

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 31 August 2011

Public Authority: The Financial Services Authority
Address: 25 The North Collonade
Canary Wharf
London
E14 5HS

Summary

The complainant requested under the Freedom of Information Act 2000 (the 'Act') any communications between the public authority and ministers or officials in the Government of Iceland, the Icelandic FSA and the Central Bank of Iceland regarding Landsbanki that were forwarded to the Treasury between 4 October 2008 and 8 October 2008. The public authority provided some information and withheld other information by virtue of section 44 [a statutory bar] and section 40(2) [third party personal data]. The complainant referred the application of section 44 to the Commissioner. The Commissioner has determined that the statutory bar found in section 348 of Financial Services and Markets Act 2000 ('FSMA') was applied correctly to all of the information withheld by virtue of section 44. He has found procedural breaches of sections 10(1), but requires no remedial steps to be taken.

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. Landsbanki Islands Hf was the second largest bank in Iceland. It got into financial trouble during the 2008 financial crisis. It has a UK branch (Landsbanki) and UK Subsidiaries (Heritable Bank plc and Teathers).

3. On 7 October 2008 the Icelandic government seized control of Landsbanki. It dismissed all of its directors and put it into receivership.
4. On 8 October 2008 the UK Treasury exercised its powers granted under sections 4 and 14 and Schedule 3 of the Anti-Terrorism, Crime and Security Act 2001 to issue the Landsbanki Freezing Order 2008¹. It froze the assets of Landsbanki in the UK, and assets belonging to the Central Bank of Iceland, and the Government of Iceland relating to Landsbanki.
5. The complainant made a number of requests for information to the public authority and referred the last one dated 13 May 2009 to the Commissioner. It is necessary to go through those requests below to understand the evolution of the request that the Commissioner has considered.

The Request

6. On 17 April 2009 the complainant submitted the following request for information:

'Please provide to us a copy of any documents containing or recording communications between HM Government/ the Bank of England/ the Financial Services Authority and ministers or officials in the Government of Iceland, the Icelandic Financial Supervision Authority and the Central Bank of Iceland from 4 October 2008 and 10am on 8 October [2008].'

7. On 24 April 2009 it was acknowledged and on 8 May 2009 the public authority asked the complainant to clarify the request. It explained:

'I cannot identify the information you have requested from the details you have provided. To help us meet your request could you please therefore redefine it, specifying:

- *Whether you are requesting information on Icelandic banking in general; or*
- *Whether you are requesting information regarding any communications between the tripartite authorities (either singly or jointly) and the Icelandic authorities regarding the Freezing Order.*

I will be unable to proceed with your request without clarification of the information you wish to receive.'

¹ <http://www.legislation.gov.uk/ukxi/2008/2668/contents/made>

8. On 13 May 2009 the complainant responded:

'In my view, the original letter of request dated 17 April 2009 was clear in its terms. That letter was drafted by specialist Counsel.

In any event, in order to provide as much assistance as possible, I can clarify matters by indicating that we are seeking copies of any communications between the bodies in question, identified in my letter to you dated 17 April, which informed the decision of Her Majesty's Government to make the Landsbanki Freezing Order 2008, SI 2008/2668.'

9. On 11 June 2009 the public authority issued its initial response. It confirmed that it held the information that was requested. However, it applied the following exemptions:
1. Section 21(1) [information accessible to the complainant by other means]. It explained that this consisted of the details of the Icelandic legislation which is publicly available;
 2. Section 44(1) [statutory prohibition on disclosure]. It explained that it held other information that it had received for the purposes of carrying out its regulatory function under the Financial Services and Markets Act 2000 (FSMA). It explained that section 348 of FSMA does not allow the disclosure of 'confidential information' (a term that is also defined by the statute) except in certain limited circumstances. It confirmed that some of the withheld information was received for the purpose of carrying out its supervision of the Icelandic banks and that it was prohibited from disclosing the information by section 348 of FSMA. Section 44(1) was therefore being relied upon for this information; and
 3. Section 31 [prejudice to law enforcement]. It explained that this exemption was being applied to the remainder of the information that it had not provided because it believed that the information would disclose the internal processes within it and it required more time to consider the balance of the public interest in relation to this information. It was therefore relying on section 10(3) to extend the deadline for responding.
10. On 26 June 2009 the public authority issued the remainder of its response. It provided more detail about why it felt section 31 was engaged. It believed that the disclosure of the remaining withheld information would or would be likely to prejudice the exercise by the FSA of its functions. Those functions relate to it ascertaining whether circumstances which would justify regulatory action in pursuance of any

enactment exist or may arise. In particular, it felt that disclosure of the information requested would be likely to lead to:

- government of Iceland, the Icelandic Financial Supervision Authority and the Central Bank of Iceland and/or other international regulators; and
- regulated firms,

becoming more circumspect in the information they provide to the FSA in the future. It explained that it is often made aware on an informal basis by firms and other States and/or regulators, of information which is important to it in carrying out its functions. It explained that any reduction in the free flow of this information would be likely to prejudice its ability to carry out its functions. It then conducted its public interest test, confirmed that it believed that the public interest favoured the maintenance of the exemption, provided its internal review details and outlined the complainant's right of appeal to the Commissioner.

11. On 23 September 2009 the complainant requested an internal review. He did not challenge the application of section 21(1). He explained that the events that had occurred subsequent to the request should have fundamentally altered the balance of public interest for the rest. He also explained that he was happy for the identity of the sources to be redacted to ensure access to the residue.
12. The public authority claimed it did not receive this letter initially. However, it received a reminder on 30 December 2009 that enclosed a copy of it and explained that it would now conduct one.
13. On 22 January 2010 the public authority wrote to the complainant. It explained that as part of its internal review process:

'We have revisited our approach to this request. We have identified a potential difficulty. As refined, you want information we hold which 'informed' the Treasury's decision. This requires knowledge of what information the Treasury took into account when making their decision. The Treasury are obviously best placed to know that, but the FSA is not. If we concluded our Internal Review at this point, our decision would be likely to be that we do not in fact hold the information you have requested. We understand that the Treasury is unable to provide you with any information as to do so will take you over the cost limit in s12 of the Act.

However, we have established that we do hold some information recording communications between the FSA and the Icelandic regulators that were forwarded to the Treasury which otherwise fall within the

terms of your request. Therefore, please can you confirm if you would like us to provide [subject to the application of the exemptions]:

'Any communications between FSA and ministers or officials in the Government of Iceland, the Icelandic FSA and the Central Bank of Iceland regarding Landsbanki that were forwarded to the Treasury between 4 October 2008 and 10 am on 8 October.'

14. On 7 April 2010 the public authority issued a reminder. On 12 April 2010 the complainant explained that he had received the reminder but not the original letter. He asked for a new copy of it and this was provided the next day. On 6 August 2010 the complainant explained that he had now received instructions and could 'confirm that I would be most obliged if you would very kindly continue with the Internal Review request as outlined, for example, in your letter to me dated 22 January 2010'.
15. On 1 October 2010 the public authority issued its internal review response. It explained that it was now appropriate to disclose some information that it had previously withheld under section 31 and 21 and provided that information. It also explained that there was a recent report conducted by the Icelandic Parliament that may be of relevance and provided a link to it. However, it was still withholding the balance of the information by virtue of:
 - Section 44 – the disclosure of this information would contravene the prohibition found in section 348 of FSMA for the same reasons it previously outlined; and
 - Section 40(2) [personal information] – it explained that it was now relying on this new exemption to withhold some of the personal details of its staff. This included junior employees and the disclosure of their information without it being their expectation may be detrimental to them or lead to their distress.

The Investigation

Scope of the case

16. On 29 November 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. His specific arguments will be considered in the analysis section of this Notice.
17. On 21 February 2011 the complainant agreed with the Commissioner's proposed scope of the investigation which was to determine the following two points:

- '1. Whether section 44 [the statutory bar] was applied appropriately to the information embraced by the refined request that was agreed to on 6 August 2010 [that was communicated in the public authority's letter to the complainant dated 22 January 2010]; and
2. Whether the provisions in the Act that relate to timeliness were satisfied by the FSA in this case.'

