

Freedom of Information Act 2000

Decision notice

Date: 3 May 2017

Public Authority: British Business Bank
Address: Foundry House
3 Millsands
Sheffield
S3 8NH

Decision (including any steps ordered)

1. The complainant requested information from the British Business Bank in relation to its partnership with a loan company called Funding Circle. The British Business Bank refused part of the request under section 43(2) of the Freedom of Information Act 2000 (the Act) because it considered disclosure would prejudice commercial interests.
2. The Commissioner's decision is that section 43(2) is engaged and the balance of the public interest favours maintaining the exemption. The British Business Bank did breach section 17(1) by providing its refusal notice after 20 working days.
3. No steps are required for the British Business Bank to comply with this request.

Request and response

4. On 26 February 2016, the complainant wrote to the British Business Bank and requested information in the following terms:

"I note that Funding Circle are noted as a partner on the British Business Bank website.

I would like to request information regarding the performance of the funding provided by the BBB to Funding Circle.

1. *Clarification of the criteria that were applied for making loans via the Funding Circle Platform*

2. *The number of loans that BBB has participated on that have been administered by Funding Circle*
 3. *The number of loans that are performing to the repayment schedule in the original loan agreement*
 4. *The number of loans that are non-performing to the original loan agreement*
 5. *The number of loans that are in default*
 6. *The policy and record in respect of pursuing loans in default and arrears*
 7. *The net yield to the BBB after deductions for defaults*
 8. *I expect that the BBB has access to an account on Funding Circle (as with other institutions) and would like to request access to this information."*
5. The British Business Bank responded on 26 April 2016 as follows:
- Item 1: refused the request under section 21 of the Act as the information was already accessible to the complainant.
 - Item 2: provided the held information.
 - Items 3 – 8: refused the request under section 43(2) of the Act, as it considered that disclosure would – or would be likely to – prejudice the commercial interests of its private sector partners, the beneficiaries of the British Business Bank, and the British Business Bank itself.
6. The complainant wrote to the British Business Bank on 25 May 2016 and requested an internal review for the information withheld under section 43(2) of the Act. He also made a number of arguments as to why he considered that the information withheld under section 43(2) of the Act should be disclosed.
7. Following an internal review the British Business Bank wrote to the complainant on 21 July 2016. It revised its position in relation to some items within the request, but also maintained its section 43(2) refusal for others:
- Item 3 – provided the number of loans that were performing to their current payment schedule, but stated it was not known whether this was from a revised schedule or from the original loan agreement.
 - Item 4 – provided the number of loans that were not performing to their current payment schedule, but stated it was not known whether this was from a revised schedule or from the original loan agreement.

- Item 5 – provided the number of loans that were in default.
- Item 6 – directed you to the relevant policy on its website, but stated that its internal process information was exempt under section 43(2) of the Act.
- Item 7 – provided the net yield.
- Item 8 – withheld the requested information under section 43(2) of the Act.

Scope of the case

8. The complainant contacted the Commissioner on 8 September 2016 to complain about the way his request for information had been handled. In his correspondence he made it clear that his appeal was in relation to the information withheld under section 43(2) – i.e. items 6 and 8 of his request. Accordingly, the Commissioner considers the scope of the case to be whether the British Business Bank is entitled to withhold the requested information for items 6 and 8 of the request under section 43(2) of the Act.
9. During the Commissioner's investigation the British Business Bank also applied section 43(1) to certain parts of the withheld information, because it considered the information represented a trade secret. Should the Commissioner find that section 43(2) does not apply to this information – or that it does but the balance of the public interest favours disclosure of the information – then she shall go on to consider whether section 43(1) applies.
10. The Commissioner will also consider the length of time the British Business Bank took to respond to the complainant's request.

Funding Circle

11. Funding Circle is a direct lending platform, which allows investors to make funds available so that it can be distributed to companies who require a loan. Funding Circle acts as the connector between lenders and borrowers and is involved in vetting both parties to ensure that the process is done with reduced levels of risk.

Reasons for decision

Section 43(2) – commercial interests

12. Section 43(2) of the Act states that:

“(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”

13. For the purposes of the Commissioner’s decision, a commercial interest relates to a person’s ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services.

14. In order for the Commissioner to be convinced that disclosure would, or would be likely to, prejudice the commercial interests of any person – and therefore for section 43(2) to be engaged – she considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would or would be likely to occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e., disclosure ‘would be likely’ to result in prejudice or disclosure ‘would’ result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; rather there must be a real and significant risk. With regard to the higher threshold, in the Commissioner’s view this places a stronger evidential burden on the public authority to discharge.

