

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 24 July 2007

**Public Authority:** The Parliamentary Commissioner for England  
(The Parliamentary and Health Service Ombudsman)  
**Address:** Millbank Tower  
Millbank  
London  
SW1P 4QP

### Summary

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The complainant wrote to the Parliamentary and Health Service Ombudsman to request information regarding a complaint he had made to the public authority against the Department for Trade and Industry. The public authority responded to the complaint by explaining that the information was exempt from disclosure under section 44 of the Act. The public authority said that the relevant statutory prohibition was section 11(2) of the Parliamentary Commissioner Act 1967. After considering the complaint the Commissioner has found that the statutory prohibition applied to the majority of the information that had been withheld from the complainant. However the Commissioner has found that the public authority also breached section 1 of the Act because the statutory prohibition did not apply to all of the information requested by the complainant.

### The Commissioner's Role

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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.

### The Request

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2. On 6 July 2005 the complainant wrote to the public authority to request information related to its investigation of a complaint he had made against the Department for Trade and Industry. The complainant asked 10 specific questions regarding the manner in which the public authority had investigated his complaint. The request read as follows.
  1. When did you first advise the DTI that you intended to investigate?

2. When did Ms Langridge, Ms McCarthy and Mr McKinlay leave DTI?
  3. Have you any DTI correspondence re the involvement of these three and Ms Pisani?
  4. What official positions did these four people hold?
  5. Have you any evidence that the reports sent to me were checked?
  6. Who checked them?
  7. What reasons did Mr Callaghan give for initially refusing to consider my complaint until I had obtained correspondence from the FSA?
  8. When did you visit DTI with regard to this complaint?
  9. Have you personally read all the correspondence between DTI and me?
  10. Who in DTI did you interview?
3. The public authority wrote to the complainant on 18 July 2005 with the outcome of its investigation into the complaint against the Department for Trade and Industry. In this letter the public authority addressed the complainant's freedom of information request.
  4. On 22 July 2005 the complainant wrote to the public authority again to request that it respond to the questions he raised in his request of 6 July 2005. At this point the complainant put the following requests to the public authority:
    1. By what means and to whom can I appeal against your decision? In the event that I exhaust all procedures with the Ombudsman I understand that there is no impediment in my seeking a ruling through the civil courts. Can you confirm and have you any advice in this regard?
    2. Is there any impediment to my obtaining all associated documents from the ombudsman, DTI and SFA in accordance with Freedom of Information legislation?
  5. The public authority initially responded to the request on the 3 August 2005. The public authority refused part 2 of the complainant's second request because it said that information about his complaint is exempt from the provisions of the Act. The public authority explained that information is exempt from disclosure under section 44 which provides that there is no duty to provide information if this information is prohibited from disclosure under any other law. The public authority explained that the relevant statutory prohibition is section 11(2) of the Parliamentary Commissioner Act 1967 which provides that information obtained by the Commissioner or his officers in the course of or for the purposes of an investigation shall not be disclosed except for the purposes of the investigation and any report to be made in respect of it.

6. The public authority said that it would deal with the first part of the complainant's second request in accordance with its internal complaint handling procedures.
7. The public authority explained that the complainant is entitled to receive any of his personal data which it holds. It said that it would also treat his request as a request for information under the Data Protection Act 1998 which requires it to provide the personal data within 40 calendar days.
8. On 10 August 2005 the complainant wrote to the public authority to request it carry out an internal review of its handling of his request. The complainant also specifically asked the public authority to address his earlier request of 6 July 2005.
9. The public authority wrote to the complainant with the outcome of its internal review on 18 November 2005. The public authority upheld its earlier decision to refuse the request under section 44 of the Act by virtue of section 11(2) of the Parliamentary Commissioner Act 1967. At this point the public authority also provided the complainant with copies of his personal data, which it held under the Data Protection Act 1998.

## The Investigation

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### Scope of the case

10. On 11 January 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The Complainant specifically asked the Commissioner to consider the public authority's decision to refuse his request of 22 July 2005 under section 44 of the Act. The complainant also asked the Commissioner to consider his request to the public authority of 6 July 2005.
11. The Commissioner is satisfied with the public authority's decision to deal with part 1 of the complainant's second request of 22 July 2005 in accordance with its internal complaint handling procedure. The Commissioner has not pursued this point further.
12. In reaching his decision the Commissioner has not considered the public authority's response to the request under the Data Protection Act 1998.

### Chronology

13. On 4 January 2007 the Commissioner requested that the public authority provide him with a schedule of all of the information which it holds relating to the complaint against the Department for Trade and Industry which has not been

- disclosed to the complainant or which the complainant has not otherwise had access to. The Commissioner also asked that the public authority fully justify and explain its application of section 11(2) of the Parliamentary Commissioner Act 1967 and asked that the public authority provide a chronology of its investigation into the complaint against the Department for Trade and Industry.
14. On 8 January 2007 the public authority provided the Commissioner with a chronology of its investigation into the complaint against the Department for Trade and Industry and provided further details on its application of section 11(2) of the Parliamentary Commissioner Act 1967.
  15. On 26 April 2007 the public authority provided the Commissioner with a schedule of the information it had withheld from the complainant under section 44 of the Act and which the complainant had not previously had access to. The schedule contained details and descriptions of the various pieces of information which had been withheld from the complainant.
  16. The public authority explained that it operates an electronic case management system and that actions such as file movement, dispatch of correspondence and the closure of the case are recorded as file management data on the case management system. The schedule contained the text of electronic file management data recording such actions.
  17. The public authority has also informed the Commissioner that it did not respond to the initial request of 6 July 2005 under the Act because it considered this to be a request within the normal course of business. The public authority provided the Commissioner with a copy of a letter dated 18 July 2005 which addressed the questions raised in the complainant's initial request of 6 July 2005.