Chronology

18. On 14 January 2011 the Commissioner wrote to the complainant and the public authority to confirm that he had received an eligible complaint. He asked the public authority to provide him with the withheld information.
19. On 31 January 2011 the Commissioner wrote again to the public authority to remind it to provide him with a copy of the withheld information. He also asked to be provided with a copy of all the correspondence that passed between the two parties. On 4 February 2011 the Commissioner received what he requested.
20. On 8 February 2011 the Commissioner wrote to the complainant in order to confirm the scope of his investigation. As noted above, the complainant confirmed the scope of the investigation on 21 February 2011. He also provided further arguments which will be discussed in the analysis section of this Notice where relevant.
21. On 22 February 2011 the Commissioner wrote to the public authority to make detailed enquiries about its position. The answers he received are considered in the analysis section where relevant.

Analysis

Exemption

22. The Commissioner has only been asked to consider the operation of section 44(1)(a). He has not therefore considered the operation of section 40(2) to the names and details of the public authority's staff any further.
23. The information that is being withheld by virtue of section 44(1)(a) can be summarised as consisting of four items:
 - One paragraph and one line (except for one line that has been disclosed) of the email dated 5 October 2008 sent at 17:27 ('item one');

- One paragraph of the email dated 6 October 2008 sent at 12:02 ('item two')
- One paragraph of the email dated 6 October 2008 sent at 13:12 ('item three'); and
- Two paragraphs of the email dated 7 October 2008 sent at 12:49 ('item four').

Section 44(1)(a)

24. The public authority refused to disclose the outstanding information falling within the scope of the investigation under section 44(1)(a). Section 44(1)(a) provides an exemption from disclosure under the Act for information which is prohibited from disclosure under any law or enactment².
25. It is an absolute exemption, so if the statutory bar applies then the information is exempt and no public interest test is necessary.
26. In its refusal notice, the public authority cited section 348 of the Financial Services and Market Act 2000 as the appropriate statutory bar in this case.
27. The statutory bar is constructed in the following way. In brief, section 348(1) explains that confidential information cannot be released without the consent of the parties. Section 348(2) defines what constitutes 'confidential information' and section 348(4) provides two situations where the information can lose its 'confidential status'. Section 348(5) confirms that the public authority should be regarded as a primary recipient for the purposes of the Act. Section 349 allows the public authority to elect to disclose information in specified circumstances. Section 352 makes disclosure in contravention of section 348 a criminal offence.
28. It is clear that the simplest way to approach the statutory bar is to consider the following four issues:
 - does the withheld information fall within the definition of 'confidential' that is contained within section 348(2) of FSMA;
 - if so, whether either of the situations have occurred that have led to it losing its 'confidential' status;

² The full wording of the sections that have been considered by the Commissioner can be found in the Legal Annex at the bottom of this Notice.

- to consider whether appropriate consent has been provided; and
- if not, to consider whether any of the exceptions in section 349 are appropriate in this case.

Does the withheld information fall within the definition of being confidential that is contained within section 348(2) of FSMA?

29. Section 348(2) of the FSMA provides a definition of confidentiality for the purposes of FMSA. It states that information is confidential when it has both been obtained by the FSA as part of its functions as the regulatory body overseeing the financial services industry and is information which relates to the business or other affairs of any person. 'Person' has the same meaning as in the Interpretation Act 1978 which states that this should be interpreted as *'a body of persons corporate or unincorporated'*.
30. To be 'confidential' the withheld information must therefore have the following properties that will be discussed in turn:
 - (1) It must have been received by the FSA;
 - (2) The obtaining of the information must have been done by the FSA as part of its functions as the regulatory body overseeing the financial services industry; and
 - (3) It must relate to the business or other affairs of a legal person.
31. In relation to the first property, the Commissioner considers that the words 'received by' should be given their natural meaning. The Commissioner is therefore of the view that this disqualifies information that is purely internally generated within the public authority and where it is possible to separate this information out this should be done. It is noted that withheld information comprises of emails between members of its staff and other individuals whose content amounts to summaries of conversations had with these other parties. In this case the Commissioner is satisfied that all four items of information were received by the FSA from those responsible for the banks in question – an external third party. It follows that the withheld information possesses the first relevant property.

32. He believes that paragraph 56 and 57 of the Information Tribunal's decision in *Financial Services Authority v the Information Commissioner* [EA/2007/093 and 100]³ supports his view. It stated:

'[56] First, it was submitted that the section covers not only the disclosure of information on the same terms as the terms in which it was received, but also information which disclosed the substance of the confidential information. Second, in some cases the substance of any information disclosed will necessarily be affected by the context of the disclosure, eg if it could be linked to other information already disclosed....

