

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 May 2012

**Public Authority:** Legal Services Commission  
**Address:** 8th Floor (8.40)  
102 Petty France  
London  
SW1H 9AJ

#### Decision (including any steps)

---

1. The complainant requested details about the 'losses statement' in the public authority's accounts for 2009/10. He was provided with some information but the remainder was withheld using the exemptions at sections 40(2) and 43(2) of the FOIA. During the Information Commissioner's investigation some further information was also provided. The Information Commissioner's decision is that part of the information is exempt under sections 43(2) and 40(2), but some should be disclosed. The Information Commissioner requires the public authority to take the following steps to ensure compliance with the legislation: the names and business addresses of the untraceable and bankrupt sole practitioners should be provided.
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Background

---

3. The request relates to information published within the public authority's annual report for 2009/10. The information requested is in connection with the following statement which can be found on page 71 of the annual report<sup>1</sup>:

***"Note 22 - Accountability notes***

*Losses statement*

*There were 9,501 (2009: 7,343) accounts involving losses totalling £32.1m (2009: £20.8m). In accordance with Managing Public Money losses over £250,000 are separately disclosed. There were 10 supplier balances written off over £250,000. The balances were £267,171, £279,809, £343,458, £356,624, £377,791, £616,631, £631,819, £883,247, £939,554, and £1,305,657. The suppliers are now either bankrupt or cannot be traced by the Commission. The debts arose from the normal course of business and represent payments on account for which claims or bills have not been submitted. There were 2 funded client balances written off over £250,000. The balances were £287,394 and £475,000. The funded client cases related to revoked cases that are now over six years old.*

*In addition to the above losses, there were other debts (offset against opening provisions) written-off during the 2009-10 year. The circumstances and age of each debt were taken into account in determining whether to write these debts off. There were 86,165 accounts involving losses totalling £80.3m and the debts arose from the normal course of business. In accordance with Managing Public Money losses over £250,000 are separately disclosed. There were 22 supplier balances written off over £250,000. The balances were £250,445, £255,012, £288,870, £288,934, £296,808, £301,335, £318,161, £332,657, £339,283, £345,170, £355,664, £372,517, £373,169, £375,471, £377,551, £390,477, £408,028, £424,552, £437,104, £463,064, £521,675, and £1,277,160. The Commission have applied these debts against the provision.*

---

<sup>1</sup> [http://www.legalservices.gov.uk/docs/archive/LSC\\_AnnualReport\\_2009-10.pdf](http://www.legalservices.gov.uk/docs/archive/LSC_AnnualReport_2009-10.pdf)

*Under the terms of the Unified Contract agreed with the Law Society in April 2008, in respect of historic cases as defined in the contract, providers can opt to accept payments on account (POAs) as the final bill without providing further documentation. As there is no supporting documentation these payments are deemed to be a loss to the Commission. All of these payments on account have been accounted for in prior year accounts. The total payments on account opted as final bills under the agreement was £12.4m (2009: £24m). Before the Unified Contract the Commission would have expected a proportion of these POAs to be repaid. No case started after April 2002 is affected by this agreement. The Commission estimates that approximately 96% of the cases expected to be closed through the Unified Contract agreement have been processed at 31 March 10".*

## Request and response

---

4. On 13 May 2011, the complainant wrote to the public authority and requested information in the following terms:

*"In Note 22 of your accounts 09/10 you detail your 'losses statement'.*

*In relation to losses you detail in that section ten supplier balance amounts in excess of £250,000 and two funded client balances in excess of £250,000.*

*In relation to written-off debts you detail 22 supplier balances in excess of £250,000.*

*For all 34 amounts please state (i) the amount, (ii) the name and address of the company or individual who received the payment, (iii) what the payment was supposed to be for and (iv) why it was that the LSC did not receive the service or goods for that amount".*

5. The public authority responded on 13 June 2011. It stated that part (i) was already available and provided a response in respect of parts (iii) and (iv). It stated that the information in respect of part (ii) was exempt by virtue of sections 40(2) and 43(2) of the FOIA.
6. Following its internal review the public authority maintained this position.

