

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 April 2024

Public Authority: Companies House
Address: Crown Way
Cardiff
CF14 3UZ

Decision (including any steps ordered)

1. The complainant has requested audit information on a specific company. Companies House ("CH") initially refused the request in reliance of FOIA section 14(1) – vexatious requests. At the time of the Commissioner's investigation CH reviewed its position and relied on the exemptions at section 41(1) – information provided in confidence and section 40(2) – personal information.
2. The Commissioner's decision is that CH has appropriately relied on FOIA section 41(1) to withhold the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 20 September 2023, the complainant wrote to CH and requested information in the following terms:

"Please can you provide an update to the audit information provided under FOI 135-04-22, to cover the TM02¹ & AD01² filings made on 21st June 2022."³

5. CH responded on 27 September 2023 referencing its earlier response to the same request made on 17 July 2022 and responded to on 11 August 2022. The request was refused in reliance on FOIA section 14 then and CH maintained its reliance.
6. Companies House stated that its position had not changed from its internal review of 7 November 2022.

Background

7. CH provided the Commissioner with background information regarding webfiling and software filing with CH. The Commissioner considers this explanatory information to be useful in understanding the circumstances in this case and has reproduced this below:

"All companies are required to file certain information with the Registrar of Companies ("Registrar"). Some are statutory requirements which must be filed each year, e.g., the financial accounts and a confirmation statement, and others are event-driven, of which the Registrar must typically be notified within 14 days of the change. Event-driven filings relate to information such as changes in the officers, officer's details or company addresses.

A company may file these changes in a paper format, however it is more efficient and secure to do so via electronic means. Companies House offers a webfiling service to facilitate filings to be made electronically or companies may opt to use specialist software products. The latter would primarily be used by agents acting on

¹ <https://www.gov.uk/government/publications/terminate-an-appointment-of-a-secretary-tm02>

² <https://www.gov.uk/government/publications/change-a-registered-office-address-ad01>

³ The information provided under FOI 135-04-22 comprises dates, form types, suffix of email addresses, type of filing and presenter ID.

behalf of multiple companies as this is a more efficient way for them to file larger volumes of information.

Regardless of the method of electronic delivery of information, the presenter requires access to the authentication code. The code is issued to the company at the company's registered office address. It is likened to a PIN number and should be protected in the same way. It is important to note that the authentication code is issued to the company and not to a particular individual, so it is for the company to determine who it allows access to that code.

If a company has a third party agent or accountant acting on their behalf who deals with Companies House filings, the company needs to provide the third party with their authentication code. Who the company shares their code with is a matter for the company to decide.

A company should be aware of who is filing documents on their behalf. Copies of documents filed by companies are available to anyone via our search service, but the backend XML system data behind those filings is not publicly available. An email address is associated with the filing which is provided by the presenter when making the filing. This email address is not validated or verified in any way by Companies House."

8. With regard to management companies CH explained:

"Some limited companies are not set up for commercial purposes but to manage a property divided into a number of flats. Each flat owner usually becomes a director on purchase of their property and the company is used as a mechanism to manage funds for such things as work on the common areas of the property.

Directors of these companies are often not professional business people and are directors only as a result of purchasing their property. There can be a number of directors of these types of companies and a regular turnover of such officers as flats are bought and sold."

9. CH explained that it has had "significant dealings" with the complainant in relation to the backend XML system data relating to a particular management company.

Scope of the case

10. The complainant contacted the Commissioner on 15 October 2023 to complain about the way their request for information had been handled. They provided lengthy submissions on the chronology of their previous request from 17 July 2022 through to the current request and why they considered their request not to be vexatious. The complainant also included information on their other complaints which they progressed through CH and the CH Independent Auditor. For example, the complainant substantively disagrees with CH likening the authentication code to a bank PIN number (as set out above in paragraph 7).
11. The complainant explained that their request in July 2022 was made as an update to a previous request for information about who had made statutory filings against [a named company]. He further explained:

“This information was needed to identify those responsible for potential malpractice in the electronic filings made with Companies House for the company.