[57] The first and second contentions do not in the Tribunal's view represent contentions which can be justifiably objected to.'

33. The second property is more complex. It requires an understanding of how the public authority undertakes its regulatory objectives and its role in supervising overseas banks.
34. Section 2 of FSMA explains how the public authority must go about undertaking its regulatory objectives and what those objectives are.

"(1) In discharging its general functions the Authority must, so far as is reasonably possible, act in a way -

- (a) which is compatible with the regulatory objectives; and*
- (b) which the Authority considers most appropriate for the purpose of meeting those objectives.*

(2) The regulatory objectives are -

- (a) market confidence;*
- (b) public awareness;*
- (c) the protection of consumers; and*
- (d) the reduction of financial crime."*

35. The public authority's role in supervising overseas banks is quite complex. The Commissioner therefore asked the public authority to explain its functions as regulatory body in relation to Landsbanki Islands

³ [http://www.informationtribunal.gov.uk/DBFiles/Decision/i257/FSA%20v%20ICO%20\(EA-2007-0093%20&%20100\)%20Decision%2013-10-08.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i257/FSA%20v%20ICO%20(EA-2007-0093%20&%20100)%20Decision%2013-10-08.pdf)

Hf. It explained that as Iceland is a member of the European Economic Area, it has the following responsibilities:

- In relation to the UK branch (Landsbanki), it is host state regulator and is responsible for the conduct of the investment business in the branch, its liquidity and measures to combat financial crime. The regulator in Iceland meanwhile is the home state regulator and is responsible for supervising the other areas (such as capital). It is therefore necessary for information to pass between the two regulators; and
 - In relation to the UK subsidiaries (such as Heritable Bank plc and Teathers) it is the home state regulator and has the normal responsibilities under FSMA to monitor their compliance in accordance with the rules contained in its handbook, in particular, SIP (supervisory provisions), PRU (prudential requirements), SYSC (senior management arrangements, systems and controls) and COND (threshold conditions for becoming and remaining authorised).⁴
36. It explained that it communicates with the relevant overseas regulators to enable it to supervise both the branch and UK subsidiaries. These communications include it exchanging information on the bank for the purpose of monitoring its compliance with the FSA rules. It also confirmed that the information was necessary to enable discussion of the most effective way of resolving the financial crisis engulfing Landsbanki Islands Hf, including arranging compensation payments in conjunction with the Financial Services Compensation Scheme (whose rules are made by the FSA).
37. It confirmed that it viewed the four items of information as having been provided for both the purpose of carrying out its supervision of the parts of Landsbanki Islands Hf and of enabling it to help resolving the failure of the group.
38. The Commissioner has considered each of the four items of withheld information. He has concluded that in light of the context outlined in paragraph 32 above, the information was received by the FSA as part of its functions as the regulatory body and that this property is satisfied for all of the information.
39. The final property is simpler. Landsbanki is a legal person and the information concerns its situation. It follows that the withheld

⁴The Handbook can be found at the following link:
<http://fsahandbook.info/FSA/html/handbook/>

information relates to its affairs and all the information falls prima facie within the definition of 'confidentiality' within section 348(2) of FSMA.

40. The Commissioner has considered the complainant's counterarguments that the 'confidentiality' may be jeopardised through the 'cherry picking' of information that is suitable for disclosure. The Commissioner does not consider that the way FSMA defines 'confidentiality' leaves any scope for these arguments to be successful. Information is defined by FSMA as 'confidential' if it satisfies the three properties above (and is not within the two circumstances that will be discussed in the next part of this Notice). The High Court in the case *Financial Services Authority v The Information Commissioner* [2009] EWHC 1548 (Admin) specifically noted that *"there is no need for information to be inherently confidential in the common law or equitable sense for it to be confidential for the purposes of section 348"*. There is therefore no link between the common law doctrine of when information is confidential and when it is designated confidential under section 348(2) of FSMA.

Whether either of the situations have occurred that have led to it losing its 'confidential' status

41. However, as noted above, section 348(4) qualifies Section 348(2) and says that information loses its confidentiality in two circumstances:

- (1) Where the information has already been disclosed to the public; and
- (2) Where the information can be provided in the form of a summary so that it is not possible to ascertain to whom the information relates.

