

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 March 2010

Public Authority: Department for Business, Innovation and Skills (BIS)
Address: 1 Victoria Street
London
SW1H 0ET

Summary

The complainant requested a report into the financial activities of a particular company, as well associated information. The public authority advised that it did not hold some of the requested information, and provided other information to the complainant. It also withheld some information under sections 31(1)(d) and (g) and 40(2) of the Act. Following the Commissioner's intervention some additional information was disclosed to the complainant. At a late stage in the Commissioner's investigation the public authority sought to rely on section 44 in relation to some of the remaining withheld material.

The Commissioner is satisfied that the public authority did not hold a copy of the final report at the time of the request. However he finds that it wrongly applied section 44 to the withheld information and that sections 31(1)(d) and 31(1)(g) were not engaged. He has concluded that the public authority was correct to withhold most of the material that it claimed was exempt by virtue of section 40(2) of the Act. The Commissioner proactively applied section 40(2) to some of the information withheld under sections 31(1)(d) and 31(1)(g). He also recorded a number of procedural breaches in relation to the handling of this request.

The public authority has been ordered to disclose some of the information withheld under sections 31(1)(d) and 31(1)(g) to the complainant within 35 days of this notice with the material exempt by virtue of section 40(2) redacted. He has also ordered the public authority to disclose the material he found had been incorrectly withheld on the basis of section 40(2).

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the Act). This Notice sets out his decision.

Background

2. This case centres on an investigation that was carried out by the Department for Trade and Industry (the DTI) under powers in section 165 of the Companies Act 1948 during the 1970's. It carried out an investigation following certain financial irregularities coming to light concerning Ramor Investments Limited. The Secretary of State appointed Inspectors to carry out the investigation. An interim report based on their findings was published in 1983. This is available in the public domain. A final report was produced in 1987 but was not published. The public authority states that it cannot locate a copy of this report.
3. The Commissioner notes that the complainant originally made his request to the Department of Trade and Industry (the DTI) on 18 November 2005. In June 2009 the DTI merged with the Department for Innovation, Universities and Skills to become the Department for Business, Innovation and Skills (BIS). For consistency and ease of reference the Commissioner has referred to BIS throughout this Notice.

The Request

4. On 18 November 2005 the complainant requested the following information from BIS:

"From what I am able to ascertain, on 22nd March 1983 the Department of Trade published an interim report titled "Ramor Investments Limited (formerly Bryanston Finance Limited) Derriton Limited: Derriton Limited". It was an investigation authorised by the Secretary of State under the then sections 164 and 172 of the Companies Acts. The investigation was originally authorised in 1975 and was conducted by H. Carlisle Q.C., and J. Darby. The report was published by HMSO with ISBN 0115136738. However there is no record of a final report ever being published.

Would you please release the final report prepared by the DTI Inspectors for the above companies, together with the official record of meetings, notes of oral statements and correspondence relating to this report. This request also covers correspondence between Inspectors and the DTI and correspondence between the DTI and PriceWaterhouse."

5. On 20 December 2005 BIS responded to the request and informed the complainant that it had carried out a search of its archive but could not locate a copy of the final report as requested. It therefore concluded it did not hold this information.
6. BIS advised that it did hold other information relevant to the request. Some of this information was provided to the complainant, but other information was withheld under sections 35 and 41 of the Act.
7. On 4 January 2006, the complainant requested that BIS internally review its decision. The complainant argued that "the denial of information is unreasonable and contrary to the spirit of the legislation, especially as the matters covered occurred [a] considerable time ago".
8. BIS acknowledged the complainant's request for an internal review by email dated 13 January 2006 and on 3 March 2006 advised the complainant that it hoped to complete the review shortly. BIS explained that it had recently identified some additional information which may be relevant to the request. This newly identified information did not include the final report as requested, but would need to be considered as part of the internal review.
9. On 26 June 2006, BIS informed the complainant of the outcome of its internal review. The public authority considered the information relevant to the request as falling into two categories:
 - (i) Two background notes (marked A and B)
 - (ii) Correspondence from the Inspectors to the Department in relation to the Ramor Investigation, which had only recently been identified (referred to by BIS as the 'section 41 file').
10. BIS released most of the information contained within the background notes, but advised that the remainder was exempt under sections 40 and 41 of the Act.
11. BIS advised that the section 41 file was exempt under sections 31 and 40 of the Act.

The Investigation

Scope of the case

12. On 2 August 2006, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant expressed the view that all of the withheld information ought to have been provided to him at the time of his request. The complainant was also dissatisfied with BIS's assertion that it did not hold the final report.
13. The complainant advised the Commissioner that the requested information related to events that began over 30 years ago and related to a major financial incident. As explained below, during the course of the Commissioner's investigation further information was located and disclosed to the complainant. The Commissioner has limited his analysis to the information that BIS has continued to withhold from the complainant.

Chronology

14. Regrettably there was a considerable delay in allocating the complaint for investigation. However, on 7 November 2007, the Commissioner asked BIS to provide copies of the withheld information, and asked a number of questions in relation to its search for the final report.
15. BIS responded to the Commissioner on 29 November 2007 and provided copies of the withheld information, and also provided a submission in relation to the way it handled the complainant's request.
16. On 23 January 2008, the Commissioner wrote to BIS with a number of further enquiries. The Commissioner requested a more detailed explanation of the extent of the search that BIS carried out for the missing final report.
17. BIS responded to the Commissioner on 20 February 2008. It advised the Commissioner that it had recently identified further information which fell within the scope of the complainant's request. This comprised a two page synopsis of the final report into the Ramor investigation (the synopsis). BIS determined that the synopsis should be disclosed to the complainant, subject to some redactions under sections 31(1)(d) and 31(1)(g) and 40(2) of the Act.

18. On the same day BIS wrote to the complainant. BIS provided the redacted synopsis, and explained that the redacted information was exempt under sections 31(1)(d), 31(1)(g) and 40(2) of the Act.
19. On 31 March 2008, the complainant wrote to BIS and asked it to reconsider its decision to withhold the section 41 file and the redacted information contained in the synopsis.
20. On 3 June 2008, BIS advised the complainant that it had now reconsidered the matter and had decided to disclose a significant amount of the information withheld from the section 41 file and some additional detail from the synopsis. However, it continued to withhold the other information under sections 31(1)(d), 31(1)(g) and 40(2) of the Act.
21. The complainant remained dissatisfied with BIS's handling of his request, and on 8 July 2008, the complainant reaffirmed his view to the Commissioner that he should be provided with all the information he had requested. Regrettably the Commissioner's investigation of this complaint was then delayed owing to a change in the Commissioner's staff.
22. Following a review of the case, the Commissioner wrote to BIS on 29 April 2009 with further enquiries about its handling of the complainant's request. In addition the Commissioner advised BIS that it appeared to him that BIS had already disclosed to the complainant the substance of the information contained in background note B which it sought to withhold. The Commissioner therefore asked that BIS consider releasing this to the complainant.
23. On 1 June 2009 BIS answered the Commissioner's enquiries and agreed to release background note B to the complainant. BIS also reconsidered a limited amount of information which had been withheld from the section 41 file under section 40 and determined that it could in fact be released. However it has not released that information to date. The Commissioner has made further comments regarding this information in the analysis section below.
24. On 10 August 2009 the Commissioner wrote to BIS. As with background note B, the Commissioner was of the view that BIS had already disclosed the substance of the withheld information in background note A to the complainant. Therefore the Commissioner asked that BIS consider releasing this to the complainant.
25. Following a number of reminders, BIS responded to the Commissioner on 1 October 2009. At this stage BIS advised that it was now considering whether it was in fact allowed to disclose any of the

remaining withheld information. BIS indicated that it was seeking advice as to whether the exemption at section 44 of the Act was engaged.

