested on 17 December 2008. Therefore the Council failed to notify the applicant that it was relying upon this exemption. Neither did it explain why it was relying upon this exemption within the statutory time for compliance. As a result, the Commissioner considers the Council breached sections 17(1)(a), (b) and (c) in its handling of this request.

Request 4

62. This request was made on 27 January 2009 and the Council did not confirm the requested information was held until 2 March 2009. Therefore the Commissioner considers that the Council breached sections 1(1)(a) and 10(1) of the Act. In failing to issue a valid refusal notice within 20 working days the Council also breached section 17(1) of the Act.
63. During the Commissioner's investigation, the Council sought to rely on sections 43 and 44 in respect of this request. As a result of the late claiming of these exemptions, the Council breached sections 17(1)(a), (b) and (c) in its handling of this request.

The Decision

64. The Commissioner's decision is that the Council correctly applied the section 44(1) exemption in this case in order to withhold the requested information.
65. However, the Commissioner has also decided that the Council did not deal with the request for information in accordance with Part 1 of the Act in the following respects:
 - Section 1(1)(a) for failing to confirm that information relevant to request 4 was held.
 - Section 10(1) for failing to confirm or deny whether information relevant to requests 2 and 4 was held within 20 working days of each request.

- Section 17(1) for failing to issue valid refusal notices in relation to request 2 and 4 within 20 working days.
- Sections 17(1)(a), (b) and (c) for late reliance on sections 43 and 44 in respect of requests 2 and 4 during the Commissioner's investigation.

Steps Required

66. The Commissioner requires no steps to be taken.

Right of Appeal

67. Either party has the right to appeal against this Decision Notice to the Information Tribunal. 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.
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 18th day of March 2010

Signed

**Anne Jones
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”.

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.”

Refusal of Request

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
- (c) states (if that would not otherwise be apparent) why the exemption applies.

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).”

Enterprise Act 2002

Part 9

237 General restriction

(1) This section applies to specified information which relates to –

- (a) the affairs of an individual;
- (b) any business of an undertaking.

(2) Such information must not be disclosed –

- (a) during the lifetime of the individual, or
- (b) while the undertaking continues in existence,

unless the disclosure is permitted under this Part.

(3) But subsection (2) does not prevent the disclosure of any information if the information has on an earlier occasion been disclosed to the public in circumstances which do not contravene –

- (a) that subsection;
- (b) any other enactment or rule of law prohibiting or restricting the disclosure of the information.

(4) Nothing in this Part authorises a disclosure of information which contravenes the Data Protection Act 1998 (c,29).

(5) Nothing in this Part affects the Competition Appeal Tribunal.

(6) This Part (except section 244) does not affect any power or duty to disclose information which exists apart from this Part.

238 Information

(1) Information is specified information if it comes to a public authority in connection with the exercise of any function it has under or by virtue of –

- (a) Part 1,3, 4, 6, 7 or 8;
- (b) an enactment specified in Schedule 14;
- (c) such subordinate legislation as the Secretary of State may by order specify for the purposes of this subsection.....

SCHEDULE 14 Specified functions (correct as at 30 August 2007)

- Parts 1, 2, 3, 4, 5, 6, 7, 8 and 11 of the Fair Trading Act 1973 (c 41).
- Trade Descriptions Act 1968 (c 29).
- Hallmarking Act 1973 (c 43).
- Prices Act 1974 (c 24).
- Consumer Credit Act 1974 (c 39).
- Customs and Excise Management Act 1979 (c 12).
- Estate Agents Act 1979 (c 38).
- Competition Act 1980 (c 21).
- Video Recordings Act 1984 (c 39).
- Consumer Protection Act 1987 (c 43).
- Consumer Protection (Northern Ireland) Order 1987 (SI 1987/2049 (NI 20)).
- Copyright, Designs and Patents Act 1988 (c 48).
- Property Misdescriptions Act 1991 (c 29).
- Timeshare Act 1992 (c 35).
- Clean Air Act 1993 (c 11).
- Value Added Tax Act 1994 (c 23).
- Trade Marks Act 1994 (c 26).]
- Competition Act 1998 (c 41).
- Chapter 3 of Part 10 and Chapter 2 of Part 18 of the Financial Services and Markets Act 2000 (c 8). An order made under section 95 of that Act.
- Fireworks Act 2003.
- Consumers, Estate Agents and Redress Act 2007

SCHEDULE 14 Specified Subordinate Legislation (correct as at 30 August 2007)

- Crystal Glass (Descriptions) Regulations 1973.
- Textile Products (Indications of Fibre Content) Regulations 1986.
- Consumer Protection (Cancellation of Contracts Concluded away from Business Premises) Regulations 1987.
- Control of Misleading Advertisements Regulations 1988.
- Paragraph 3 of Schedule 5 to the Simple Pressure Vessels (Safety) Regulations 1991.
- Package Travel, Package Holidays and Package Tours Regulations 1992.
- General Product Safety Regulations 2005.
- Footwear (Indication of Composition) Labelling Regulations 1995.
- Household Appliances (Noise Emission) Regulations 1990.
- Electromagnetic Compatibility Regulations 2006.
- Supply of Machinery (Safety) Regulations 1992.
- Recreational Craft Regulations 1996 in so far as not revoked by the Recreational Craft Regulations 2004.
- Lifts Regulations 1997.
- Non-Road Mobile Machinery (Emission of Gaseous and Particulate Pollutants) Regulations 1999.
- Pressure Equipment Regulations 1999.
- Radio Equipment and Telecommunications Terminal Equipment Regulations 2000.

Reference: FS50232320



Information Commissioner's Office

- Personal Protective Equipment Regulations 2002.
- Packaging (Essential Requirements) Regulations 2003.
- Recreational Craft Regulations 2004
- The Restrictions of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2006