42. In respect of the first, the Commissioner has considered the report by the Icelandic Government, the information that was disclosed as a result of this request and contemporary news reports. He considers that the withheld information has not been disclosed to the public. It follows that this circumstance does not render any of the information non-confidential.
43. In respect of the second, the Commissioner notes that any information that falls within the modified request must relate to Landsbanki. Therefore in this case there is no way of summarising the information in a way that would make it impossible to ascertain that it relates to Landsbanki. It follows that this circumstance does not render any of the information non-confidential in this case.

Has consent been given?

44. The statutory bar only operates when the public authority does not have the consent of the parties to whom it relates to disclose the information.
45. The provision of consent is a matter of fact and the Commissioner is not entitled to look behind the reasons that consent has not been obtained or judge whether it was reasonable. This was confirmed by the Information Tribunal in paragraph 36 of *Norman Slann v Information Commissioner and the Financial Services Authority* (Slann) [EA/2005/0019]⁵ where it stated:

'It is impossible to see how there could be any room for the exercise of any discretion by the IC in such a case.'

46. The complainant argued that Landsbanki would not object to the provision of the information in this case.
47. The public authority told the Commissioner that it had not sought consent from Landsbanki or the Icelandic FSA in this particular case.
48. However, it had sought consent from the Icelandic FSA in previous cases and such consent was declined.
49. It also explained that given the fact that Landsbanki had gone into administration it was difficult to understand who it would approach to obtain the relevant consents even if it had decided to obtain it.
50. Finally, it explained that from experience, it could say that regulated firms are reluctant to give consent to disclose information received by the FSA that was provided for its regulatory functions.
51. From the rationale above, the Commissioner is satisfied that no consent has been provided.

Whether any of the exceptions found in section 349 are appropriate in this case?

52. Section 349(1) allows the public authority to elect to disclose information in specified circumstances without contravening the confidentiality provisions in section 348. It explains:

⁵ The relevant decision can be found at the following link:
<http://www.informationtribunal.gov.uk/DBFiles/Decision/i53/MrNSlannvInfoComm11Jul06v7307.pdf>

'Section 348 does not prevent a disclosure of confidential information which is—

(a) made for the purpose of facilitating the carrying out of a public function; and

(b) permitted by regulations made by the Treasury under this section.'

53. Section 349(1)(a) can be dealt with swiftly. Section 44 is specifically qualified to apply where 'its disclosure (otherwise than under the Act)' would engage the statutory bar. Therefore, a disclosure under the Act cannot be taken into account as a purpose that facilitates the carrying out of its public functions and thus this exception to the statutory bar does not work. In addition, the Commissioner is also of the view that the making of a disclosure under the FOIA is not a public function for the purposes of the regulations and therefore is not a basis for disclosing confidential information held by the FSA.
54. Section 349(1)(b) requires the Commissioner to consider the Regulations made by the Treasury. There is one set of Regulations which is called *The Financial Services and Markets Act 2000 (Disclosure of Confidential Information Regulations 2001* S.I. 2001 No 2188).
55. There are four Regulations that require comment which are:
- regulation three – which allows disclosure when it is made to any person to allow them to discharge their own public functions;
 - regulation four – which allows the public authority to disclose the information for the purposes of a criminal investigation;
 - regulation five – which allows disclosure in limited other proceedings; and
 - regulation six – which allows disclosure in pursuance of a Community obligation.
56. For all of these Regulations, the right to disclose the information is discretionary for the public authority. They do not disallow reliance on the statutory bar. In addition, none of the four requirements are satisfied by the information at issue in this case.
57. However the Commissioner wishes to provide a detailed rationale for why he discounts regulation three. Firstly, it is important to note that public functions is defined by section 349(5) of FSMA as including:
- "(a) functions conferred by or in accordance with any provision contained in any enactment or subordinate legislation; ..."*

58. The Commissioner is of the view that the definition relates to the powers conferred on the FSA by legislation, rather than from legislation (such as the Act) to which it was subject. Therefore, there is no relevant function that enables the public authority to disclose confidential information. His view has been supported by paragraph 39 of the Information Tribunal decision in *Slann* which stated:

'...Section 349(5)(a) with its reference to public function is referring to and is directed to functions and powers conferred on the FSA by statute or by statutory instrument other than the FSMA and not legislation such as the 2000 Act to which other persons including the FSA are or might be subject. Even if that view were wrong, section 44 on its face makes it clear beyond doubt that disclosure under the 2000 Act is to be ignored for this purpose by virtue of the dispensing words "otherwise than under this Act".