26. On 21 October 2009 BIS confirmed to the Commissioner its view that section 451A of the Companies Act 1985 provided a statutory bar on disclosure, thereby engaging section 44 of the Act. BIS therefore declined to release any further information to the complainant on that basis.

Findings of Fact

27. As previously mentioned, BIS released some information during the course of the Commissioner's investigation. The following information remains withheld from the complainant:
- BIS maintained that it did not hold the final report as requested by the complainant.
 - Some information contained in background note A, which BIS considered exempt under section 44.
 - Some information contained in the section 41 file, which BIS considered exempt under sections 31(1)(d), 31(1)(g), 40(2) and 44.
 - Some information contained in the synopsis of the missing final report, which BIS considered exempt under sections 31(1)(d), 31(1)(g), 40(2) and 44.
28. The Commissioner's analysis in this case refers to the information detailed the paragraph above.

Analysis

Substantive procedural matters

Section 1 – information not held

Final report

29. Section 1 of the Act provides that:

“(1) Any person making a request to a public authority is entitled –

- (a) To be informed in writing by the public authority whether it holds the information of the description specified in the request, and
 - (b) If that is the case, to have that information communicated to him".

- 30. In this case the standard of proof that the Commissioner has applied in determining whether the public authority does hold information falling within the scope of these requests is the civil standard of the balance of probabilities as outlined by the Tribunal in the case of *Linda Bromley v Information Commissioner & the Environment Agency* (EA/2006/0072). In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held.

- 31. Where the public authority has stated correctly that it does not hold information falling within the scope of a request, the Commissioner will conclude that the public authority has complied with the requirement of section 1(1)(a).

- 32. BIS has advised that it does not hold a copy of the "final report" as requested by the complainant and has provided the Commissioner with a comprehensive submission outlining the extent of its search for the information. BIS identified officers who searched the BIS Companies Investigation Branch's electronic database and Central File Store where closed files are stored. Indeed, the Commissioner notes that this search led to the identification of the background notes which also fell within the scope of the complainant's request.

- 33. BIS's search for the final report included the inspection of the contents of a considerable quantity of material and unpacked crates held in a storeroom at Kingsgate House, London. Further searches were undertaken by the Departments Record's Officer and by several staff at the Department's Central File Store in Wandsworth. These searches confirmed that 33 boxes of material (under one file reference number) relating to Bryanston Finance Limited, Ramor's previous name, were authorised for destruction in 2003 by a named individual on the basis that the records were no longer required by Companies Investigation Branch or the National Archives. One file relating to Bryanston Finance Limited was recorded as being open but despite extensive searches both at CIB's offices and at the Department's Central File Store the file was not located. BIS have advised the Commissioner that in fact this file and the final report are believed to have been destroyed in 2003 or earlier in 2000.

34. On 11 January 2006 BIS identified that all but one of the previously identified registered files relating to Bryanston Finance Limited had been destroyed in 2000 under the Department's standard review procedures based on the Grigg system (see Annex A). The surviving file was the section 41 file.
35. The complainant did not accept that BIS was unable to locate the final report and drew the Commissioner's attention to the fact that BIS provided him with a summary report (the two page synopsis), which he felt could not have been done without reference to the report itself. The Commissioner notes that BIS has not denied ever holding a copy of the final report. Indeed it must have been held in order for the synopsis to have been created. The issue is whether the final report was held by BIS at the time of the request. The Commissioner is satisfied, on the basis of the details of the search and the information that BIS has provided regarding its records management policies that, on a balance of probabilities the final report was not held at the time of the request. Therefore BIS complied with section 1(1)(a) in denying that this information was held.

Exemptions

Section 44 – statutory prohibitions on disclosure

36. During the Commissioner's investigation, BIS formed the view that all of the outstanding withheld information was exempt under section 44 of the Act and sought to rely upon that exemption at a late stage. In the case of the *Department for Business, Enterprise and Regulatory Reform v Information Commissioner and Friends of the Earth*, the Tribunal stated that it "may decide on a case by case basis whether an exemption can be claimed outside the time limits set by [sections] 10 and 17 depending on the circumstances of the particular case". The Commissioner considers that in light of the Tribunal's comments he also has discretion to determine whether or not to accept and consider an exemption that is claimed by a public authority at a late stage.
37. In this case, the Commissioner has decided that, it is appropriate for him to accept and consider the section 44 exemption. This is in view of the fact that the request was made to BIS at a relatively early stage of the Act's implementation and because additional information within the scope of the request was only identified during the investigation.
38. Section 44(1)(a) provides that information is exempt if its disclosure is prohibited by or under any enactment. The exemption is absolute, so there is no need to consider the public interest.

39. BIS explained that the Ramor investigation was authorised on 12 May 1975 and was carried out under powers in section 165 of the Companies Act 1948 ('the CA 1948'). On 1 July 1985 the CA 1948 was repealed and replaced by the Companies Act 1985 ('the CA 1985'). BIS has argued that section 31(4) of the CA 1985 provides for a continuity of law provision and that the effect of this is that the Ramor Inspection became subject to the CA 1985 as of July 1985. It further argued that the investigation is also subject to the amendments to the CA 1985.
40. The Commissioner accepts that section 31 of the CA 1985 provides a continuity of law provision however, in his view, the relevant subsection is 31(2). Consequently he accepts that the investigation undertaken under section 165 of the CA 1948 becomes an investigation under section 432 of the CA 1985. In view of this, section 434 of the CA 1985 applies to information obtained in the course of the investigation.
41. BIS cited section 451A of the CA 1985 as a statutory bar to disclosure. Section 451A applies to information obtained by an inspector under section 434 of the CA 1985. Section 451A provides that the Secretary of State may disclose such information to any person if he considers it appropriate.
42. BIS took the view that permission to disclose information in "specified and limited circumstances" implied that disclosure was prohibited outside of these circumstances. Therefore the Secretary of State was under a duty not to disclose information unless this disclosure fell within section 451A. In this case BIS was of the view that disclosure of the information requested by the complainant would not fall under section 451A and therefore the information could not be disclosed.
43. The Commissioner is of the view that section 451A does not prohibit BIS from disclosing information. There is no wording that suggests that disclosure is prohibited and no specified associated penalty. On the contrary, section 451A provides a clear mechanism for disclosure of information if the Secretary of State so chooses. Moreover, the Commissioner notes that in the Ministry of Justice's review of statutory prohibitions, section 451A was not listed in contrast to section 449 within the same Act which was identified.
44. For the reasons set out above the Commissioner is satisfied that the exemption at section 44 of the Act does not apply to any of the withheld information.
45. As explained previously, the Commissioner expressed his view to BIS that it had already disclosed the substance of the remaining withheld

information in background note A to the complainant. As the Commissioner is satisfied that the exemption at section 44 does not apply to this information and this was the only exemption applied to this part of the withheld material, he requires BIS to release that information to the complainant.