I had made clear to Companies House that I was seeking this information as a Director of the “victim” company – and this was the only mechanisms that Companies House were prepared to entertain to provide this information.”
12. It is not within the remit of the Commissioner to comment on matters concerning the operation of public authorities other than in regards to the access to information legislation. However, in this case it appears to him that the information sought is such that a FOIA request is not the appropriate means as this would result in disclosure to the world at large. The Commissioner understands that the complainant has a personal interest in the information but would expect they could correspond with their fellow directors of the company to understand or resolve any concerns regarding the filing.
13. The Commissioner also understands that the complainant had been provided with information including email suffixes, in May 2022. Notwithstanding that provision the Commissioner has investigated the CH response and submissions to his office in this case.
14. CH reviewed its handling of the request at the time of the Commissioner’s investigation and relied on FOIA sections 41(1) and 40(2) to continue to withhold the information. CH informed the complainant of its change in reliance on 27 March 2024.

15. The Commissioner considers that the scope of his investigation is the application of FOIA sections 41(1) and 40(2) to withhold the requested information which comprises email addresses.

Reasons for decision

Section 41(1) – Information provided in confidence

16. Section 41(1) states:

"Information is exempt information if –

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

17. In order for this exemption to be engaged both parts (a) and (b) must be met. Part (a) requires that the requested information must have been given to the public authority by another person. In this context the term 'person' means 'legal person', an individual, company, another public authority or any other type of legal entity.

Was the information obtained from any other person?

18. CH explained that the requested information was provided by the presenter of the filing.
19. The Commissioner is satisfied that the withheld information meets the requirement of section 41(1)(a).

Would disclosure constitute an actionable breach of confidence?

20. For section 41 to apply, the public authority must also be able to demonstrate that disclosure of the information could lead to an actionable breach of confidence. This means that not only must disclosure lead to a breach of a duty of confidence, but it must also be an actionable breach.
21. The test for a breach of confidence was first set out in the High Court case of *Coco v A N Clark (Engineers) Limited* [1968] FSR 415. The Court considered that, in order to bring an action for a breach of confidence, three elements would need to be established:
 - the information must have the necessary quality of confidence,

- it must have been imparted in circumstances importing an obligation of confidence, and
- there must have been an unauthorised use of the information to the detriment of the confider.

22. Information will have the necessary quality of confidence if it is more than trivial, and is not otherwise accessible.

23. CH explained:

“The electronically filed documents were received from another person via a secure system which requires an authentication code to access. The email address associated with that transaction is provided during the secure filing process.

The email address associated with these transactions is not accessible elsewhere. The information contained on the form being filed is made publicly available but the backend XML data, which includes the presenter’s email address, is not. We do not provide any audit history for companies to access via our online systems, so the email address would not be known more widely. It is a matter between the presenter of the form and Companies House.”

24. CH considers that the information being protected in the above manner is not trivial and is not otherwise accessible.

25. Regarding the second bullet point of paragraph 21, CH explained:

“While the information provided on the electronically filed forms is intended to be made available for public inspection, the backend XML data which includes the presenter’s email address is not made publicly available. As this is a secure system, there is an implicit expectation that information provided as part of that process is provided to Companies House and not wider. Presenters would be aware that this information does not form part of the submitted filing.

Our ‘help’ section of the webfiling service under ‘Is my data going to be secure?’ makes it clear that the webfiling service can only be accessed if the user has an authentication code. It also states that we take every precaution to protect information submitted via the website. From this, users would have an explicit expectation that information provided as part of the filing process would be protected and not made more widely accessible.

In addition, although we have not relied on the prohibition on disclosure under section 44, section 1087(1)(i) of the Companies Act

2006 specifically lists the email address as information which should not be made available for public inspection. The law never intended for this information to be made more widely available. On this basis we take the view that there is an explicit obligation of confidence.”

26. The third point of the test concerns detriment to the confider by an unauthorised disclosure. In consideration of the third criterion, CH explained:

“We consider that the disclosure of the email address would be an unauthorised use of that information. The email address was provided as part of the secure process for filing without any expectation that it would be shared more widely.

Disclosure of the email address would publicly link the presenter to the company. There is unlikely to be any other public connection between the company and the presenter and this could be detrimental to the company and to the presenter if there has never been an intention for this to be the case.”