15. Section 43(2) is a qualified exemption as per section 2(2)(b) of the Act. Should the Commissioner find that section 43(2) is engaged she will go on to consider whether the balance of the public interest favours maintain the exemption, or whether it supports disclosure of the requested information.

16. The Commissioner shall address the withheld information for each item of the request separately when assessing whether their disclosure would – or would likely – prejudice commercial interests. To confirm, the content of each item of the request is as follows:

- Item 6 of the request –
 - a document showing Funding Circle’s debt collection process.

- a spreadsheet showing Funding Circle's Risk Summary, with default and recovery rates.
- Item 8 of the request –
 - document titled the 'government loan book', which contains details of loans made on British Business Bank's account with Funding Circle.

What harm would – or would likely – occur if the withheld information was disclosed?

17. In relation to item 6 of the request, the British Business Bank argued that both its and Funding Circle's commercial interests would be prejudiced through disclosure of the information.
18. The document showing Funding Circle's debt collection process shows how its financial services operate; and the risk summary spreadsheet provides very precise details about its exposure through its lending operations. Both documents show information that is specific to Funding Circle and relates to its unique selling point which forms the basis for its commercial activities. Without this being withheld there would be significant harm as Funding Circle's competitors would know exactly how it operated, which would allow for its products to be copied or provide rival companies with insider knowledge of its commercially sensitive information. The Commissioner accepts that harm would occur to Funding Circle's commercial interests were the information disclosed.
19. The British Business Bank argued that it had a mandate from government to carry out investments in small and medium enterprises (SMEs), and that this was intended to generate returns which subsidise other loss-making activities that the Bank engages in.¹ Were the information to be disclosed, it would harm the British Business Bank's ability to withhold commercially sensitive information. The British Business Bank stated this would in turn damage its ability to form agreements with commercial partners.
20. The Commissioner agrees that this is sufficient to show that there is an argument that if the information is disclosed the British Business Bank's commercial interests would be harmed. The Bank has a mandate to generate returns in order to carry out all of its functions, and this mandate is achieved through its commercial relationship with Funding

¹ See the Bank's objectives here <http://british-business-bank.co.uk/what-the-british-business-bank-does/>

Circle. Were this relationship to be damaged through the disclosure of commercial sensitive information then this would clearly have an impact on the British Business Bank's ability to form and maintain such relationships.

21. In relation to item 8 of the request, the British Business Bank has argued that its own commercial interest would be prejudiced; as well as those of Funding Circle, and the loan beneficiaries which are detailed in the government loan book.
22. For the loan beneficiaries, the British Business Bank argued that the government loan book provided the company name, company number, and post code of each beneficiary. Disclosure of this information would allow for the identification of the beneficiaries and thus reveal something about the nature of their financing. The British Business Bank stated that this would provide information to competitors and affect the ability of the managers of these SMEs to manage their businesses.
23. The Commissioner's view is that this argument has merit and shows that the prejudice is of substance. There are several thousand companies listed in the government loan book, and whilst not all might be hindered by the knowledge of the loan becoming public knowledge, it is certain that enough will have their relationships with their suppliers and customers affected. Knowing the risk a company is exposed to can make commercial partner alter its terms of trade, which would have a prejudicial effect on that company's commercial interest.
24. The British Business Bank asked Funding Circle for its view on how disclosure of the government loan book would harm its commercial interests. Funding Circle stated that it had spent a considerable amount of time and resources (amounting to millions of pounds) going through and assessing the companies that are contained within the government loan book. It stated that disclosure of this information would provide its competitors with an extensive list of viable customers, and those competitors would have gained an unfair advantage through avoiding the vetting process undertaken by Funding Circle. This would have the effect of harming Funding Circle's commercial activities.
25. The Commissioner agrees with Funding Circle's argument. The government loan book contains several thousand companies, and disclosure of this would allow competitors to save themselves large amounts of work and cost to obtain the names and details of potential customers. Given the work that has gone in to ensuring that these companies are viable customers for its loan platform it would be harmful to Funding Circle's commercial interests for this information to be disclosed.

26. For the British Business Bank, it made similar arguments as for the information pertaining to item 6 of the request – that it had a government mandate to generate returns to help cover the loss-making activities it is involved in. Specifically, the Bank would be shown to give out information about loan beneficiaries, and this would likely deter some potential future customers who would not be willing to have this information about their business released in response to a request under the Act.
27. The Commissioner considers this argument to be valid, and whilst it bears similarities to the argument for the loan beneficiaries at paragraph 20, she considers that it is distinct enough and is reasonable under the circumstances. The Commissioner can see that SMEs might not approve of such disclosure about their financial status. Were disclosure of the government loan book to happen it is reasonable that future SMEs might be dissuaded from using the British Business Bank due to the potential risk of commercial information being disclosed.