46. In relation to the remainder of the withheld information, the Commissioner has gone on to consider BIS's arguments in relation to the other exemptions claimed.

Sections 31 - Law Enforcement

47. BIS claimed sections 31(1)(d) and 31(1)(g) in respect of information in the synopsis and the section 41 file. These are both prejudice based and qualified exemptions. When considering the application of a prejudice-based exemption, the Commissioner adopts the three step process laid out in the Information Tribunal case of *Hogan v the ICO and Oxford City Council* (EA/2005/0026 and 0030):

"The application of the 'prejudice' test should be considered as involving a numbers of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption.....Second, the nature of 'prejudice' being claimed must be consideredA third step for the decision-maker concerns the likelihood of occurrence of prejudice" (paragraphs 28 to 34).

48. The Commissioner has therefore applied the test above when considering each of the exemptions in section 31 applied by BIS in this case.

Section 31(1)(d) – assessment or collection of tax or duty

49. Section 31(1)(d) applies where disclosure "would or would be likely to prejudice the assessment or collection of any tax or duty or of any imposition of a similar nature".

Relevant applicable interests

50. Initially BIS cited this exemption only in relation to some of the material that was redacted from the synopsis. However, in its letter to the complainant dated 3 June 2008 section 31(1)(d) was also referenced in relation to information withheld from the section 41 file. Therefore the Commissioner has considered the exemption in relation to the material withheld from the section 41 file as well as the relevant aspects of the information withheld from the synopsis.

51. In relation to the synopsis BIS argued that the withheld material relates to the matters referred to the Inland Revenue and the outcome of the Revenue's investigation. It suggested that it would be prejudicial to the Inland Revenue's interests if people who might be the subject of similar referrals in the future obtained an unfair advantage by being able to see how these particular matters were dealt with.
52. In respect of the material within the section 41 file, BIS asserted that disclosing information that would reveal details of civil settlements could deter people from entering into such agreements in the future.
53. BIS is seeking to protect the ability of the Inland Revenue to investigate potential tax fraud and to resolve the matter by way of settlements with the relevant taxpayers where appropriate. The Commissioner accepts that if the Inland Revenue was unable to undertake its functions in this regard it could prejudice the assessment or collection of any tax or duty referred to in section 31(1)(d) and therefore the prejudice claimed is to the interest stated in that exemption.

The nature of the prejudice

54. When considering the nature of the prejudice, the Commissioner has noted the Tribunal's further comments in *Hogan v the ICO and Oxford City Council* (paragraph 30):

"An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and that the prejudice is, as Lord Falconer of Thoronton has stated, "real, actual or of substance" (Hansard HL, Vol. 162, April 20, 2000, col. 827). If the public authority is unable to discharge this burden satisfactorily, reliance on 'prejudice' should be rejected. There is therefore effectively a de minimis threshold which must be met."

55. Therefore, the Commissioner takes the view that, for the exemption to be engaged, the disclosure of the information must have a causal effect on the applicable interest, this effect must be detrimental or damaging in some way, and the detriment must be more than insignificant or trivial.
56. If he concludes that there is a causal relationship between potential disclosure and the prejudice outlined in the exemptions *and* he concludes that the prejudice that could arise is not insignificant and is not trivial, the Commissioner will then consider the question of likelihood. In doing so, he will consider the information itself and the arguments put forward by the public authority in this regard.

57. In this case the Commissioner accepts that disclosure of the withheld information could prejudice the ability of the Inland Revenue to investigate allegations of tax fraud and to agree settlements with the relevant taxpayers. He further accepts that this would amount to real and actual prejudice to the assessment or collection of tax or duty. Therefore he has gone on to consider the likelihood of this prejudice arising.

Likelihood of prejudice

58. Where the public authority has claimed that disclosure is only *likely* to give rise to the relevant prejudice then, in accordance with the Tribunal's decision in the case of *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005), "*the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk*". Where the public authority has claimed that disclosure *would* give rise to the relevant prejudice then the Tribunal has ruled, in the *Hogan v Information Commissioner and Oxford City Council* case, that there is a stronger evidential burden on the public authority, and the prejudice must be at least more probable than not.
59. Where a public authority has failed to specify the level of prejudice at which an exemption has been engaged the Commissioner will consider the lower threshold of "likely to prejudice" unless there is clear evidence that it should be the higher level. The Commissioner does not consider that such evidence exists in this case and therefore he has considered the likely to prejudice limb of the test.
60. In *England v ICO and London Borough of Bexley* (EA/2006/0060 & 0066) the Tribunal stated that it was impossible to provide:
- "evidence of the causal link between the disclosure of the list [of empty properties] and the prevention of crime. That is a speculative task, and as all parties have accepted there is no evidence of exactly what would happen on disclosure, it is necessary to extrapolate from the evidence available to come to the conclusion about what is likely"*.
61. The Commissioner takes the view that, although unsupported speculation or opinion will not be taken as evidence of the likelihood of prejudice, neither can it be expected that public authorities must prove that something definitely will happen if the information in question is disclosed. Whilst there will always be some extrapolation from the evidence available, the Commissioner expects the public authority to be able to provide some evidence (not just unsupported opinion) to extrapolate from.

62. The Commissioner has considered all of the correspondence between the complainant and BIS as well as the submissions that he has received regarding the application of the exemption. Having done so he has concluded that BIS has not provided any evidence or arguments to demonstrate why the prejudice identified as relevant to section 31(1)(d) is likely to occur. BIS did not provide any submissions in this regard and in particular did not address how the likelihood of prejudice was affected by the age and content of the withheld material. In the absence of this information the Commissioner is not satisfied that section 31(1)(d) is engaged. He has therefore gone on to consider section 31(1)(g).

Section 31(1)(g) – prejudice the functions of a public authority

63. BIS cited section 31(1)(g) in respect of some information within the synopsis and some information within the section 41 file. Section 31(1)(g) applies where disclosure “would be likely to prejudice the exercise by any public authority of its functions for any of the purposes specified in subsection (2)”. In this case BIS has claimed that disclosure would prejudice each of the functions in sections 31(2)(a), (b), (c) & (d).
64. The section 31(2) purposes are as follows:
- (a) the purpose of ascertaining whether any person has failed to comply with the law,
 - (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
 - (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
 - (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on”.