### **Findings of fact**

18. The complaint against the Department for Trade and Industry concerned the complainant's application to that department for an investigation into the activities of a group of company directors whom he alleged to have disadvantaged shareholders with the aim of fraudulently acquiring a public limited company.
19. The public authority's investigation into the complaint against the Department for Trade and Industry began in November 2004. The public authority wrote to the complainant on 18 July 2005 to explain why it had concluded that it could not take his complaint any further. The complainant challenged the public authority's conclusions and this was escalated through the public authority's internal complaints procedure. The public authority confirmed that it closed correspondence on the complainant's case on 24 February 2006.
20. The schedule of information, which the public authority supplied to the Commissioner, represents all of the information that it holds regarding the complaint against the Department for Trade and Industry which has not been seen by the complainant.

21. The public authority confirmed that in the course of its investigation it interviewed members of staff at the Department for Trade and Industry who had been involved in the complaint against that department.

## Analysis

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22. A full text of the relevant statutes referred to in this section is contained within the legal annex.

## Exemption

23. The Commissioner accepts that section 11(2) of the Parliamentary Commissioner Act 1967 acts as a statutory prohibition on information obtained in the course of, or for the purposes of, the public authority's investigations and is satisfied that responding to a freedom of information request is not one of the reasons for disclosure provided for in subsection a) – c) of section 11(2) of that Act. The issue to be considered in this decision notice is whether the information requested by the complainant was obtained in the course of or for the purposes of its investigation into the complaint against the Department for Trade and Industry.
24. Firstly, the Commissioner has considered the complainant's request of 6 July 2005. In this request the complainant asked 10 questions regarding the manner in which the public authority investigated his complaint against the Department for Trade and Industry. The public authority has stated that it considered this request to be a request within the normal course of business and provided the Commissioner with a copy of its response. The Commissioner has reviewed the response and is satisfied that the public authority addressed the complainant's request. However, the Commissioner has gone on to consider the public authority's response to the complainant's second request of 22 July 2005 and in doing so has reviewed the schedule of information provided by the public authority. For the purposes of considering the public authority's handling of the second request the Commissioner considers the information withheld under section 44 of the Act to be any information which the public authority holds regarding its investigation into the complaint against the Department for Trade and Industry which has not previously been supplied to the complainant or which he has not otherwise had access to. In reaching his decision the Commissioner has considered the extent to which any or all of this information is covered by the statutory prohibition provided for in section 11(2) of the Parliamentary Commissioner Act 1967.
25. The Commissioner has reviewed the schedule of information which the public authority holds in relation to the complaint against the Department for Trade and Industry and which the complainant has not previously had access to. The Commissioner has found that some of the information it holds was passed to the public authority by the Department for Trade and Industry during the course of the investigation or was obtained by the public authority as a result of interviews it conducted with that department. The Commissioner is satisfied that such information is information obtained in the course of or for the purposes of an

investigation and that the exceptions in a) – c) of section 11(2) of the Parliamentary Commissioner Act 1967 do not apply. The Commissioner finds that this information is exempt from disclosure under section 44 of the Act.

26. The Commissioner also recognises that a certain amount of information that has been withheld from the complainant is information that was generated by the public authority and its officers in the course of investigating the complaint against the Department for Trade and Industry. This information is typically comprised of correspondence from the public authority to the Department for Trade and Industry, internal minutes and emails. It is the Commissioner's view that where such information draws upon or makes reference to the complaint against the Department for Trade and Industry, or the public authority's investigation of this complaint, then such information constitutes information obtained in the course of or for the purposes of an investigation. These documents have the complaint as their focus and whilst they may have been generated by the public authority itself and therefore have not been physically obtained, it is clear that the information contained within these documents will have been obtained in the course of or for the purposes of the investigation.
27. The Commissioner has considered the text of electronic file management data. This is information recording how the public authority physically manages the information it holds in its file. The Commissioner considered this information because it was provided by the public authority in response to the Commissioner's request for a schedule of information it held regarding the complaint against the Department for Trade and Industry. The Commissioner considers this information to have been provided for the sake of completeness and does not consider this information to fall within the scope of the request.
28. Section 44 is an absolute exemption and therefore the Commissioner has not undertaken an assessment of the public interest test.
29. The Commissioner recognises that the public authority has discretion to disclose information obtained in the course of, or for the purposes of an investigation, where it believes that it would be beneficial for the purposes of that investigation. In reaching his decision the Commissioner has not sought to question the public authority's use of its discretion in this regard.

## **The Decision**

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30. The Commissioner's decision is as follows:
  - The public authority complied with section 1 of the Act by correctly applying section 44.

## **Right of Appeal**

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31. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

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 24th day of July 2007**

**Signed .....**

**Jane Durkin  
Deputy Commissioner**

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

**Legal Annex**

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**Section 1(1)** of the Act provides that:

“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 44(1)** of the Act provides that:

“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.”

**Section 11(2)** of the Parliamentary Commissioner Act 1967 provides that:

“Information obtained by the Commissioner or his officers in the course of or for the purposes of an investigation under this Act shall not be disclosed except—

- (a) for the purposes of the investigation and of any report to be made thereon under this Act;
- (b) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Commissioner or any of his officers by virtue of this Act or for an offence of perjury alleged to have been committed in the course of an investigation under this Act or for the purposes of an inquiry with a view to the taking of such proceedings; or
- (c) for the purposes of any proceedings under section 9 of this Act;

and the Commissioner and his officers shall not be called upon to give evidence in any proceedings (other than such proceedings as aforesaid) of matters coming to his or their knowledge in the course of an investigation under this Act.