## Scope of the case

---

7. On 5 December 2011 the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He stated:

*"Whilst I accept their argument that Sections 43 and 40(2) may apply to the requested information I feel that the public interest in disclosure outweighs that in withholding it. I feel this is particularly the case given the amounts written off by the Commission, with one sum in the region of £1.3 million. I believe that there is a right for the public to know the details of those who defaulted on their debt and certainly, in respect of the companies involved, I cannot see how disclosure of the information would prejudice their position any more".*

8. During the Information Commissioner's investigation the public authority identified further information which it deemed suitable for disclosure and it provided this to the complainant. It did not provide the names / addresses of 16 debtors as these were classed as 'sole practitioners' and it believed that disclosure would breach the Data Protection Act (the "DPA"). It did not provide the names / addresses of one further provider as it believed to do so would breach that provider's commercial interests.
9. When asked whether or not this partial disclosure would satisfy his request the complainant advised:

*"I would still prefer full disclosure. I would point out that for those declared bankrupt their details would be made public as I understand they would be routinely published in the London Gazette. As for those where the LSC are saying it is uneconomical to pursue the matter there is a stronger public interest in knowing who has effectively got away from paying back literally hundreds of thousands of pounds owed to a public body".*

## Reasons for decision

---

### Section 43(2) – commercial interests

10. Section 43 provides that if the disclosure of information would, or would be likely to, prejudice the commercial interests of any person including the public authority who holds the information, then the

information is exempt from disclosure. This prejudice-based exemption is subject to the public interest test.

11. The withheld information consists of the name and address of one service provider, which is not a sole practitioner.

*The applicable interest*

12. In its responses the public authority has indicated that the relevant interests are the financial circumstances of the organisation involved.

*The nature of the prejudice*

13. The withheld information concerns monies that have been 'written off' by the public authority as explained in the "*Background*" section above. The public authority has clarified to the Information Commissioner that it believes disclosure *would be likely* to have the prejudicial effects stated.

14. The public authority has advised the Information Commissioner:

*"... we maintain that the organisation's name should be withheld under [section 43]. This is because this firm was not declared bankrupt and nor was it liquidated, hence valid commercial interest considerations remain.*

*The amount recorded as being owed by this firm was disputed and eventually written off. We believe that the reason for the debt being written off adds weight to the argument that the identity of the debtor should be withheld. It is our assertion that disclosure of the name of the firm, as well as more detailed information relating to the nature of the debt, would also be likely to adversely affect the LSC's ability to recover debts in the future. The public interest is better served by the LSC being able to carry out this type of recovery work as it relates to the recovery of public funds".*

15. The Information Commissioner notes that the public authority has not contacted the organisation in relation to this request. However, as the amount was disputed it is very unlikely that the organisation would consent to disclosure of the information. The amount concerned totals £332,657.

*Would prejudice be likely to occur?*

16. As stated above, the Information Commissioner has no evidence from the organisation concerned to support the public authority's belief that disclosure would be likely to prejudice its commercial interests. However, taking account of the circumstances, he concludes that it is unlikely that consent would be given.
17. The public authority's own views regarding the prejudice that would be likely to occur as a result of disclosure can be summarised as follows:
  - disclosure would reveal something about the overall financial circumstances of the organisation which could have a prejudicial effect on its reputation thereby adversely affecting its commercial interests.
18. It further advised the Information Commissioner that:

*"In reaching the decision to maintain the use of this exemption the LSC considered the likely impact of disclosure on the organisations in question. We believed that key to our argument was the fact that the legal service providers that the LSC contract with are not solely funded by the LSC and nor do they, for the most part, only carry out publicly funded work. These providers are therefore commercial organisations with legitimate commercial interests and information disclosed about them may therefore have a reputational impact not only on their publicly funded work but also on any work they carry out privately. In this instance the disclosure of their names alongside the data already available would have implied something about their overall financial situations".*
19. Taking a pragmatic approach, the Information Commissioner accepts that the organisation, if contacted, would be likely to object to disclosure of the requested information. Furthermore, he agrees that releasing details of the debt would be likely to have an effect on the commercial interests of the organisation concerned because of the effect it would have on its reputation.
20. Having accepted the public authority's view that disclosure would be likely to prejudice the commercial interests of the organisation in this case the Information Commissioner will now go on to consider the public interest in disclosure.