Relevant applicable interests

65. BIS was created in June 2009 from the merger of the Department for Business, Enterprise and Regulatory Reform and the Department for Innovation, Universities and Skills. Prior to the creation of BIS, CIB was part of the Department for Trade and Industry (DTI). The role or function of CIB is to investigate companies under the Companies Act 1985. Company inspections are carried out under Part 14 of the Companies Act 1985 and include investigations to establish if there is evidence of fraud, misfeasance or other misconduct.

66. BIS has argued that if the withheld information was disclosed it would be likely to have an adverse effect on how forthcoming Inspectors appointed to carry out investigations under Part 14 of the Act would be. The investigations have several purposes including, determining whether someone has failed to comply with the law, is responsible for improper conduct, whether circumstances justify regulatory action or a person's fitness or competence in relation to the management of bodies corporate. In view of this the Commissioner is satisfied that the applicable interests are relevant to section 31(1)(g) and 31(2)(a) to (d).
67. BIS has also explained that where Inspectors identify evidence of criminal offences this is referred to the relevant prosecuting authorities. It has suggested that if the information were disclosed it would prejudice the ability of the authorities responsible for pursuing those criminal matters to carry out their investigations. Whilst this argument is relevant to the exemption in section 31(1)(a) which applies where disclosure would "prejudice the prevention or detection of crime", the Commissioner is satisfied that it is also relevant to the exemption in section 31(1)(g) by virtue of section 31(2)(a) to (d).

The nature of the prejudice

68. BIS has argued that if it were to disclose the withheld information which was obtained during the course of this particular investigation it might have an adverse effect on how forthcoming Inspectors might be in future and this would likely prejudice its ability to fulfil its functions under 31(2)(a) to (d). When questioned further on this point BIS advised that during the course of an investigation Inspectors raise concerns or speculate on issues which may turn out to be unsubstantiated and therefore be excluded from their final report. If Inspectors were aware that some of these concerns or speculations provided by them might be revealed, then they might be less candid in their communications. BIS believe this would hamper the effectiveness of an investigation undertaken at public expense.
69. BIS also argued that releasing the withheld information would harm its ability to obtain information from witnesses which in turn would prejudice the functions mentioned previously. The Department's investigators interview witnesses who are required to provide frank answers, either under compulsion or with the threat of compulsion. Some witnesses give their evidence under oath. BIS argued that there is a reasonable expectation that any information not already published in an inspection report would be safe from disclosure. If this was not the case, witnesses would be more reluctant in the answers that they gave which would hamper the effectiveness of investigations with the

end result being that the public authority would be prejudiced in fulfilling its functions.

70. The Commissioner accepts that disclosure of the withheld information could result in the effects outlined above. If this were to occur it would likely result in prejudice to the functions of BIS and other investigatory authorities which is both actual and of substance.

Likelihood of prejudice

71. The Commissioner has considered all of the correspondence between the complainant and BIS as well as the submissions that he has received regarding the application of the exemptions. Having done so he takes the view that BIS has not provided any evidence or arguments to demonstrate why the prejudice identified as relevant to section 31(1)(g) is likely to occur. BIS did not provide any submissions in this regard and in particular did not address how the likelihood of prejudice was affected by the age and content of the withheld material. In the absence of such information the Commissioner is not satisfied that section 31(1)(g) is engaged.
72. As the Commissioner has concluded that BIS has not provided sufficient evidence to demonstrate that the section 31 exemptions are engaged he has gone on to consider section 40. The Commissioner has ordered the disclosure of some of the material withheld under section 31.
73. However, as will be explained further below, he considers that some of the material that BIS withheld under section 31 is in fact personal data that is exempt under section 40(2).

Section 40(2) – personal data

74. BIS applied this exemption to information contained in the section 41 file and the synopsis of the final report.
75. The exemption under section 40(2) applies to information which is the personal data of an individual other than the applicant, where disclosure of the information would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the DPA). The full text of the exemption is available in the Legal Annex at the end of this notice.

Is the information personal data?

76. "Personal data" is defined at section 1(1) of the DPA:

“personal data’ means data which relates to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

77. “Sensitive personal data” is defined in section 2 of the DPA as:

“personal data consisting of information as to –

(a) the racial or ethnic origin of the data subject,

(b) his political opinions,

(c) his religious beliefs or other beliefs of a similar nature,

(d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),

(e) his physical or mental health or condition,

(f) his sexual life,

(g) the commission or alleged commission by him of any offence, or

(h) any proceedings for any offence committed or alleged to have been by him, the disposal of such proceedings or the sentence of any court in such proceedings”.

78. BIS advised that there was a chance that, given the passage of time, some individuals may be deceased. It suggested that there was no evidence to this effect available and therefore it had assumed that those persons named were still alive. In this case the Commissioner is content to assume that, where there is no evidence to the contrary, all the named individuals are still living.

Synopsis

79. The information withheld under this exemption in the synopsis consists of names and details of taxpayers alleged to have committed offences and in some instances details of settlements individuals reached with the Inland Revenue. Details of the alleged offences were provided to the Inland Revenue by the DTI during the course of the investigation into certain financial irregularities involving Ramor Investments Limited. The investigation was carried out by the then DTI under powers in section 165 of the Companies Act 1948. In view of this the Commissioner is satisfied that all of the information withheld from the synopsis constitutes sensitive personal data.

Section 41 file

80. A limited amount of information from within the section 41 file was also withheld under section 40(2). This amounted to four minor redactions within the information that has been released to the complainant. In the Commissioner's view the information withheld from document 3 is sensitive personal data as defined in section 2(h) of the Data Protection Act 1998. It identifies an individual who has been subject to a fine following conviction for criminal offences. In the Commissioner's view this constitutes information as to the sentence of court in proceedings for an alleged offence.
81. The material withheld from document 9 is the name of an individual linked to the companies under investigation. In the Commissioner's view this does not constitute personal data as he has evidence to suggest that this individual is deceased. As the Commissioner is unable to provide further information in this regard without revealing the content of the withheld information he has set out his reasoning in this regard in the attached confidential annex (Annex C) to be served on BIS.
82. The information withheld from document 18 is the name of an employee of one of the companies investigated by the Inspectors. The material withheld in document 22 is also the name of one of the individuals who was linked to the companies under investigation. The Commissioner is satisfied that this material is personal data.

Would disclosure breach the First Data Protection Principle?

83. Personal data is exempt if either of the conditions set out in section 40(3) or 40(4) are met. The relevant condition in this case is at section 40(3)(a)(i), where disclosure would breach any of the data protection principles as set out in Schedule 1 to the DPA.
84. BIS claimed that disclosure of the withheld information in this case would contravene the First Data Protection Principle in that it would be unfair to the individuals concerned.
85. The First Data Protection Principle provides that:
"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
 - (a) at least one of the conditions in Schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

86. In deciding whether disclosure of personal data would be unfair the Commissioner has taken into account a range of factors including:

- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and
 - even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 ECHR;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.

87. Furthermore, notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, the Commissioner believes that it may still be fair to disclose information if it can be argued that the legitimate interest in the public accessing the material is compelling. Therefore, when assessing fairness under the first data protection condition, the Commissioner will balance the rights and freedoms of the data subject with the legitimate interests in disclosing the information.

Synopsis

Would disclosure be unfair?

