

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 9 December 2010**

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

### Summary

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The complainant requested the database manual associated with the software used by the Student Loans Company (SLC) for monitoring repayment data. In response, The SLC stated that it did not hold a database manual but confirmed that information relating to its CLASS software system was retained in a data dictionary and specifications. The SLC, however, refused to disclose the data dictionary and specifications under the exemption afforded by section 36(2)(c) (prejudice to the effective conduct of public affairs) of the Freedom of Information Act 2000. The Commissioner has investigated and has found that section 36(2)(c) was not correctly applied. The Commissioner therefore requires the SLC to release the data dictionary and specifications with the exception of a limited amount of 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. Following the response of the Student Loans Company (SLC) to an earlier information request – which will not be addressed in this notice

- the complaint asked on 9 March 2010 for the following information to be provided:

*"...it would help me enormously in narrowing my request to be provided with the database manual – this will enable me to understand exactly what queries are automated, what the system is for obtaining a data dump of the data etc etc. So if you are unable to think of a way of helping me narrow my request could you at least provide me with the database manual so that I can try to narrow myself."*

3. On 12 March 2010, the SLC asked the complainant to confirm whether she wanted the request to be processed under the Act. This was affirmed by the complainant later that day.

4. The SLC formally responded to the request on 31 March 2010. The authority stated that it did not hold a database manual but clarified that:

*"Our CLASS system is a bespoke system which has been developed by SLC over a number of years. Apart from user screens, there are numerous batch processes that are only documented in specifications. Metadata is held in a data dictionary and this describes data items and data relationships."*

5. The SLC went on to consider whether it would be appropriate to release the data dictionary and specifications. The SLC decided, however, that the information should be withheld under section 36(2)(c) of the Act.

6. On 27 April 2010, the complainant contacted the SLC to inform it of her dissatisfaction with the handling of her requests. The SLC subsequently asked for, and was provided with, clarification of the areas that an internal review should cover.

7. On 25 May 2010, the SLC informed the complainant that the timeframe for carrying out the internal review would need to be extended. The SLC advised the complainant of the findings of its internal review on 22 June 2010. This upheld the decision to apply section 36(2)(c) of the Act, finding that the public interest favoured maintaining the exemption because there was:

*"...an unacceptable risk to [the SLC's] system security to release database specifications and data dictionary information into the public domain."*

## The Investigation

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### Scope of the case

8. On 13 July 2010 the complainant contacted the Commissioner to complain about the reliance of the SLC on section 36(2)(c).
9. During the course of the investigation the complainant has notified the Commissioner that she is not seeking the information described by the SLC in paragraph 11 below, nor any personal data that might be contained in the data dictionary and specifications. The Commissioner has therefore excluded this information from the scope of his determination.

### Chronology

10. On 13 August 2010 the SLC wrote to the Commissioner to explain in greater detail the information contained in the 'Specifications and Data Dictionary', also enclosing extracts from the specifications for the benefit of the Commissioner. In addition, the SLC set out the reasons why, in pursuance of section 36(2), it considered the requested information should not be released.
11. As one element of its argument against disclosure, the SLC stated:  
*"The specification contains sensitive information, including, BACS user numbers and SLC's bank sort code and account number used in transacting business..."*
12. The Commissioner emailed the SLC on 13 September 2010 to ask the authority to expand on its application of section 36(2)(c). The SLC's response was provided on 11 October 2010.
13. Further to the receipt of the SLC's response and a subsequent telephone call of 8 November 2010, the Commissioner emailed the SLC on 9 November 2010 to seek clarification of the status of the qualified person who offered his view that section 36(2)(c) was engaged. This included a request for a copy of any document which attested to the authorisation of the official being cited by the SLC as the relevant qualified person.
14. The SLC responded on 11 November 2010 by stating that the request had not been referred to its Chief Executive, as the relevant qualified person, in this instance. However, the SLC assured the Commissioner

that steps were being taken to ensure that the correct procedures were followed in the future.

## Analysis

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15. The legal provisions relevant to the decision are set out in the Legal Annex to the Decision Notice.

