

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 October 2008

Public Authority: Her Majesty's Revenue and Customs ('HMRC')
Address: 4th Floor
100 Parliament Street
London
SW1A 2BQ

Summary

The complainant requested copies of the information HMRC holds in relation to the civil action it instigated against KPMG concerning its administration of Leeds United, specifically the information formally served into the court. Although HMRC confirmed to the complainant that it held this information, it considered it to be exempt from disclosure on the basis of section 44(1)(a) of the Act because of the prohibition on disclosure provided by the Commissioners for Revenue and Customs Act 2005. The Commissioner has concluded that the requested information is exempt on the basis of section 44(1)(a). However, the Commissioner has concluded that HMRC breached sections 10(1) and 17(1) of the Act by failing to provide the complainant with a refusal notice within 20 working days of his request.

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 set out his decision.

The Request

2. On 26 July 2007 the complainant submitted a request to HMRC for 'the information HMRC holds in relation to the civil action against KPMG [concerning its administration of Leeds United Association Football Club Limited], specifically the information formally served into the court'.

3. HMRC responded to this request on 3 September 2007. In this response HMRC explained that the provisions of section 44(1)(a) of the Act dictate that information is exempt if its disclosure is prohibited by or under any other enactment and in this case section 23 of Commissioners for Revenue and Customs Act 2005 (CRCA) was such an enactment. HMRC's response specifically noted that section 23(1)(a) of the CRCA provides that information is exempt by virtue of section 44(1)(a) of the Act if its disclosure would specify the identity of the person to whom the information relates. HMRC noted that the term person includes both natural and legal persons, and therefore includes the tax affairs of a limited company. HMRC therefore explained that the requested information was exempt on the basis of section 44(1)(a) because it identifies the company referred to in the request.
4. On 4 September 2007 the complainant asked for an internal review to be conducted.
5. On 26 October 2007 HMRC provided the complainant with the outcome of the internal review. In this letter HMRC explicitly confirmed to the complainant that it held information falling within the scope of his request, but stated that the initial decision that the information was exempt on the basis of section 44(1)(a) of the Act was correct.

The Investigation

Scope of the case

6. On 26 October 2007 the complainant contacted the Commissioner to complain about HMRC's decision to refuse to disclose the information he had requested. The complainant highlighted a number of reasons why he believed that the prohibition provided by the CRCA did not apply. During the Commissioner's investigation of this complaint (i.e. the period July to September 2008) the complainant also raised a number of further reasons why he did not believe that the CRCA had been correctly applied. The Commissioner has outlined in detail the complainant's arguments as to why section 44(1)(a) has been mis-applied in the Analysis section below (see paragraphs 23 to 27).

Chronology

7. The Commissioner contacted HMRC on 19 June 2008 and asked to be provided with a detailed explanation as to why it considered the requested information to be exempt on the basis of section 44(1)(a) of the Act. The Commissioner also asked HMRC to provide him with a copy of the information falling within the scope of this request.
8. HMRC provided the Commissioner with a response on 15 July 2007. In this response HMRC explained that the requested information contained confidential and sensitive information and for this reason, along with its statutory duty to guard against unlawful disclosure of customer's information, HMRC did not consider it

appropriate to provide the Commissioner with a copy of this information. Furthermore, HMRC asked the Commissioner to consider whether it was in fact necessary for him to view the requested information in order to determine whether section 44(1)(a) had been correctly applied. This was because the exemption in question is class based and absolute and in HMRC's opinion it was without question that the requested information fell within the scope of the absolute exemption because the identity of the entity that the information relates to is specified in the request. HMRC did however invite the Commissioner and/or members of his staff to visit its offices in order to view the requested information.

9. HMRC's response included a detailed explanation as to why it believed that the interaction of sections 18(1) and 23 of the CRCA provided a prohibition on disclosure of the requested information. HMRC also noted that if it received this request now it would refuse to confirm or deny whether it held information of the nature requested.
10. On 12 August 2008 the Commissioner contacted HMRC and asked it to clarify a number of issues relating to the application of section 44(1)(a), in particular the purposes for which HMRC held the requested information.
11. HMRC provided this clarification to the Commissioner on 16 September 2008.