88. The Commissioner understands that the information withheld from the synopsis is not in the public domain. In his view disclosing the identities of individuals alleged to have committed criminal offences, together with details of those offences and of the settlements that were

eventually reached with the Inland Revenue, would be likely to cause the individuals concerned significant damage and distress. This is particularly the case given the considerable amount of time that has passed since the allegations were made. He considers that it would have been intrusive and distressing for the individuals involved and damaging to their reputations, if the information had been put into the public domain at the time of the request, particularly when the matters had been resolved by way of a settlement rather than via full court proceedings.

89. The personal data in this case was obtained as part of an investigation into the financial activities of Ramor Investments Limited. BIS advised the Commissioner that as part of the investigations process, some of the individuals alleged to have committed offences had an opportunity to remedy the tax issues identified by reaching agreed settlements with the Inland Revenue. BIS has argued that in agreeing to enter into settlements the individuals would have had a reasonable expectation that their details would not be disclosed to the general public. Furthermore the Commissioner notes that the synopsis records the fact that all settlements were subject to express terms whereby all parties agreed to keep the terms confidential. In view of this he is satisfied that the individuals would have had a reasonable expectation that the personal data about them would remain confidential.
90. Notwithstanding the Commissioner's view about the data subjects' expectations and the consequences of disclosure he has considered whether the legitimate interest in the public accessing the material is such that it would be fair to release it. The Commissioner considers that there is legitimate interest in the public accessing the material in the interests of accountability and transparency. Disclosing details of the allegations and the settlements would allow the public to better understand the decision of the Inland Revenue to agree to settle the matter rather than pursue prosecutions. It would also demonstrate the thoroughness of the Inspectors' investigation. In this case the Commissioner considers that these arguments are compelling, despite the potential damage to the individuals concerned or the passage of time.
91. In reaching this view he has taken into account the seriousness of the allegations (the individuals were accused of attempting to evade tax totalling £355,000) and the cost and scale of the Inspectors' investigation. The complainant has asserted that the cost of the investigation to the taxpayer was £760,301. The Commissioner has also noted the Inspectors' criticism that details of the allegations and settlements were not publicised. The synopsis explains that the Inspectors could not see how keeping these details confidential, "was in the interests of the Revenue or in the public interest".

92. As the Commissioner has concluded that the legitimate interest of the public accessing the information is compelling, he has gone on to consider whether disclosure is necessary and therefore condition 6 in Schedule 2 is met. Condition 6 states that the processing must be,
- “necessary for the purposes of the legitimate interests pursued by the data controller or by a third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.”
93. The Commissioner considers that the analysis above explains why, in his view the public has a legitimate interest in accessing the withheld information and why disclosure would not result in unwarranted prejudice to the rights and freedoms of the data subjects. Therefore he has simply considered whether it is necessary to disclose any or all of the withheld information to meet the legitimate interest of the public.
94. In this case, the Commissioner considers that it is necessary to disclose all of the withheld information in order to ensure the transparency and accountability that he has suggested is compelling. In reaching this conclusion he has taken into account the fact that BIS has disclosed a redacted version of the synopsis but he does not consider that this provides sufficient detail to satisfy the legitimate interests of the public in as far as the allegations are concerned. However, in his view if the personal data from the synopsis were released it would provide sufficient information to satisfy the legitimate interest of the public having access to the material. It would improve public confidence in the actions of BIS and the Inland Revenue and ensure accountability and transparency. The level of detail means that the data subjects would not suffer any unnecessary intrusion that may have occurred if the material were more detailed.
95. In view of all of the above, the Commissioner has concluded that disclosure would be fair and the sixth condition in Schedule 2 is met. He has therefore gone on to consider whether any of the Schedule 3 conditions is met and whether disclosure would be unlawful.

Is a schedule 3 condition met?

96. As explained above, sensitive personal data cannot be processed without breaching the First Data Protection Principle unless one of the conditions in Schedule 3 is met. The full text of the Schedule 3 and the additional conditions in The Data Protection (Processing of Sensitive Personal Data) Order 2000 is set out in the Legal Annex.

97. The Commissioner considers that only conditions 1 or 5 in Schedule 3 could potentially be relevant in this case. The first condition is that the data subject has given his explicit consent to the processing of the personal data. The Commissioner understands that in this case no such consent exists. Moreover, as explained earlier, the synopsis reflects that the settlements in fact included confidentiality clauses, which suggests the individuals concerned have not consented to the information being made public. Therefore this condition is not met.
98. The fifth condition is that the information contained in the personal data has been made public as a result of steps deliberately taken by the data subject. The Commissioner has not been provided with, nor is he aware of any evidence that the data subjects have deliberately placed the withheld information in the public domain. Again, the confidentiality clauses mentioned above suggest that in fact steps have been taken to ensure that the material is not made public and therefore the Commissioner has concluded that this condition is not met.

Would disclosure be unlawful?

99. In view of the above, the Commissioner has concluded that disclosure of the withheld information would breach the First Data Protection Principle because none of the schedule 3 conditions can be met. Therefore it is not necessary to consider in detail whether disclosure would be unlawful. However, the Commissioner considers that it is likely that, in this case, disclosure would be unlawful given the existence of the confidentiality clauses mentioned above.

Section 41 file

100. Having reached a decision about the material withheld from within the synopsis, the Commissioner has gone on to consider the information that BIS withheld under section 40(2) from within the section 41 file. He has considered whether disclosure of the information he has agreed constitutes personal data would breach the First Data Protection Principle using the same test set out above. As the personal data redacted from each document is different he has addressed each in turn.

Document 3

Would disclosure be unfair?

101. As explained above the Commissioner has concluded that the withheld material constitutes sensitive personal data. He has decided that disclosure of the information would be unfair as the legitimate interest of the public in accessing this particular information has limited weight

and disclosure is not necessary. The Commissioner is unable to provide further details about how he has reached this decision without revealing the content of the withheld information and therefore he has set out his reasoning in this regard in Annex C.

Document 18

Would disclosure be unfair?

102. Document 18 is a copy of a letter from one of the companies that was investigated to the Midland Bank Limited confirming instructions for registration of shares. This letter was supplied at the Inspectors' request by the Midland Bank to assist their investigation. The withheld information is the name of the employee of that company who requested the registration of the shares. The Commissioner understands that the employee was not the subject of the investigation and notes that he was not referenced in the interim report.
103. In the Commissioner's view, those who were the subject of the Inspectors' investigation would have had a reasonable expectation that some of their personal data would be disclosed given the content of the interim report. In contrast he does not consider that the individual whose personal data has been withheld from document 18 would have had such an expectation.
104. BIS holds the personal data because it was contained within evidence that the Inspectors forwarded to it in connection with their investigation. However, whilst the contents of the letter appear to have been material to the investigation the identity of its author does not. It appears that the individual was carrying out an administrative task in advising the bank of the details of the company in whose name the shares should be registered. As the actions of the named employee were not the subject of the investigation the Commissioner does not consider that he would have had an expectation that BIS would have disclosed information about him to the public.
105. However the Commissioner also considers that if any damage or distress to the data subject were to result from disclosure it would be extremely minimal. The information would identify the data subject as an employee of the named organisation and as the author of a letter containing instructions regarding share registration which was subsequently used as evidence by the Inspectors. However as explained above, it is clear from other information in the public domain that the individual was not the subject of the investigation.
106. The Commissioner considers that there is a legitimate interest in the public having access to the information to ensure that BIS is

transparent about the investigation that the Inspectors carried out into Ramor Investments Limited and Derriton Limited. However, given that the content of the letter has been disclosed and all that remains outstanding is the identity of its author he considers that the legitimate interests of the public have very limited weight. In view of the above, the Commissioner has concluded that although any damage or distress as a result of disclosure is likely to be extremely limited, given the data subject's expectations and the very limited legitimate interest in the public accessing this particular withheld information, it would be unfair to release it. Therefore the Commissioner considers that BIS appropriately withheld the information under section 40(2) as disclosure would have breached the First Data Protection Principle.