## Exemption

### Section 36 – Prejudice to effective conduct of public affairs

16. Information can only be exempt under section 36(2)(c) if 'in the reasonable opinion of a qualified person' disclosure would, or would be likely to, lead to adverse consequences in relation to the effective conduct of public affairs. Where the qualified person reasonably considers that there is at least a strong likelihood of prejudice occurring through disclosure, thereby engaging the exemption, the public authority must then consider the public interest in the release of the information.
17. In order to determine that the exemption has been applied correctly, the Commissioner must:
  - establish that an opinion was given;
  - ascertain who was the qualified person;
  - ascertain when the opinion was given;
  - consider whether the opinion was objectively reasonable and reasonably arrived at.
18. The Commissioner is aware that the majority of public authorities will not have a qualified person designated under section 36(5)(a) - (n) of the Act. Therefore, the public authority must either rely on a Minister to act as a qualified person or will need to have someone in its ranks authorised by a Minister as a qualified person if it wishes to rely on any part of section 36.
19. The Commissioner is also aware of the concerns of the Information Tribunal in the case *Student Loans Company Limited v the Information Commissioner* (EA/2008/0092) that the SLC had not adequately demonstrated that the Chief Executive of SLC was the qualified person for the purposes of section 36(2)(c).

20. In this case the SLC has confirmed that, in considering the request, it consulted with its Company Secretary and Head of Assurance Services, who inputted into a 'large proportion of the life cycle of the case.'
21. The Commissioner, however, has not been provided with any evidence to suggest that the Company Secretary would represent the qualified person in this case. Indeed, the SLC has apparently conceded that in this respect the procedure for applying section 36(2)(c) was not correctly followed.
22. In view of the above, the Commissioner has determined that the SLC has not demonstrated that it sought the opinion of a qualified person in applying section 36(2)(c). As a principal requirement of the exemption has not been satisfied, the Commissioner must necessarily conclude that section 36(2)(c) is not engaged. The Commissioner has therefore not had any reason to consider the public interest arguments both for and against disclosure.
23. Similarly, as no other exemption has been offered by the SLC, the Commissioner has had no choice but to require disclosure given the procedural flaws associated with the application of section 36(2)(c).

## **The Decision**

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24. The Commissioner's decision is that the public authority incorrectly applied section 36(2)(c) of the Act when responding to the information request.

## **Steps Required**

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25. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
  - To provide the identified information to the complainant with, in reference to paragraphs 9 and 11 above, the exception of BACs user numbers and the SLC's bank sort code and account numbers used in transacting business or any personal data that might be contained in the information.
26. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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

## Other matters

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28. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

For the purposes of the section 36 exemption, in order to establish whether a qualified person's opinion was reasonable the Commissioner will consider the information that the qualified person had in front of them when making a decision. This approach accords with the Information Tribunal's findings in *McIntyre v Information Commissioner* (EA/2007/0068), in which it stated at paragraph 47 that:

*"We would recommend to the Commissioner that in future investigations for complaints where a s.36(2) exemption has been claimed that he should require to see more evidence in relation to the opinion given by the qualified person, such as civil servants' submissions to ministers and their responses."*

During his investigation, the Commissioner asked the SLC provide him with the information that the qualified person had access to when coming to a decision. While the SLC confirmed the kinds of arguments that were considered, the authority stated that the information was supplied to what it considered to be the qualified person in anecdotal form and discussed during face to face meetings. The SLC was therefore unable to supply any specific documents containing the information.

Although the Commissioner did not have to consider whether the opinion was reasonable in this instance, and therefore this issue did not materially affect his determination, he would in future expect the SLC to maintain a record of the information that was put before the qualified person when considering a request.

## 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 sent.

**Dated the 9<sup>th</sup> day of December 2010**

**Signed .....**

**Lisa Adshead  
Group Manager FOI Policy Delivery**

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

## Legal Annex

### Prejudice to effective conduct of public affairs

#### Section 36(1) provides that –

“This section applies to-

(a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and

(a) information which is held by any other public authority.

#### Section 36(2) provides that –

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

(a) would, or would be likely to, prejudice-

(i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or

(i) the work of the Executive Committee of the Northern Ireland Assembly, or

(ii) the work of the executive committee of the National Assembly for Wales,

(b) would, or would be likely to, inhibit-

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

#### Section 36(3) provides that –

“The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).”



**Section 36(4) provides that –**

"In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".

**Section 36(5) provides that –**

"In subsections (2) and (3) "qualified person"-

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
- (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
- (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
- (h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means-
  - (i) the public authority, or
  - (ii) any officer or employee of the authority authorised by the Assembly First Secretary,
- (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
- (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,

- (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,
- (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means-
  - (i) the public authority, or
  - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,
- (m) in relation to information held by the Greater London Authority, means the Mayor of London,
- (n) in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and
- (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means-
  - (i) a Minister of the Crown
  - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or
  - (iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown."

**Section 36(6) provides that –**

"Any authorisation for the purposes of this section-

- (a) may relate to a specified person or to persons falling within a specified class,
- (b) may be general or limited to particular classes of case, and
- (c) may be granted subject to conditions."

**Section 36(7) provides that –**

A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion-

- (a) disclosure of information held by either House of Parliament, or
- (b) compliance with section 1(1)(a) by either House, would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.