

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 January 2012

**Public Authority:** Oxfordshire County Council  
**Address:** Trading Standards Service  
Graham Hill House  
Electric Hill House  
Ferry Hinksey  
Oxford  
OX2 0BY

### Decision (including any steps ordered)

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1. The complainant has requested information relating to complaints received by the Oxfordshire County Council Trading Standards Service about Camerabox Limited.
2. The Commissioner's decision is that Oxfordshire County Council has correctly applied the exemption in section 44 of the Act, which exempts information from disclosure where that information is subject to a statutory prohibition on information being disclosed.

### Request and response

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3. On 8 May 2011, the complainant wrote to Oxfordshire County Council and requested information in the following terms:

*"1. For the period of 2004 to today, how many complaints have you received about this company?"*

*2. Of those complaints, how many were resolved without the need for further action by you i.e. were resolved privately between the client and Camerabox?"*

*3. Of those complaints, how many resulted in official action by you?"*

*4. Please can you supply details of any of these actions that resulted in fines."*

4. Oxfordshire County Council responded on 29 June 2011. It stated that the information was exempt as it is subject to a statutory prohibition on disclosure provided by Part 9 of the Enterprise Act 2002.
5. Following an internal review the council wrote to the complainant on 13 July 2004 upholding its initial refusal notice for the same reasons.

### **Scope of the case**

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6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He argues that the information should have been disclosed to him

### **Reasons for decision**

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7. Section 44 of the Freedom of Information Act 2000 ('the Act') states that information which is the subject of a statutory prohibition is exempt from disclosure.
8. The council argues that part 9 of the Enterprise Act 2002 prohibits the disclosure of any information which the council holds as a result of the exercise of its functions under Part 8 of that Act. It states that this includes information on complaints it has received, including statistical data about the handling of the complaints it has received and investigations it has conducted as a result of those complaints.
9. Section 237 of the Enterprise Act prohibits the disclosure of information which the council receives which relate to the affairs of an individual or any business of an undertaking during the lifetime of the individual or whilst the undertaking continues to exist. Section 245 of that Act makes it a criminal offence for any person to disclose relevant information in breach of this prohibition on disclosure.
10. The Commissioner notes that the information relates to the numbers of complaints against the company and information about what actions the trading standards section of the council took as a result of those complaints. The question he must consider is whether this equates to information received about the *"business of an undertaking"* for the purposes of section 237.
11. The information which has been requested is not specific information which has been received about the company itself. It is statistical data

on the number of complaints received about it together with information on the actions of Trading Standards department relating to those complaints. It would in effect provide a reasonably good overview of the actions which the Trading Standards department took when dealing with the complaints it had received about the company. It could therefore be argued that the information is not the sort of information which the Enterprise Act prohibits the disclosure of.

12. However the council referred the complainant to the decision of the First Tier Tribunal in the case of Malcolm Dey v the ICO and the Office of Fair Trading (EA/2006/0057). In that case the Tribunal found that information about the number of complaints made against a company falls within the scope of the prohibition in the Enterprise Act.
13. The Commissioner is therefore satisfied that the prohibition does include information on the number of complaints which the Trading Standards department received and the actions it took when dealing with those complaints.
14. The Enterprise Act does not prohibit the disclosure of information about a business which has previously been disclosed to the public in circumstances which did not contravene the prohibition in the Enterprise Act or any other rule of law.
15. The information which has been requested would only be held by the council and therefore only the trading standards department of the council could disclose that information. The council has confirmed to the complainant that the information has not been disclosed previously and that it is not already in the public domain. The Commissioner is therefore satisfied that the information has not been disclosed previously.
16. The prohibition within the Enterprise Act states that the prohibition lasts "*while the undertaking continues in existence*". The complainant argues that the company concerned has gone into administration since his request was first made and that as the company is no longer trading the information can be disclosed to him. The Commissioner notes that the company went into administration between the council's receipt of the request and its decision in the review.
17. The Commissioner is satisfied however that a company is still in existence even after entering into administration. He considers the position to be that companies in administration still exist unless or until that company is wound up. The Commissioner therefore considers that the prohibition still has effect when a company has gone into administration.

18. Exemptions to the prohibition are provided within section 239 to 243. Loosely described, these include:

- the consent of the business or the individual to disclose the information (section 239).
- That the disclosure is required for the purpose of a community obligation (Section 240).
- That the council needs to disclose the information for the purposes of fulfilling its functions under the Enterprise Act, e.g. such as to enable it to complete its investigations into the company (section 241).
- The council can disclose the information to any person for the purposes of bringing criminal proceedings. However there is a prohibition on the person receiving that information from using it for any purposes other than those for which it was disclosed (i.e. to bring criminal proceedings) (section 242).
- The council can disclose the information to a public authority overseas for the purposes of the furthering the overseas authority's investigations into activities which it itself carries out under the Enterprise Act (section 243).

19. The Commissioner has considered whether any of the above would allow the disclosure of the information requested by the complainant.

20. The Commissioner is satisfied that the company would not have provided its consent to a disclosure of the information.

21. The Commissioner is also satisfied that responding to the complainant's request is not necessary in order to fulfil a community obligation or to further the carrying out of its functions in this instance.

22. In its refusal notice the council stated to the complainant that if he could provide evidence that he was considering taking legal action against the company it might be able to disclose the information to him. It said that where it is satisfied that that the complainant wants the information in order to take civil proceedings against the company the Enterprise Act allows a limited disclosure of the information to that individual. Such a disclosure would however occur outside of the complainant's rights under the FOI Act and would not effect the application of the exemption in section 44 of the Act. This is because a disclosure of information under the access rights provided by the FOI Act is considered to be a global disclosure, i.e. that any person could receive that information.

23. The Commissioner is therefore satisfied that the exemptions stated above are not relevant for the purposes of confirming whether section 44 is applicable in this instance. The Commissioner is therefore satisfied that the requested information falls within the scope of the prohibition.
24. Section 44 of the Act is an absolute exemption. This means that the Commissioner does not need to carry out a public interest test once he has established that the exemption is applicable.
25. The Commissioner's decision is therefore that section 44 of the Act is applicable and that the council was therefore correct to withhold the information from disclosure in this instance.

## Right of appeal

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26. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

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

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**