Document 22

Would disclosure be unfair?

107. Document 22 is a letter dated 17 January 1978 and sent to BIS by the Inspectors. It provided an update on their investigation into the Morris O'Farrell Group's involvement with Ramor Investments Limited. The information that has been withheld is the name of an individual whose relationship to the Group was part of the investigation. The Commissioner has concluded that the legitimate interest of the public accessing this information is of limited weight and disclosure is not necessary. In view of this he has decided that it would be unfair to disclose the withheld information. The Commissioner is unable to provide further information in this regard without revealing the withheld information. Therefore he has provided his reasons for reaching this conclusion in Annex C.

Other information within the section 41 file

108. There are some instances in which BIS did not apply section 40 to personal data because it determined that that information was exempt under section 31. In view of the fact that the Commissioner has concluded that the exemptions in section 31 are not engaged he has decided that it is appropriate in this case to use his discretion to proactively consider section 40. This is in view of the Commissioner's role as data protection regulator. Therefore the Commissioner has proactively applied section 40 to personal data within the section 41 file that BIS withheld under section 31.

109. In addition, as noted in the chronology section above, BIS wrote to the Commissioner on 1 June 2009 and explained that it had decided that it no longer wished to rely upon section 40 for some of the redactions to the section 41 file. However the Commissioner considers that in fact it

was appropriate for BIS to withhold that information under section 40(2). Annex C includes an explanation of which material within the section 41 file the Commissioner has concluded is exempt under section 40(2).

110. The Commissioner has concluded that all of the information referred to above constitutes sensitive personal data as it details alleged criminal offences and identifies the individuals who are the subject of those allegations. In the Commissioner's view the data subjects would have had a reasonable expectation that the information would be disclosed and any damage or distress they may have suffered as a result of disclosure would have been extremely limited, given that most of the material already appears to be in the public domain.
111. However, the Commissioner also considers that the fact that a significant amount of the information is already in the public domain limits the weight of the public's legitimate interest in accessing the material. Moreover, he is of the view that disclosure of the information in this case is not necessary as a result. In light of this the Commissioner considers that disclosure would be unfair and would therefore breach the First Data Protection Principle.
112. The Commissioner is unable to provide any further detail about his reasons for reaching the conclusions set out above without revealing the withheld information. Therefore he has provided some additional reasons for his conclusion in Annex C.

Procedural requirements

Section 1 – general right of access

113. Section 1(1)(b) sets out a duty on the public authority to provide information that is the subject of a request within the statutory time for response. In this case, BIS breached section 1(1)(b) of the Act in failing to provide the information that the Commissioner has concluded is not exempt under sections 31, 40(2) or 44. The public authority also breached section 1(1)(b) in that it failed to communicate all the information in background note 'B' by the end of the internal review.

Section 10 – time for compliance

114. Section 10(1) of the Act provides that:

"Subject to subsection (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."

115. The Commissioner has concluded that in this case, BIS breached section 10(1) in failing to provide the information that he has concluded is not exempt by virtue of sections 31, 40(2) or 44 within twenty working days of the request. BIS also breached section 10(1) in failing to provide the material that it disclosed during the course of the Commissioner's investigation within twenty working days.

Section 17 – refusal of a request

116. Section 17(1) provides that, where a public authority refuses a request for information, it is required to provide the applicant with a 'refusal notice' explaining the exemption or exemptions relied upon. This notice should be provided to the applicant within twenty working days. In this case the information request was made on the 18 November 2005. BIS breached section 17(1) in failing to provide a refusal notice in respect of the background notes and the section 41 file within twenty working days.

117. BIS also breached section 17(1)(a), (b) and (c) in failing to provide refusal notice in relation to the synopsis which was compliant with the requirements of section 17 within twenty working days.

The Decision

118. The Commissioner's decision is that BIS dealt with the following elements of the request in accordance with the requirements of the Act:

- The Commissioner is satisfied that on a balance of probabilities BIS did not hold a copy of the final report at the time of the request. Therefore it complied with section 1(1)(a) in this regard.
- BIS correctly applied section 40(2) to all of the information redacted from the synopsis and some of the material withheld from the section 41 file in this case.

119. However, the Commissioner has decided that the following elements of the request were not dealt with in accordance with the Act:

- BIS incorrectly claimed that information within background note A was exempt by virtue of section 44. It breached section 1(1)(b) and 10(1) in failing to provide this information.
- BIS failed to demonstrate that sections 31(1)(d) and 31(1)(g) by virtue of section 31(2)(a) to (d) applied. Therefore it breached

section 1(1)(b) and 10(1) in failing to disclose some of the information within the section 41 file within twenty working days.

- BIS incorrectly identified some material within the section 41 file as exempt by virtue of section 40(2). It breached sections 1(1)(b) and 10(1) in failing to provide that information to the complainant within twenty working days.
- BIS failed to provide the redacted copies of the background notes, 'section 41 file' and two page synopsis to the complainant within twenty working days and therefore breached sections 1(1)(b) and 10(1) in this regard.
- BIS breached section 17(1) in failing to provide a refusal notice in respect of the background notes and the section 41 file within twenty working days. It also breached sections 17(1)(a), (b) and (c) in failing to provide a refusal notice in respect of the synopsis within twenty working days of the request.

Steps Required

120. The Commissioner requires BIS to take the following steps to ensure compliance with the Act:

- To disclose the information in background note A that was previously withheld from the complainant under section 44 of the Act.
- To disclose some of the information withheld under section 31(1)(d) and 31(1)(g) from within the section 41 file to the complainant.
- To disclose the information from within the section 41 file that the Commissioner has concluded was incorrectly withheld under section 40(2).

121. The Commissioner has clarified the specific information to be disclosed to the complainant in Annex C to this decision notice.