27. CH also pointed to the wider detriment of placing information associated with filings, which customers consider to be confidential, into the public domain. It pointed to the possibility of discouraging other companies and presenters from using webfiling and software filing to submit their documents which could result in the use of postal options and in the case of delivering accounts, could result in financial penalty for late receipt by CH.
28. The Commissioner accepts that the requested information in the circumstances of the case is not trivial nor is it accessible. The Commissioner’s guidance⁴ explains that the information should be worthy of protection in the sense that someone has a genuine interest in the contents remaining confidential. The Commissioner accepts that in the circumstances explained by CH the presenter has a genuine interest in the information remaining confidential.
29. Turning to the second criterion of the test, the Commissioner considers that CH has made the case that the “backend XML data” carries an implicit expectation of confidentiality. He is therefore

⁴ <https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf>

satisfied that the information was provided in circumstances importing an obligation of confidence.

30. In considering the third criterion the Commissioner notes that although Judge Megarry in *Coco v A N Clark (Engineers) Limited* [1968] FSR 415 included consideration of the 'detriment' test, it left open the question of whether detriment to the confider is a necessary prerequisite in every breach of confidence case. In this case the Commissioner is not convinced that CH has provided sufficiently strong arguments to explain detriment to the confider, however, he is persuaded to accept that the presenter, due to the specific circumstances described by CH, would have had no expectation of disclosure of their information.
31. The final element for engaging section 41 is whether an action for breach of confidence is likely to succeed. Section 41 is an absolute exemption and therefore not subject to the conventional public interest test under section 2 of the FOIA. However, a public authority must carry out a test to determine whether it would have a public interest defence for the breach of confidence. Case law on the common law of confidence suggests that a breach of confidence will not succeed, and therefore will not be actionable, in circumstances where a public authority can rely on a public interest defence.
32. Recent developments acknowledged in the Court of Appeal in *HRH Prince of Wales V Associated Newspapers Limited* [2008] Ch 57 have resulted in the test becoming one of proportionality, whether there is a public interest in disclosure which overrides the competing public interest in maintaining the duty of confidence.
33. The Commissioner is mindful of the wider public interest in preserving the principle of confidentiality and the need to protect the relationship of trust between confider and confidant. However, he is also aware of the public interest in transparency and disclosure of confidential information where there is an overriding public interest which provides a defence to an action for breach of confidentiality.
34. Consequently the Commissioner must now consider whether there is a public interest in disclosure which overrides the competing public interest in maintaining the duty of confidence.
35. This test does not function in the same way as the public interest test for qualified exemptions, where the public interest operates in favour of disclosure unless outweighed by the public interest in maintaining the exemption. Rather, the reverse is the case. Therefore the Commissioner has considered whether there is a public

interest in disclosure of the withheld email addresses which overrides the duty of confidence.

36. CH did not provide the Commissioner with submissions determining whether it would have a public interest defence for the breach of confidence. Rather it provided its view that although the requested information is of interest to the complainant, there is no wider interest in disclosure. It explained:

"There are a number of other directors involved in the [named] company and we have had no approach from them to obtain this same information. If there is no demonstrable interest from the other officers of the company, there is unlikely to be anything further from the public at large that would tip the balance in favour of disclosure.

We consider that this is a personal matter being pursued by the Applicant and that there is no basis for disclosure under the FOIA. The public interest is best served in preserving the confidentiality of the email address of the presenter and the secure and confidential basis of the process."

37. In the Commissioner's view, disclosure of the information would provide the complainant with information which he believes could help address the alleged malpractice referenced in paragraph 11. However, the Commissioner considers that the withheld information does not carry a significant public interest to the public at large. Disclosure of the email addresses, although demonstrating transparency, would not inform the public or further public understanding in any substantive way. Therefore, given the strength of the public interest in maintaining confidences, and taking into account the specific circumstances of this case, the Commissioner is not satisfied that there is a public interest defence to the disclosure of the information, should CH be subject to such an action for breach of confidence. He therefore concludes that the public interest in maintaining confidentiality should prevail.
38. He therefore finds that CH is entitled to rely on section 41(1) of FOIA to refuse to provide the withheld information. The Commissioner acknowledges that CH previously provided email suffixes to the complainant. The Commissioner's concern is with the CH response in this current case, not its response to a previous request, however, if CH had chosen to withhold that information under section 41(1) at the time and if the circumstances were the same at that time, then it would have been entitled to do so.

Right of appeal

39. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

40. 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.
41. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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