Is there a causal relationship between potential disclosure and the prejudice the exemption is designed to protect?

28. In relation to item 6 of the request, the Commissioner has considered the relationship between potential disclosure and prejudice to the commercial interests of Funding Circle and the British Business Bank. The Commissioner considers that the consequences of disclosure cannot be seen as trivial. Establishing the causal link means that the prejudice claimed is at least possible, and showing that there are circumstances in which it could arise.
29. With regards to Funding Circle, the British Business Bank argued that it is involved in a highly competitive market of peer to peer lending. Funding Circle's website states that it has lent £2.1bn to UK businesses, and that it considers itself to be a world-leader in the market in which it operates.² The relevant information would show how Funding Circle's core business practices work – i.e. how it collected debts from loan recipients and how it managed its lending risk – and putting this information in such fine detail into the public domain would be of benefit to its competitors.
30. The Commissioner has accepted this argument, and agrees that there is definitely a possibility that this information would be of value to Funding Circle's competitors were it to be disclosed. Whilst requests under the

² <https://www.fundingcircle.com/uk/statistics/>

Act are generally considered to be applicant blind, the Commissioner cannot ignore the fact that the requester in this case runs a rival company.

31. With regards to the British Business Bank, it maintained that disclosure would inhibit its ability to make and maintain commercial agreements in the future. The Commissioner considers that there is likely to be a peer to peer lender willing to take the risk, given the benefits of being linked to a well-funded organisation such as the British Business Bank. However, she also acknowledges that there is a possibility that potential partners would be deterred from having its business practices disclosed to its competitors, and that this would impede the British Business Bank's ability to select a partner from the widest range of suitable applicants.
32. In relation to item 8 of the request, the Commissioner has considered the relationship between potential disclosure and prejudice to the commercial interests of the loan recipients, Funding Circle, and the British Business Bank. As before, the consequences of disclosure cannot be trivial and it must be shown that there are circumstances in which it could arise.
33. With regards to the loan recipients, the Commissioner considers that with the sheer volume of companies listed in the government loan book there will be a sufficient number that will have their commercial relationships impacted by the knowledge of their loan history. As mentioned, this would be information that a supplier or customer could use to modify the relationship they have with one of the loan recipient companies, and this would affect said company's commercial interests.
34. With regards to Funding Circle, disclosure of the government loan book would reveal a list of customers that it has spent large amounts of resources collating. This would obviously provide their competitors with the same information free of charge, thus allowing them to know which companies Funding Circle has vetted to be suitable for a loan.
35. With regards to the British Business Bank, given that the Commissioner considers loan recipient companies have a vested interest in not revealing disclosure of the government loan book it follows that the British Business Bank would wish to keep this information confidential to show that it withhold sensitive information. Companies would understandably be reluctant to enter into a financial agreement with a partner that put commercial sensitivity information into the public domain.

What is the likelihood of this prejudice occurring should the information be disclosed?

36. In relation to item 6 of the request, the Commissioner is again mindful that Funding Circle is involved in a highly competitive market, and so disclosure of the processes Funding Circle uses to generate returns would be more likely than not to cause prejudice to its commercial interests.
37. For the British Business Bank, the Commissioner's view is that the prejudice would occur. The British Business Bank lends to thousands of companies and has the capacity to lend to several more, so from this large pool of potential partners it is entirely probable to the point of being near certain that one would be unwilling to form a commercial relationship with the British Business Bank because of the threat of disclosure of financially sensitive information.
38. In relation to item 8 of the request, for Funding Circle the Commissioner considers that the prejudice would occur were the government loan book to be disclosed. Funding Circle's resources were spent ensuring that the government loan book contained trusted and valued customers, by putting this information into the public domain is clearly going to lead rival lenders trying to use the customer details for their own commercial gain at Funding Circle's expense.
39. For the loan recipient companies, the Commissioner is conscious that the sheer volume of companies involved makes it certainly more probable than not that prejudice would occur. Disclosure would impact upon several thousand commercial relationships and it is inconceivable that the prejudice would not occur in a significant number of them.
40. For the British Business Bank, the Commissioner again sees the prejudice as being more probable than not. The scope of the information means that it would have an impact on British Business Bank's reputation to the point where it would inhibit potential partners from entering commercial agreements with it.

Commissioner's conclusion

41. In relation to item 6 of the request, the Commissioner's conclusion is that the prejudice test has been met for the commercial interests of both Funding Circle and the British Business Bank. It has been shown how the prejudice relates to the specific exemption, that the prejudice has a causal link to disclosure of the requested information, and that the prejudice would occur should the information be disclosed.
42. In relation to item 8 of the request, the Commissioner's conclusion is that the prejudice test has been met for the commercial interests of

Funding Circle, the loan recipients, and the British Business Bank, for the reasons given above.