122. The public authority must take the steps required within 35 calendar days of the date of this Notice.

Failure to comply

123. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

124. 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
Arnhem House
31 Waterloo Way
Leicester
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 25th day of March 2010

Signed

**Jo Pedder
Senior Policy Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Annex A

The Grigg system

- a) All registered paper files, except case files, are closed after a maximum of five years;
- b) Five years after a file has passed out of active use departments (either the business users or the departments' records centres) carry out "first review" Appraisal Project Board 9.3.042 at which they decide whether the file has any continuing administrative value to the organisation or could have administrative value in the future. Files may be destroyed immediately or earmarked for destruction without further review after a stated period;
- c) 25 years after a file was created (supposing it survived 1st review) reviewers in departmental records centres, under TNA supervision, carry out "second review" at which they decide whether the file has 'historical' value. Those that have are transferred to TNA.
- d) 'Case files' (today a term which includes datasets) are dealt with outside the system of review. Grigg proposed that all case files created across government be appraised as a whole, enlisting historical advice;
- e) Specific guidance applies to unregistered files, such as private office papers, films, sound recordings;
- f) TNA advice on how to decide what records are of historical value has been given in various manuals for departments and, more recently, through the Acquisition and Disposition Policies and the accompanying Operational Selection Policies (OSPs);
- g) The Grigg Committee, the subsequent Wilson Committee, and subsequent TNA advice all emphasise the need for good systems of records creation and the extensive use of disposal schedules.
- h) The timing of disposal for common administrative records is closely regulated in many departments by disposal schedules, supported by general guidelines provided by the TNA for classes of administrative records, such as accounting records, legal records, personnel records, estate records etc.

Annex B Legal Annex: Relevant statutory obligations

Freedom of Information Act 2000

Section 1 General right of access to information held by public authorities

(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.

Section 10 - Time for compliance with request

(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.

Section 17 - Refusal of request

(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.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

- (i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
- (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an

estimate of the date by which the authority expects that such a decision will have been reached.

...

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(7) A notice under subsection (1), (3) or (5) must—

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.

Section 40

Section 40(1) provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act

would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Data Protection Act 1998

Schedule 3

Conditions relevant for purposes of the First Principle: Processing of Sensitive Personal Data

1. The data subject has given his explicit consent to the processing of the personal data.
2. (1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.
(2) The Secretary of State may by order—
 - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
 - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.
3. The processing is necessary—
 - (a) in order to protect the vital interests of the data subject or another person, in a case where—
 - (i) consent cannot be given by or on behalf of the data subject, or
 - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or
 - (b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.
4. The processing—
 - (a) is carried out in the course of its legitimate activities by any body or association which—
 - (i) is not established or conducted for profit, and
 - (ii) exists for political, philosophical, religious or trade-union purposes,

- (b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,
 - (c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and
 - (d) does not involve disclosure of the personal data to a third party without the consent of the data subject.
- 5. The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.
- 6. The processing—
 - (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
 - (b) is necessary for the purpose of obtaining legal advice, or
 - (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.
- 7. (1) The processing is necessary—
 - (a) for the administration of justice,
 - (b) for the exercise of any functions conferred on any person by or under an enactment, or
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.

(2) The Secretary of State may by order—

 - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
 - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.
- 8. (1) The processing is necessary for medical purposes and is undertaken by—
 - (a) a health professional, or
 - (b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

(2) In this paragraph “medical purposes” includes the purposes of preventative medicine, medical diagnosis, medical research, the

provision of care and treatment and the management of healthcare services.

9. (1) The processing—

(a) is of sensitive personal data consisting of information as to racial or ethnic origin,

(b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and

(c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

(2) The Secretary of State may by order specify circumstances in which processing falling within sub-paragraph (1)(a) and (b) is, or is not, to be taken for the purposes of sub-paragraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.

10. The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.

The Data Protection (Processing of Sensitive Personal Data) Order 2000

1. - (1) The processing -

(a) is in the substantial public interest;

(b) is necessary for the purposes of the prevention or detection of any unlawful act; and

(c) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice those purposes.

(2) In this paragraph, "act" includes a failure to act.

2. The processing -

(a) is in the substantial public interest;

(b) is necessary for the discharge of any function which is designed for protecting members of the public against-

(i) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person, or

(ii) mismanagement in the administration of, or failures in services provided by, any body or association; and

(c) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the discharge of that function.

3. - (1) The disclosure of personal data -

(a) is in the substantial public interest;

(b) is in connection with -

(i) the commission by any person of any unlawful act (whether alleged or established),

(ii) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person (whether alleged or established), or

(iii) mismanagement in the administration of, or failures in services provided by, any body or association (whether alleged or established);

(c) is for the special purposes as defined in section 3 of the Act; and

(d) is made with a view to the publication of those data by any person and the data controller reasonably believes that such publication would be in the public interest.

(2) In this paragraph, "act" includes a failure to act.

4. The processing -

(a) is in the substantial public interest;

(b) is necessary for the discharge of any function which is designed for the provision of confidential counseling, advice, support or any other service; and

(c) is carried out without the explicit consent of the data subject because the processing -

(i) is necessary in a case where consent cannot be given by the data subject,

(ii) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of the data subject, or

(iii) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the provision of that counselling, advice, support or other service.

5. - (1) The processing -

(a) is necessary for the purpose of -

(i) carrying on insurance business, or

(ii) making determinations in connection with eligibility for, and benefits payable under, an occupational pension scheme as defined in section 1 of the Pension Schemes Act 1993[2];

(b) is of sensitive personal data consisting of information falling within section 2(e) of the Act relating to a data subject who is the parent, grandparent, great grandparent or sibling of -

(i) in the case of paragraph (a)(i), the insured person, or

(ii) in the case of paragraph (a)(ii), the member of the scheme;

(c) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of that data subject and the data controller is not aware of the data subject withholding his consent; and

(d) does not support measures or decisions with respect to that data subject.

(2) In this paragraph -

(a) "insurance business" means insurance business, as defined in section 95 of the Insurance Companies Act 1982[3], falling within Classes I, III or IV of Schedule 1 (classes of long term business) or Classes 1 or 2 of Schedule 2 (classes of general business) to that Act, and

(b) "insured" and "member" includes an individual who is seeking to become an insured person or member of the scheme respectively.

6. The processing -

(a) is of sensitive personal data in relation to any particular data subject that are subject to processing which was already under way immediately before the coming into force of this Order;

(b) is necessary for the purpose of -

(i) carrying on insurance business, as defined in section 95 of the Insurance Companies Act 1982, falling within Classes I, III or IV of Schedule 1 to that Act; or

(ii) establishing or administering an occupational pension scheme as defined in section 1 of the Pension Schemes Act 1993; and

(c) either –

(i) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of the data subject and that data subject has not informed the data controller that he does not so consent, or

(ii) must necessarily be carried out even without the explicit consent of the data subject so as not to prejudice those purposes.

7. - (1) Subject to the provisions of sub-paragraph (2), the processing -

(a) is of sensitive personal data consisting of information falling within section 2(c) or (e) of the Act;

(b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons -

(i) holding different beliefs as described in section 2(c) of the Act, or

(ii) of different states of physical or mental health or different physical or mental conditions as described in section 2(e) of the Act, with a view to enabling such equality to be promoted or maintained;

(c) does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of that data subject; and

(d) does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.