Background

12. In May 2007 Leeds United went into administration following several years of financial difficulty and in the face of a winding up order from HMRC. By calling in the administrators KPMG, the debts Leeds United owed to a number of creditors, including HMRC, were effectively wiped out.
13. KPMG subsequently announced that Leeds United would be sold to Ken Bates for an undisclosed sum. This move came after HMRC mounted a legal bid to block Mr Bates' earlier attempts to buy the club because under the terms of that sale creditors would only be given 8p in every £1.¹

¹ Source of background information BBC website news stories: 'League demands Leeds assurances' http://news.bbc.co.uk/sport1/hi/football/teams/l/leeds_united/6294442.stm and 'Leeds United resold to Ken Bates' <http://news.bbc.co.uk/1/hi/business/6292746.stm>

Analysis

Section 44 – prohibition on disclosure

HMRC's position

14. HMRC has noted that section 44(1)(a) exempts information from disclosure if its disclosure is prohibited by any other enactment or rule of law. The prohibition relied upon by HMRC is that contained in the CRCA.
15. Section 18(1) of the CRCA provides that HMRC officials may not disclose information which is held by HMRC in connection with one of its functions. HMRC has explained that it holds the requested information for the purpose of collecting corporation tax.²
16. Section 23(1) of the CRCA further provides that information relating to a person, the disclosure of which is prohibited by 18(1), is exempt information for the purposes of section 44(1)(a) of the Act if its disclosure would specify the identity of the person to whom the information relates, or would enable the identity to be deduced. HMRC has highlighted the fact that paragraph 110 of the explanatory notes of the CRCA states that 'person' includes both natural and legal persons such as companies. Both the named administrators and the company (i.e. Leeds United) are identified in the requested information and therefore the exemption applies.
17. HMRC has acknowledged that section 18(2) sets aside the duty of confidentiality established by section 18(1) in some circumstances. (In essence, a number of gateways to disclosure are created by section 18(2)). However, in HMRC's view section 18(2) does not affect the interaction of sections 18(1) and 23 of the CRCA because section 23 makes no mention of sections 18(2) and (3). Consequently, the only questions to be considered for section 44(1)(a) to be engaged are 'Is the information held by HMRC for one of its functions?' and 'Does it relate to an identifiable person?'. If the answer is yes to both of these questions the information is exempt under the Act.
18. Moreover, HMRC has suggested that the clear intention of Parliament was to remove information from the right of access under the Act as shown by the following statement made by the then Paymaster General, Dawn Primaralo on the introduction of section 23 of the CRCA, which followed concerns expressed during the passage of the bill through Parliament that information HMRC held about taxpayers might be disclosed under the Act:

'Taxpayer confidentiality remains of paramount importance in the new department. As I have said, for that reason, the Bill ensures that information connected with a taxpayer is not discloseable under the Freedom of Information Act. That was always the intention, but the new

² Section 7 of the CRCA assigns former Inland Revenue matters listed in Schedule 1 of the CRCA to HMRC. Corporation Tax is listed as a function of HMRC at item 6 in Schedule 1.

clause puts that beyond doubt – that information will not be discloseable under the Act. However, much of the information that Her Majesty's Revenue and Customs will hold is not taxpayer confidential – for example, information about the department's internal processes. The new clause identifies that such information will be subject to the Freedom of Information Act. Therefore, if a person requests information that it is not taxpayer confidential, that request will be considered under the Act'.

19. In HMRC's view, if Parliament had intended for section 23 of the CRCA to take account of section 18(2) and section 18(3) exceptions it would have expressly said so.
20. Furthermore, HMRC argued that if it was the intention of Parliament that section 18(2) conditions should be considered then section 23 would become unnecessary. If section 18 read as a whole prohibits disclosure then it is obvious that the exemption in section 44(1)(a) of the Act can be relied upon and there is no need to add that it is exempt information if it would specify the identity of the person to whom the information related or would enable the identity of such a person to be deduced. Consequently, in HMRC's opinion on such a construction section 23(1) becomes a provision whose purpose would be to provide a needless reassurance.
21. However, HMRC noted that it may on a discretionary basis and outside the terms of the Act, disclose information where it received the necessary consent of the customer because of the exception to the duty of confidentiality contained in section 18(2)(h) of the CRCA. However, HMRC explained that it would only consider such a disclosure to (a) the customer itself where the request is made by an appropriate officer; or (b) to a person who has provided HMRC with the company's or other customer's specific authority permitting HMRC to disclose its information to them.