43. As the prejudice test has been met for both items of the request the Commissioner is satisfied that the exemption at section 43(2) is engaged. She will now go on to consider the balance of the public interest.

Arguments in favour of disclosing the information

44. Where there is spending of public money by a public authority there is an inherent argument for transparency. The British Business Bank invests millions of pounds of public funds into Funding Circle, so it follows that there is a corresponding argument to match the sums of money being spent.
45. The complainant has made further arguments regarding transparency, and stated that disclosure of the withheld information would allow the public to determine whether the British Business Bank is following best practice, and acting in a way that generated returns without going against the standards expected of it.
46. The complainant also stated to the Commissioner that British Business Bank distorts the lending market, as those businesses – such as Funding Circle – who receive business from British Business Bank increase their market share as a result. The complainant is disappointed at the magnitude of support that is given to a select number of companies, and believes that disclosure of the requested information would help increase competition within the market. This, he argues, would be good for potential loan recipients and other companies operating lending platforms.

Arguments in favour of maintaining the exemption

47. The British Business Bank was established to increase the supply of finance to businesses that were not always able to obtain funds through established banks. The Commissioner has found that disclosure of the withheld information would prejudice the British Business Bank's commercial interests and its ability to carry out its mandated objectives. It is evident that such prejudice is not in the public interest, and would impede the work that government ministers established the British Business Bank to carry out.
48. In addition, the Commissioner has also shown that disclosure would prejudice the commercial interests of Funding Circle and the loan recipients named in the government loan book. It is within the public interest to allow these companies to engage in commercial activities, and if the withheld information was disclosed into the public domain it

would allow their competitors – and in the case of the loan recipients, their customers and suppliers – to have information which would provide them with an unfair advantage.

49. The British Business Bank argued that it has already provided a substantial amount of information to the complainant about its investments in response to the request, as well as making other information available online.³ The British Business Bank considers that it has met the requirement for transparency by showing figures about its overall performance and the results of its investments. It states this is sufficient to allay any concerns that the British Business Bank is not implementing its government mandated objectives.
50. Funding Circle stressed the confidential nature of the information that would be revealed through disclosure. It argued that for its customers the process of applying for and agreeing a loan was a massively significant event for an SME company, and by putting details of this into the public domain would be a betrayal of that trust.
51. The Commissioner is also mindful of the timing of this information. Where requested information is historic there is a weaker argument to prevent the prejudice to commercial interests, but when the request was submitted the information was current. The Commissioner bases her decision on the state of affairs as they were at the time of the requests so the fact the information is current gives it a stronger argument for preventing commercial prejudice.

Balance of the public interest test

52. The Commissioner has considered the arguments put forward by the complainant and by British Business Bank and Funding Circle in relation to the balance of the public interest. The Commissioner is mindful of the need for transparency in relation to government spending and the scale of funding that British Business Bank is responsible for.
53. However, the Commissioner considers the balance of the public interest test to favour maintaining the exemption. She notes that the British Business Bank has released a substantial amount of information to the complainant through his request about the overall performance of its investments, which largely meets the requirement for transparency. To give out information to the granular level asked for by the complainant would provide greater insight but only at the cost of prejudice to the commercial interests of the British Business Bank, Funding Circle, and

³ For example <https://annualreport2016.british-business-bank.co.uk/>

the several thousand loan recipients named in the government loan book. Given the timing of the request, and the sheer number of companies that are involved in the requested information, the Commissioner is satisfied that the balance is clearly in favour of maintaining the exemption.

54. The Commissioner's decision is that the requested information is exempt under section 43(2) of the Act and that the balance of the public interest favours maintaining the exemption. No steps are required.

Section 17(1) – time to issue a refusal notice

55. Section 1(1) of the Act states that:

“(1) 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.”

56. Section 10(1) of the Act states that:

“(1) 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.”

57. Section 17(1) of the Act states that (Commissioner's emphasis):

*“(1) 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.”

58. Should a public authority wish to refuse a request by relying on an exemption from Part II of the Act (such as section 43) then it will need to issue its refusal notice to the requester within 20 working days following receipt of the request.

59. The British Business Bank received the complainant's request on 26 February 2016. It responded on 26 April 2016, which is 40 working days following receipt of the request. The British Business Bank breached section 17(1) as it failed to respond to the complainant's request within the statutory time limit. The Commissioner recommends that the British Business Bank ensure its response is issued within the limit in future.

Right of appeal

60. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

61. 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.
62. 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

Jonathan Slee
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