*Public Interest Test*

21. Section 2(2)(b) provides that where a qualified exemption applies information shall only be withheld where the public interest in maintaining that exemption outweighs the public interest in disclosure.

*Public interest arguments in favour of disclosing the requested information*

22. The public authority did not provide any arguments to support disclosure of the information. The Information Commissioner has identified the following as relevant:
- promoting transparency and the accountability of use of public funds;
  - ensuring that public money is being used effectively;
  - ensuring that the public authority is obtaining value for money when purchasing goods and services.

*Public interest arguments in favour of maintaining the exemption*

23. The public authority believes that the 'anonymised' disclosure that has already been made is sufficient to ensure that the public interest is met.

*Balance of the public interest arguments*

24. The Information Commissioner accepts that the disclosure made goes some way to satisfying the public interest as it indicates the amount of debt owed by the organisation concerned.
25. In considering the public interest test, the Information Commissioner takes into account that he has found the exemption to be engaged. That is, releasing the withheld information would harm the commercial interests of the company. However, the Information Commissioner appreciates that public access to information held by public authorities engenders desirable transparency and accountability of those authorities. On the facts of this matter, the public authority has already provided the actual written-off amount and has confirmed that this was a 'disputed' amount and that the organisation concerned is, so far as the public authority is aware, still trading. This goes some way in facilitating transparency and accountability of the public authority's action. While knowing the organisation concerned would increase the degree of transparency and aid accountability, the likely consequence will be damage to the commercial activity of that organisation.

26. On the facts of this matter, the Information Commissioner has concluded that the public interest in the small increase in transparency and accountability, by releasing the withheld information, does not justify the likely damage that would be caused to the commercial activities of the organisation. Although he affords some weight to the arguments that the amount written off is significant and the public should be fully informed about such costs to the public purse, he notes that the amount was under dispute and revealing the name of the organisation would potentially shed it in a bad light when the actual circumstances concerning the debt have not been fully explored. Consequently, the Information Commissioner is satisfied that, in the circumstances of this case, the balance of the public interest favours the maintenance of the exemption.

### **Section 40 – personal information**

27. The information withheld under section 40 has been divided into three different categories by the public authority. These are:
- Funded client – private individual
  - RDCO – private individual
  - Service provider - sole practitioner

#### *Funded Clients*

28. The public authority has explained:

*“For funded clients, the debts relate to instances where clients are assessed as needing to make repayments for some or all of the money previously provided as legal aid funding. All funded client debts in the case of this request relate to single cases”.*

29. There are two relevant entries in the withheld information. They relate to private individuals and private addresses.

#### *RDCO (Recovery of Defence Cost Orders)*

30. This entry relates to a private individual and a private address. An RDCO is issued by the judge at the end of a trial if they find that the defendant could and should pay for their own defence. (More information about this is on the public authority's website<sup>2</sup>).

---

<sup>2</sup>[http://www.legalservices.gov.uk/criminal/getting\\_legal\\_aid/recovery\\_defence\\_cost\\_orders.asp](http://www.legalservices.gov.uk/criminal/getting_legal_aid/recovery_defence_cost_orders.asp)

*Service Providers*

31. The public authority has explained:

*“For service providers, as cases may last some time, the LSC makes interim payments known as ‘payments on account’ (POAs) to enable cases to be progressed. On completion of a case the provider should submit a bill of costs for assessment and the POAs are recouped to ensure that they are not paid twice. Where a bill of costs is not presented a debit note is created to recoup the POAs. Alternatively, in other cases, fixed monthly payments may be made to providers and the provider should submit the bill of costs as with POAs. All provider debts in the case of this request relate to multiple cases”.*

32. Therefore, the information only serves to identify the service provider and none of the clients concerned.
33. The Information Commissioner considers that the two former categories are sufficiently similar to be considered together as they both relate to ‘private’ individuals rather than a service provider dealing with several individuals. He will therefore consider the data in two groups, namely ‘private individuals’ and ‘service providers’.

***Section 40(2)***

34. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in section 40(3) or section 40(4) is satisfied. One of the conditions, listed in section 40(3)(a)(i), is where the disclosure of the information to any member of the public would contravene any of the principles of the Data Protection Act 1998 (the “DPA”).
35. The public authority has confirmed that it believes that disclosure would breach the first principle of the DPA. This principle requires that the processing of personal data is fair and lawful and that at least one of the conditions in schedule 2 is met.

