

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 February 2013

Public Authority: Construction Industry Training Board

Address: Head Office
Bircham Newton
Kings Lynn
Norfolk
PE31 6RH

Decision (including any steps ordered)

1. The complainant has requested from the Construction Industry Training Board (CITB) a list of all companies registered with it. The Commissioner's decision is that the CITB was entitled to withhold the requested information under section 44(1)(a) (prohibition on disclosure) of FOIA. He does not there require the CITB to take any steps as a result of this notice.

Background

2. The CITB operates under the Industrial Training Act 1982 (ITA), which gives it the power to collect information from employers in the construction industry each year and to use this information to assess whether or not an employer is liable to pay a statutory levy. Income from the levy is primarily used to provide financial support for employers engaged in training. The CITB has stated that the levy has similar characteristics to other forms of business taxation in that it is collected under a form of compulsion.

Request and response

3. On 31 January 2012 the complainant wrote to the CITB and requested information in the following terms:

"Under the freedom of information act please provide us with a full list of contractors that you have established should be eligible to be considered by the CITB to pay or be exempt from paying the levy."

4. The CITB responded on 14 February 2012. It informed the complainant that any list derived from its register was exempt information under sections 41(1) and section 44(1)(a) of FOIA.
5. The complainant contacted the CITB on 1 August 2012 and advised that he had not received a response to his information request. The CITB subsequently wrote to the complainant again on 15 August 2012 and attached a copy of its response letter of 14 February 2012. The CITB also acknowledged receipt of a separate request (not considered here) which it considered was substantially the same so, on this basis, reiterated its reliance on sections 41(1) and section 44(1)(a) of FOIA.

Scope of the case

6. The complainant contacted the Commissioner to complain about the CITB's refusal to disclose the requested information.
7. In considering this matter, the Commissioner noticed that there may be more than one way of reading the request and therefore clarified with the complainant the specific information he was seeking. This is as follows:
 - A list comprising the contractors that are registered with the CITB, not including any levy liability information relating to those contractors.
8. The information described above will henceforth be referred to in the notice as the "disputed information".
9. The Commissioner has proceeded with his investigation on the basis of this reading of the request. This has equally been adopted by the CITB, which has continued to claim that sections 41(1) and 44(1)(a) apply to the disputed information.

Findings of fact

10. The CITB has informed the Commissioner that it has previously been willing to confirm whether a business is registered with it or not in response to an enquiry about that business. Under FOIA, however, it was not prepared to provide a complete registration list.

11. During the course of the Commissioner's investigation, the CITB has advised that it has decided to amend its work instructions such that in future it will respond to specific enquiries by neither confirming nor denying that a business is registered.

Reasons for decision

12. For the reasons outlined below, the Commissioner has decided that the CITB was entitled to refuse the disclosure of the disputed information under section 44(1)(a) of FOIA. He has not therefore found it necessary to make a separate determination on whether section 41(1), the other exemption cited by the CITB, would similarly apply.

Section 44 – prohibitions on disclosure

13. Section 44(1)(a) of FOIA states that information is exempt information if its disclosure by the public authority holding it is prohibited by or under any enactment. The CITB has claimed in this case that section 44(1)(a) is engaged by virtue of the restriction on disclosure set out by section 6(2) of the ITA.

Section 6(1) and (2) of the ITA provides:

(1) An industrial training board may require employers in the industry to furnish such returns and other information of a kind approved by the Secretary of State and to keep such records of a kind approved by him and produce them for examination on behalf of the board as appear to the board to be necessary for carrying out its functions.

(2) Subject to subsection (3) below, returns and other information furnished in pursuance of subsection (1) above and any information obtained on an examination made in pursuance of that subsection shall not, without the consent of the employer to whose business the returns or information relate, be disclosed otherwise than to the Secretary of State or one of his officers, or to an industrial training board or a committee appointed by such a board, or an officer of such a board or committee or any person entitled to take part in the proceedings of such a board.

14. Sections 6(3)(a) and (b) of the ITA contain exceptions to the effect of section 6(2) quoted above. Paragraph (a) permits the disclosure of returns in the form of a summary if the summary is so framed "as not to enable particulars relating to any individual business to be ascertained from it." Paragraph (b) states that the restriction on disclosure will not apply where disclosure is made for the purposes of legal proceedings pursuant to the ITA or for any criminal proceedings.

15. The Commissioner considers that the successful application of section 44(1)(a) of FOIA in the context of section 6(2) of ITA rests on the following conditions being met:
 - That the disputed information was **furnished** (the Commissioner's emphasis) to the CITB.
 - That the exceptions to the restriction on disclosure set out by section 6(3) do not apply.
16. According to the CITB's website¹, if *"you are a GB based construction business/employer you should be registered with CITB-ConstructionSkills. The registration will enable access to the scheme along with a wide range of other funding and support services."* A registration form has been produced by CITB for this purpose.
17. The Commissioner considers that the act of registration itself means that the CITB was furnished with the disputed information by the employers. Furthermore, the CITB does not have the consent of the employers to the release of the disputed information. It is therefore left for the Commissioner to consider the gateways to disclosure set out at section 6(3) of the ITA.
18. As stated above, paragraph (a) of section 6(3) allows the disclosure of information where the particulars of any individual business cannot be ascertained. It is the Commissioner's opinion that the disputed information does, by its very nature, tell us something about each of those employers – that is, a named employer is registered with the CITB. The Commissioner has therefore found that section 6(3)(a) does not apply.
19. Under section 6(3)(b) of the ITA, information provided to the CITB by employers can be disclosed where the disclosure is made for the purposes of legal proceedings pursuant to the ITA or for any criminal proceedings. The Commissioner observes that there is no suggestion that the information is required for the proceedings described in the exception. In any event, disclosure under FOIA is to the world at large and cannot be restricted to a specific purpose. The exception does not therefore have a bearing on the application of section 44(1)(a) in this situation.

¹ <http://www.cskills.org/levy-grant/index.aspx>

20. Consequently, the Commissioner has decided that the disclosure of the requested information is prohibited by section 6(2) of the ITA and thus section 44(1)(a) of FOIA is engaged. As section 44 is an absolute exemption, there is no requirement in the legislation to consider the public interest in disclosure.

Right of appeal

21. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

22. 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.
23. 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

Lisa Adshead
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