The complainant's position

22. In correspondence with the Commissioner the complaint highlighted a number of reasons why in his opinion HMRC are incorrect to rely on section 44(1)(a) of the Act to withhold the requested information. The Commissioner has summarised the complainant's arguments into the following four points:
23. Firstly, in the complainant's view the requested information was compiled by HMRC in order to challenge the way in which KPMG carried out the administration of the affairs of Leeds United. In the complainant's view, HMRC was therefore challenging the administration of Leeds United by KPMG as a creditor, a specific power open to any creditor challenging a company voluntary agreement (CVA). The complainant has therefore argued that the information he is seeking access to relates to a court action concerning the challenging of actions by an administrator and is not related to HMRC's collection of corporation tax. Furthermore, the complainant has highlighted the fact that the court action, and thus the information to which he is seeking access to, relates to actions of KPMG and not Leeds United, but it is Leeds United who owed HMRC corporation tax. The complainant's ultimate conclusion is that as the information is not held

for the purposes of the collection of corporation tax and therefore does not fall within section 18(1) of CRCA, it cannot be exempt from disclosure on the basis of section 44(1)(a) of the Act.

24. Secondly, the complainant has argued that by providing the information he has requested to the court for the purposes of the civil proceedings it would appear that HMRC has relied upon the gateway contained at section 18(2)(c) of CRCA. The complainant has therefore argued that as this gateway has been previously relied upon HMRC, it is also engaged for the purposes of his request.
25. Thirdly, the complainant has argued that by placing the requested information in the custody of the court, HMRC has in effect ensured that this information is in the public domain. Consequently, disclosure of this information will not place into the public domain the identity of any 'persons', or indeed information about such persons, that HMRC's actions have not already ensured are in the public domain. In this context, the complainant has argued that it seems perverse that such information is exempt from disclosure under the Act.
26. Fourthly, the complainant has argued that there are a number of reasons why disclosure of the requested information would be in the public interest.

The Commissioner's position

27. In his consideration of both HMRC's and the complainant's submissions, the Commissioner has considered the following questions:
 - Is the requested information actually held 'in the connection with a function of Revenue and Customs' and thus is section 18(1) of the CRCA met?
 - Does section 18(2) of the CRCA affect the interaction of sections 18(1) and 23 of the CRCA?
 - If so, do any of the gateways contained in section 18(2) of the CRCA apply in this case?
 - Do the complainant's arguments outlined at paragraphs 26 and 27 have any impact on the application of the exemption in this case?

Is the requested information actually held 'in the connection with a function of Revenue and Customs' and thus is section 18(1) of the CRCA engaged?

28. In the circumstances of this case, the Commissioner cannot describe in great detail the content of the requested information as to do so may reveal the nature of the information itself and thus compromise the duty of confidentiality the CRCA places on HMRC. However, the Commissioner is satisfied that the requested information – i.e. the documents served into court by HMRC – were submitted with the intention of securing an increased payment against a tax debt owed. Therefore, in the Commissioner's opinion the requested information is held by HMRC for the purposes of collecting corporation tax and thus falls within the scope of section 18(1) of the CRCA.

Does section 18(2) of the CRCA affect the interaction of sections 18(1) and 23 of the CRCA?

29. The Commissioner disagrees with HMRC's position that section 18(2) of CRCA does not affect the interaction of sections 18(1) and 23 of the CRCA. Rather the Commissioner believes that it is not possible to determine whether or not section 18(1) is engaged without reference to section 18(2).
30. In the Commissioner's opinion the correct application of this particular statutory bar is the following: first whether the information is held in connection with a function of HMRC and thus meets the requirements of section 18(1); second, where none of the exceptions in section 18(2) apply; and third, whether the information relates to an identifiable person and thus the requirements of section 23(1) are met.
31. In the recent Information Tribunal decision *Mr Andrew John Allison v Information Commissioner and HMRC* (EA/2007/0089; 22 April 2008) the Tribunal agreed with the Commissioner's interpretation of the application of this statutory bar:

'The Tribunal feels that on balance the arguments of the Commissioner are to be preferred. First, the Tribunal finds it difficult to find any ambiguity on the face of section 18(1) and section 18(2) of the 2005 Act such as to import the necessity to have recourse to Hansard under the well known principles considered in Pepper v Hart. The language of the relevant provisions in the 2005 Act is clear. It is simply not possible to determine whether or not section 18(1) is engaged without reference to section 18(2). Moreover, on a clear reading of the statute, in the Tribunal's view, it is only if the information is such that none of the exceptions in section 18(2) apply that it can be said that section 18(1) is fully engaged and that the information may not be disclosed. Next and perhaps crucially, section 18(1) whether or not coupled with section 18(2) does not represent a complete code whereby the question as to whether disclosure should be made can be answered. As the Additional Party [HMRC] itself accepts, whether information prohibited from disclosure under section 18(1) is in fact exempt depends on section 23. As a matter of statutory construction, therefore, the Tribunal finds that in the absence of clear words which would expressly distance the operation of section 18(2) from section 18(1) such as to make section 18(1) a complete code in the way suggested, it is necessary to consider whether any of the exceptions in section 18(2) apply before an answer can be given to the question of whether disclosure is prohibited under section 18(1).'

32. Therefore, the Commissioner believes that he has to consider whether any of the exceptions contained within section 18(2) of the CRCA apply before he can conclude that the withheld information is exempt on the basis of section 44(1)(a).

Do any of the gateways contained 18(2) of the CRCA apply in this case?

33. In the circumstances of this case the only exceptions that the Commissioner considers may be relevant are those contained at section 18(2)(a), 18(2)(c) and 18(2)(h). These three sub-sections provide that:

'18(2) But subsection (1) does not apply to a disclosure—

(a) which—

(i) is made for the purposes of a function of the Revenue and Customs, and

(ii) does not contravene any restriction imposed by the Commissioners,

(c) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,

(h) which is made with the consent of each person to whom the information relates.'

34. With regard to the exception contained at section 18(2)(a) of CRCA the Commissioner is satisfied that making a disclosure of information under section 1(1) of the Act cannot be correctly described as a 'function' of HMRC. Rather complying with statutory obligations, including those imposed by the Act is one of HMRC's general responsibilities as a public authority but is not a specific or unique function of HMRC. This position is supported by the Tribunal decision in the case *Mr N Slann v Information Commissioner* (EA/2005/0019; 11 July 2006). Therefore the Commissioner is satisfied that the exception contained at section 18(2)(a) cannot be relied upon.
35. Turning to the exception contained at section 18(2)(c), the Commissioner agrees with the complainant that in submitting the requested information to the court, HMRC appears to have relied upon the exception contained at section 18(2)(c) of the Act. It would appear that the disclosure of this information was for the purposes of civil proceedings.
36. However, the Commissioner does not agree with the complainant that HMRC could, or indeed should, rely on this exception in order to disclose the requested information in response to his request. This is because the purpose of the gateway contained at section 18(2)(c) is simply to allow for information to be disclosed for the purpose of civil proceedings; the purpose of disclosure to the complainant would be to comply with an information request, and consequently HMRC cannot rely on section 18(2)(c). In the Commissioner's opinion it is an incorrect interpretation of the CRCA to argue that simply because a gateway has been relied upon in the past it will always be correct to rely on that gateway in the future when the purposes of that disclosure may be fundamentally different.
37. With regard to the exception contained at section 18(2)(h), HMRC has explained that its position with regard to consent has changed since the complainant first

submitted his request. In its letter detailing the outcome of the internal review, HMRC informed the complainant that if he could obtain the administrators' written authority allowing HMRC to disclose the requested information to him, then HMRC's duty of confidentiality would be set aside and thus the exception contained at section 18(2)(h) of the CRCA would be engaged.

38. However, in correspondence with the Commissioner, HMRC has explained that it has now reached a different position in terms of the interaction of sections 18 and 23 of the CRCA and section 44 of the Act. Consequently, whilst HMRC would still provide the complainant with the information he requested if he received the necessary consent, the disclosure would be on a discretionary basis outside the Act, rather than as a disclosure under the Act on the basis that the exception contained at 18(2)(h) was met. HMRC has noted that it is not its practice nor is it a requirement of the Act that it approaches its customers to seek consent; in this particular case, this is for the complainant to do. In the Commissioner's opinion it would appear that if such consent was granted, then conditions set out in 18(2)(h) would be met and consequently section 18(1) would not apply. Disclosure could then be made under the Act, not as HMRC has argued, on a discretionary basis outside the scope of the Act.
39. However, the Commissioner does not intend to speculate as to whether the administrators of Leeds United, if consulted, would consent to disclosure of the requested information under the Act. Nor has he taken steps to contact either party in order to establish whether they would provide such consent.
40. The Commissioner has taken this approach because the Tribunal in *Allison* indicated that in terms of consent under section 18(2)(h) of CRCA the key issue was that such consent was in place, or sought, at the time of the request:
- 'In paragraph 61 [of decision notice FS50079644], the Commissioner made the point, again in the view of the Tribunal perfectly properly, that with regard to the need to seek consent for the purposes of section 18(2)(h) of the 2005 Act [the CRCA], it was entirely clear that at the time the Appellant [Mr Allison] had made his original request, quite apart from any later period, no consent had been given. Moreover, section 18(2)(h) did not impose any obligation on the Additional Party [HMRC] to seek consent.'* (Tribunal at paragraph 23).
41. HMRC received this request on 26 July 2007 and on the basis of the facts outlined in the chronology it is clear to the Commissioner that at this time no consent, in terms of the consent required for the exception contained at section 18(2)(h) of the CRCA to apply, was given, or indeed sought. Therefore the Commissioner is of the opinion that the exception contained at 18(2)(h) cannot apply in this case.
42. On the basis of the above, the Commissioner is satisfied that none of the exceptions listed in section 18(2) of the CRCA are applicable in this case.