***Is the requested information personal data?***

36. Section 1 of the DPA defines personal data as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

37. The relevant information consists of the names, and last known addresses, of sole practitioners and private individuals. The Information Commissioner concludes that this is their '*personal data*'.
38. Where the address is a 'private' address rather than a 'business' one it has been given different considerations.

***Would disclosure breach one of the data protection principles?***

39. The data protection principles are set out in schedule 1 of the DPA. The relevant principle in this case is the first principle which states that personal data should only be disclosed in fair and lawful circumstances. The Information Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Information Commissioner balances the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

***Reasonable expectations - private individuals***

40. The Information Commissioner makes a general distinction between information relating to one's professional life and information which relates to one's private life and generally considers the latter attracts more privacy and warrants more protection. Although the requested information in this case does relate to monies which are 'owed' to the public purse, these debts, as explained above, relate to named individuals in a 'private' capacity. Furthermore, some of the addresses that form part of the withheld information are 'private' addresses of the parties concerned rather than business addresses and as such the Information Commissioner believes these should be afforded the same considerations.
41. The public authority explained to the complainant that:

*"... money may be owed because a funded client or 3rd party was required to repay some or all of the legal aid funding that was made available for the case".*
42. The public authority has also argued:

*"I consider that these individuals would have a reasonable expectation that their personal information, and in particular information about their financial circumstances, would not be disclosed in this way".*

43. It has also advised that:

*“Disclosing the names of funded clients would have confirmed that those individuals had been in receipt of legal aid, the provision of which is considered akin to receiving a state benefit. This in turn would have implied something about their financial circumstances both in itself and especially when combined with the fact that a debt had been written off in relation to them. There is no expectation on the part of the LSC’s funded clients that such information will be disclosed publicly and we do not consider that there is a strong argument to support a breach of their rights to privacy”.*

44. In respect of those parties who are ‘private’ individuals the Information Commissioner accepts that their expectations are likely to be such that they would not expect disclosure of information about their financial circumstances, or their private address, to be placed in the public domain.

45. Nevertheless, the Information Commissioner does accept it could be argued that there is a legitimate public interest in the disclosure of this information as it is a debt which is, essentially, owed to the public purse. He also understands that such payments are large sums which have been met by the public purse and there is a legitimate public interest in knowing exactly how public money is spent in such circumstances as well as the reasons for failing to recoup it. However, he also considers a party’s personal finances to attract privacy and to therefore warrant more protection than those of a professional party providing a service.

46. In conclusion, the Information Commissioner does not accept that the legitimate interests of the public warrant the intrusion into the privacy of the individuals concerned that disclosure of the requested information would inevitably cause. He does not believe that these parties would expect their reliance on public funding, and the amounts involved to pursue their legal cases, to be released to the general public. He also believes that all parties covered by the scope of the request would have no expectation that their private home address would be released, this being distinctly different to a business premises.

47. For the reasons explained above, the Commissioner is satisfied that disclosure of ‘private’ information would be unfair and in breach of the first data protection principle outlined in the DPA. He has therefore concluded that section 40(2) of the Act is engaged in respect of this information.

***Reasonable expectations - service providers***

48. These providers are all sole practitioners who were acting on behalf of clients in receipt of legal aid, other than one retired barrister. As explained above, the public authority has made 'payments on account' to these parties with the intention of recouping any excess fees paid at the end of proceedings. Of the 18 providers concerned, 11 are 'bankrupt' (a number of these having been reported in the London Gazette by the public authority). Of the 7 remaining providers, 1 has not been traced and the other 6 have been classed as 'uneconomical' to pursue.
49. The reasons for the debt being 'uneconomical' to pursue range from:
- disputed debt;
  - no clear line of sight established to assets prior to debt becoming statute barred;
  - debtor had left country and no identification of assets justifying enforcing debt abroad;
  - subject to litigation and no guarantee of successful recovery.
50. The service providers have been provided with funding from the public purse to represent their clients. As explained above, these payments are given with the understanding that any overpayments will be given back to the public authority when proceedings have ended. It is also clear that these parties, although classed as 'individuals', are, other than the retired barrister, solicitors who are acting in a professional capacity. As solicitors, they are all bound by the rules of the Solicitors Regulation Authority (the "SRA"). The SRA's principles can be found on its website<sup>3</sup>; one of which is:

*"... run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles".*

51. It is the Information Commissioner's view that all service providers would reasonably expect details of the written-off monies, and their business addresses, to be disclosed and he accepts that there is a high level of legitimate public interest in this information. He notes that the public authority has already released the same information in respect of limited companies - except for one case where the provider was still trading and it applied section 43(2) (as considered above) – and he believes the same considerations apply for sole practitioners. However,

---

3

<http://www.sra.org.uk/solicitors/handbook/handbookprinciples/content.page>

he does also note that the information which was released in respect of limited companies does all relate to providers which were either bankrupt or had gone into liquidation so there were no on-going commercial interests.

52. In respect of the retired barrister, the Information Commissioner considers that this party would also have a reasonable expectation that this type of information would be released as a result of a request under the FOIA.
53. As professional service providers, in receipt of public monies, the Information Commissioner concludes that they would have a reasonable expectation that their names and business addresses would be disclosed in respect of a requested made under the FOIA.

### **Would it be fair to disclose the requested information?**

54. In deciding what is fair, the Information Commissioner balances the possible consequences of disclosure for the data subjects, including their reasonable expectations, with the general principles of accountability and transparency and any legitimate interests arising from the specific circumstances of the case.
55. Rather than adopt a case-specific approach for each of the 18 providers in this instance, the public authority appears to have taken a 'blanket' approach to the type of information concerned, ie if it is a sole practitioner the information should not be released irrespective of the circumstances. It explained that:

*"In trying to recover money there is a balance to be struck between incurring more costs against the potential benefit of successful recovery. Where there seems limited chance of recovery e.g. because no source of repayment has been identified or it seems unlikely that litigation would succeed, a commercial decision is taken to write off the debt".*

56. The Information Commissioner notes that the service providers who are sole practitioners fall into three categories:

- debtor bankrupt,
- debtor whereabouts unknown, or
- uneconomic to pursue the debt.

57. For those providers who are bankrupt, the Information Commissioner does not consider disclosure of their names and business addresses to be an intrusion of privacy that would cause them significant prejudice. This is largely because they are no longer 'trading' so the impact on them can only be negligible. In respect of the debtor who cannot be

traced, the Information Commissioner also considers that this party can no longer be trading and they therefore fall under the same considerations. He further notes that there is no dispute in respect of the amounts due, as they are written off purely on the basis of either bankruptcy or inability to pursue the debt.

58. In respect of these two categories, the Information Commissioner also finds that disclosure would meet schedule 2 condition 6 in the Data Protection Act. Disclosure is necessary to meet a legitimate public interest and disclosure of the names of these sole providers and their last recorded business address is a proportionate way to meet the public interest when considering any prejudice (with particular emphasis on business addresses - he does not conclude that private home addresses should be released as he finds that this is not warranted). The Information Commissioner has not been presented with any additional reasons as to why this disclosure would be unlawful.
59. However, in respect of those parties where the debt has been considered 'uneconomic to pursue' the Information Commissioner has drawn a different conclusion. These parties may well still be trading and their business and reputation could therefore be affected by such a disclosure. The debts have been 'written off' without any firm conclusion as to whether the party or the public authority was ultimately liable for that debt. As such the Information Commissioner considers that releasing this information into the public arena would not be fair as it may tarnish the reputations of individuals who are actually not at fault.
60. In the Information Commissioner's view, even where disclosure is necessary to address the legitimate public interest, it may still be unwarranted if there is a disproportionate detriment to the rights of the individuals concerned.
61. In this case the Information Commissioner has already concluded, when considering fairness above, that there would not be unwarranted harm or distress caused to the data subjects from the disclosure of the information.
62. The Information Commissioner's conclusion is that the public authority incorrectly applied the exemption found in section 40(2) of the FOIA in respect of those sole practitioners who were either bankrupt or unable to be traced.

## Right of appeal

---

63. 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)

64. 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.
65. 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 .....

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