(2) Where any individual has given notice in writing to any data controller who is processing personal data under the provisions of sub-paragraph (1) requiring that data controller to cease processing personal data in respect of which that individual is the data subject at the end of such period as is reasonable in the circumstances, that data controller must have ceased processing those personal data at the end of that period.

8. - (1) Subject to the provisions of sub-paragraph (2), the processing -

(a) is of sensitive personal data consisting of information falling within section 2(b) of the Act;

(b) is carried out by any person or organisation included in the register maintained pursuant to section 1 of the Registration of Political Parties Act 1998[4] in the course of his or its legitimate political activities; and

(c) does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.

(2) Where any individual has given notice in writing to any data controller who is processing personal data under the provisions of sub-paragraph (1) requiring that data controller to cease processing personal data in respect of which that individual is the data subject at the end of such period as is reasonable in the circumstances, that data controller must have ceased processing those personal data at the end of that period.

9. The processing -

(a) is in the substantial public interest;

(b) is necessary for research purposes (which expression shall have the same meaning as in section 33 of the Act);

(c) does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of that data subject; and

(d) does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.

10. The processing is necessary for the exercise of any functions conferred on a constable by any rule of law.

Section 44 - Prohibitions on disclosure

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it—

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

Companies Act 1948

Section 165 – Investigation of a company's affairs

Without prejudice to their powers under the last foregoing section, the Board of Trade—

(a) shall appoint one or more competent inspectors to investigate the affairs of a company and to report thereon in such manner as the Board direct,

- (i) the company by special resolution; or
- (ii) the court by order;

declares that its affairs ought to be investigated by an inspector appointed by the Board; and

(b) may do so if it appears to the Board that there are circumstances suggesting—

- (i) that its business is being conducted with intent to defraud its creditors or the creditors of any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive of any part of its members or that it was formed for any fraudulent or unlawful purpose; or
- (ii) that persons concerned with its formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members; or
- (iii) that its have not been given all the information with respect to its affairs which they might reasonably expect.

Companies Act 1985

Section 432 - Other company investigations

(1) The Secretary of State shall appoint one or more competent inspectors to investigate the affairs of a company and [F1report the result of their investigations to him], if the court by order declares that its affairs ought to be so investigated.

(2) The Secretary of State may make such an appointment if it appears to him that there are circumstances suggesting—

(a) that the company's affairs are being or have been conducted with intent to defraud its creditors or the creditors of any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner which is unfairly prejudicial to some part of its members, or

(b) that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial, or that the company was formed for any fraudulent or unlawful purpose, or

(c) that persons concerned with the company's formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards it or towards its members, or

(d) that the company's members have not been given all the information with respect to its affairs which they might reasonably expect.

[F2(2A) Inspectors may be appointed under subsection (2) on terms that any report they may make is not for publication; and in such a case, the provisions of section 437(3) (availability and publication of inspectors' reports) do not apply.]

(3) Subsections (1) and (2) are without prejudice to the powers of the Secretary of State under section 431; and the power conferred by subsection (2) is exercisable with respect to a body corporate notwithstanding that it is in course of being voluntarily wound up.

(4) The reference in subsection (2)(a) to a company's members includes any person who is not a member but to whom shares in the company have been transferred or transmitted by operation of law.

Section 434 – Production of documents and evidence to inspectors

Production of documents and evidence to inspectors

(1) When inspectors are appointed under section 431 or 432, it is the duty of all officers and agents of the company, and of all officers and agents of any other body corporate whose affairs are investigated under section 433(1)—

- (a) to produce to the inspectors all [F1 documents] of or relating to the company or, as the case may be, the other body corporate which are in their custody or power,
- (b) to attend before the inspectors when required to do so, and
- (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.

[F2(2) If the inspectors consider that an officer or agent of the company or other body corporate, or any other person, is or may be in possession of information relating to a matter which they believe to be relevant to the investigation, they may require him—

- (a) to produce to them any documents in his custody or power relating to that matter,
- (b) to attend before them, and
- (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give;

and it is that person's duty to comply with the requirement.]

[F3(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.]

(4) In this section a reference to officers or to agents includes past, as well as present, officers or agents (as the case may be); and "agents", in relation to a company or other body corporate, includes its bankers and solicitors and persons employed by it as auditors, whether these persons are or are not officers of the company or other body corporate.

(5) An answer given by a person to a question put to him in exercise of powers conferred by this section (whether as it has effect in relation to an investigation under any of sections 431 to 433, or as applied by any other section in this Part) may be used in evidence against him.

[F4(5A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

- (a) no evidence relating to the answer may be adduced, and
- (b) no question relating to it may be asked,

by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

(5B) Subsection (5A) applies to any offence other than—

(a) an offence under section 2 or 5 of the Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath); or

(b) an offence under section 44(1) or (2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath).]

[F5(6) In this section “document” includes information recorded in any form.

(7) The power under this section to require production of a document includes power, in the case of a document not in hard copy form, to require the production of a copy of the document—

(a) in hard copy form, or

(b) in a form from which a hard copy can be readily obtained.

(8) An inspector may take copies of or extracts from a document produced in pursuance of this section.]

Section 451A - Disclosure of information by Secretary of State or inspector

This section applies to information obtained—

(a) under sections 434 to [F3446E] ;

(b) by an inspector in consequence of the exercise of his powers under section 453A.]

(2) The Secretary of State may, if he thinks fit—

(a) disclose any information to which this section applies to any person to whom, or for any purpose for which, disclosure is permitted under section 449, or

(b) authorise or require an inspector appointed under this Part to disclose such information to any such person or for any such purpose.

[F4(3) Information to which this section applies may also be disclosed by an inspector appointed under this Part to—

(a) another inspector appointed under this Part;

(b) a person appointed under—

(i) section 167 of the Financial Services and Markets Act 2000 (general investigations),

(ii) section 168 of that Act (investigations in particular cases),

(iii) section 169(1)(b) of that Act (investigation in support of overseas regulator),

(iv) section 284 of that Act (investigations into affairs of certain collective investment schemes), or

(v) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),

to conduct an investigation; or

(c) a person authorised to exercise powers under—

(i) section 447 of this Act; or

(ii) section 84 of the Companies Act 1989 (exercise of powers to assist overseas regulatory authority).]

(4) Any information which may by virtue of subsection (3) be disclosed to any person may be disclosed to any officer or servant of that person.

(5) The Secretary of State may, if he thinks fit, disclose any information obtained under section 444 to—

(a) the company whose ownership was the subject of the investigation,

(b) any member of the company,

(c) any person whose conduct was investigated in the course of the investigation,

(d) the auditors of the company, or

(e) any person whose financial interests appear to the Secretary of State to be affected by matters covered by the investigation.]

[F5(6) For the purposes of this section, information obtained by an inspector in consequence of the exercise of his powers under section 453A includes information obtained by a person accompanying the inspector in pursuance of subsection (4) of that section in consequence of that person's accompanying the inspector.

(7) The reference to an inspector in subsection (2)(b) above includes a reference to a person accompanying an inspector in pursuance of section 453A(4).]