Do the complainant's arguments outlined at paragraphs 26 and 27 have any impact on the application of the exemption in this case?

43. The Commissioner accepts the logic of the complainant's argument that if the requested information is already in the public domain, and moreover, that it was placed in the public domain by HMRC, it appears somewhat perverse for HMRC to now argue that such information is exempt from disclosure because it would identify particular persons when HMRC's previous actions have already led to these individuals being identified.
44. However, as the above analysis makes clear, section 44(1)(a) is a class based exemption and therefore information is exempt simply if it falls within the scope of the exemption. Unlike prejudice based exemptions, for class based exemptions to be engaged, there is no need for a public authority to identify how harm will occur if information is disclosed. Therefore, information may be exempt under section 44 even if it is already in the public domain.
45. As section 44 is also an absolute exemption and not subject to the public interest test set out in section 2 of the Act, the public interest arguments in favour of disclosure identified by the complainant are irrelevant to the Commissioner's consideration as to whether section 44(1)(a) applies.
46. On the basis of the above analysis, the Commissioner is satisfied that because of the interaction of sections 18(1) and 23 of CRCA the requested information is exempt from disclosure on the basis of section 44(1)(a) of the Act.

Procedural Issues

47. The complainant submitted his request on 26 July 2007 and HMRC did not provide the complainant with a refusal notice until 3 September 2007. By failing to issue this refusal notice within 20 working days the Commissioner has concluded that HMRC breached sections 10(1) and 17(1) of the Act.

The Decision

48. The Commissioner's decision is that HMRC was correct to refuse to disclose the requested information on the basis that it was exempt by virtue of section 44(1)(a) of the Act.
49. However, the Commissioner has also concluded that HMRC breached sections 10(1) and 17(1) by failing to issue a refusal notice within 20 working days.

Steps Required

50. The Commissioner requires no steps to be taken.

Other matters

51. In its submissions to the Commissioner, HMRC also explained that if it received this request again, it would refuse to confirm or deny whether it held any information falling within the scope of the complainant's request. This is on the basis that section 44(2) of the Act provides that the duty to confirm or deny that information is held does not apply if the confirmation or denial itself would fall within any of the provisions of 44(1). HMRC argued that if revealed that it held the requested information, then it could be revealing something about the affairs of Leeds United whether HMRC went on to disclose the information or not. This would fall within section 44(1)(a) and therefore section 44(2) would exempt HMRC from the duty to confirm or deny in response to this request.
52. Although not a formal part of this decision, the Commissioner has gone on to consider HMRC's argument that it when it initially received this request it would have been correct to refuse to confirm or deny whether it held this information on the basis of section 44(2). The Commissioner accepts that when it first received this request HMRC could have correctly refused to confirm or deny whether it held any information falling within the scope of the request. This is because section 44(2) provides that the duty to confirm or deny does not apply if to do so would fall within any of the provisions of section 44(1). The Commissioner agrees with HMRC's position if it confirmed that it held information of the nature requested then it would be revealing something about the affairs of Leeds United and named administrators. Consequently simply providing confirmation that it held this information would fulfil sections 18(1) and 23(1) of the CRCA and thus on the basis of sections 44(1) and 44(2) of the Act the duty to confirm or deny contained at section 1(1)(a) of the Act is removed.
53. However, as the chronology clearly demonstrates, HMRC in responding to this request, did in fact confirm that it did hold some information relevant to this request. The Commissioner has therefore gone on to consider whether if HMRC received a similar request in the future, it could correctly rely on the interaction of sections 44(1) and 44(2) of the Act, and the provisions of the CRCA, to refuse to confirm or deny whether it in fact held any such information.
54. The Commissioner acknowledges the slightly perverse nature of such a consideration – how can a public authority refuse to confirm or deny whether it holds information when it has previously provided confirmation that it does hold such information in response to a previous request under the Act? However, in the Commissioner's opinion because of the way in which the relevant sections of the CRCA and the Act work, in this particular case, even if it received a further

request for similar information about Leeds United and KPMG, HMRC would be entitled to refuse to confirm or deny whether it held this information.

55. The Commissioner has reached this conclusion on the following basis:
56. For the sake of simplicity if the gateways contained at section 18(2) of the CRCA are set aside for a moment, for the statutory bar to apply to information it simply has to be held by HMRC for the purposes of one its functions (section 18(1)) and relate to a person whose identity would be revealed if the information was disclosed (section 23(1)). If HMRC received this request again in the Commissioner's opinion the statutory bar would still apply because the information being sought would still meet the requirements of section 18(1) and 23(1) of the CRCA. Given the wording of the statutory bar contained in the CRCA, the bar does not stop applying to information simply because a previous confirmation has been given that such information is held.
57. Furthermore, as the Commissioner has argued above in paragraph 52, he accepts that simple confirmation of the fact that such information about Leeds United and the named administrators is held would fulfil sections 18(1) and 23(1) of the CRCA and thus on the basis of sections 44(1) and 44(2) of the Act the duty to confirm or deny contained at section 1(1)(a) of the Act is removed.
58. The Commissioner notes the CRCA does not provide for situations where information has been previously disclosed under the Act and as a consequence the statutory bar does not apply or the principle of confirm or deny is removed. (In particular none of the gateways listed at section 18(2) anticipate such a situation.) Therefore, although on the face of it such a position appears illogical, the Commissioner accepts that if it received this request again, HMRC would be entitled to rely on section 44(2) and the provisions of the CRCA to refuse to confirm or deny whether it held this information.

Right of Appeal

59. 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@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 22nd day of October 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

The Freedom of Information Act 2000

Section 1(1) 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 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 10(1) provides that –

“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(1) provides that -

“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

(a) states (if that would not otherwise be apparent) why the exemption applies.”

Section 44(1) 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 44(2) provides that –

“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).”

Commissioner for Revenue and Customs Act 2005

Section 18 provides that -

“18. Confidentiality

- (1) Revenue and Customs officials may not disclose information which is held by the Revenue and Customs in connection with a function of the Revenue and Customs.
- (2) But subsection (1) does not apply to a disclosure –
 - a) which –
 - (i) is made for the purposes of a function of the Revenue and Customs, and
 - (ii) does not contravene any restriction imposed by the Commissioners,
 - (c) which is made for the purposes of civil proceedings (whether or not within the United Kingdom) relating to a matter in respect of which the Revenue and Customs have functions,
 - (h) which is made with the consent of each person to whom the information relates.
- (3) Subsection (1) is subject to any other enactment permitting disclosure.”

Section 19 provides that -

“19. Wrongful Disclosure

- (1) A person commits an offence if he contravenes section 18(1) or 20(9) by disclosing revenue and customs information relating to a person whose identity –
 - (a) is specified in the disclosure, or
 - (b) can be deduced from it.
- (2) In subsection (1) “revenue and customs information relating to a person” means information about, acquired as a result of, or held in connection with the exercise of a function of the Revenue and Customs (within the meaning given by section 18(4)(c)) in respect of the person; but it does not include information about internal

administrative arrangements of Her Majesty's Revenue and Customs (whether relating to Commissioners, officers or others)".

Section 23 provides that -

"23. Freedom of Information (1) Revenue and Customs information relating to a person, the disclosure of which is prohibited by section 18(1), is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000 (c. 36) (prohibitions on disclosure) if its disclosure –

- (a) would specify the identity of the person to whom the information relates, or
- (b) would enable the identity of such a person to be deduced.

(2) Except as specified in subsection (1), information the disclosure which is prohibited by section 18(1) is not exempt information for the purposes of section 44(1)(a) of the Freedom of Information Act 2000.

(3) In subsection (1) "revenue and customs information relating to a person" has the same meaning as in section 19."