59. Therefore this gateway cannot apply in this case:

1. the statutory bar specifically indicates that the presence of the Act must be disregarded when considering the operation of the statutory bar; and
2. even if it didn't, the obligations imposed on it by the Act cannot be said to be public functions for the purposes of this exception – this is because it is not a power that is conferred upon the public authority.

60. After considering the withheld information and the law as above, the Commissioner's view is that the statutory bar found in section 348 of FSMA was applied appropriately by the public authority to all four items. This is because the information falls within the definition of confidentiality contained in FSMA and none of the exemptions found in that legislation apply here.

61. It follows that the public authority has appropriately relied on section 44(1)(a). This is an absolute exemption and the information can therefore be withheld.

Procedural Requirements

Timeliness

62. The second aspect referred to in the scope of the case is the Commissioner's consideration of timeliness.

63. Section 10(1) explains that subject to limited exceptions it is necessary for the public authority to comply with section 1(1) within twenty

working days. One of those exceptions is found in section 1(3). Section 1(3) explains that where a public authority reasonably requires further information in order to identify and locate the information requested and has informed the applicant of such, then the clock is stopped.

64. In this case the public authority did write to the complainant a week after receiving the request explaining that it felt it needed further clarification. The complainant explained that the request was clear already but to be helpful narrowed the request (which must be regarded as a new request for information under section 8 of the Act).
65. The Commissioner has considered the wording of the original request and does not consider that it was objectively reasonable for the public authority to seek clarification in order to identify and locate the information requested. The complainant's original request clearly explained that he wanted the recorded documentation between named bodies. There was no scope for confusion. Therefore, the Commissioner finds that there was a breach of section 10(1) in handling the original request dated 17 April 2009.
66. In addition, the public authority then processed the refined request dated 13 May 2009 without originally recognising that it required specific knowledge that it did not have (in that it had no knowledge of what documents informed the decision of Her Majesty's Government to make the Landsbanki Freezing Order 2008). It therefore should then have clarified the modified request by virtue of section 1(3) before answering it (something that it realised during its internal review process). Because it lacked this knowledge it was unable to comply with its obligations under section 1(1) in 20 working days and so breached section 10(1).

The Decision

67. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
 - It applied section 44(1)(a) appropriately to the four items it withheld under that exemption.
68. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - It breached section 10(1) in the way that it handled the requests as they evolved in this case.

Steps Required

69. The Commissioner requires no steps to be taken.

Other matters

70. Although it does not form part of this Decision Notice the Commissioner wishes to highlight the following matter of concern. The Commissioner is not content that the original request dated 17 April 2009 was objectively unclear. The section 45 Code of Practice explains that clarification should only be requested when further clarification needs to be sought by the public authority to enable it to identify and locate the information sought and explains that a flexible approach should be expected. The Commissioner wants to record that the public authority should carefully consider whether it does require further information when deciding whether it needs to clarify a request. This is because an unnecessary request could be seen as a further barrier to the access of information and not accord with the spirit of the Act.

Right of Appeal

71. 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: 0300 1234504

Fax: 0116 249 4253

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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

72. 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.

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

Dated the 31st day of August 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
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Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

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 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21*
- (b) section 23*
- (c) section 32*
- (d) section 34*
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords*
- (f) in section 40 –*
 - (i) subsection (1), and*
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,*
 - (iii) section 41, and*
 - (iv) section 44"*

Time for Compliance

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'.

Prohibitions on disclosure

Section 44(1)(a) provides that –

'(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).'

Financial Services and Markets Act 2000

Disclosure of information

348 Restrictions on disclosure of confidential information by Authority etc

(1) Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of—

(a) the person from whom the primary recipient obtained the information; and

(b) if different, the person to whom it relates.

(2) In this Part “confidential information” means information which—

(a) relates to the business or other affairs of any person;

(b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the Authority, the competent authority for the purposes of Part VI or the Secretary of State under any provision made by or under this Act; and

- (c) is not prevented from being confidential information by subsection (4).
- (3) It is immaterial for the purposes of subsection (2) whether or not the information was received—
 - (a) by virtue of a requirement to provide it imposed by or under this Act;
 - (b) for other purposes as well as purposes mentioned in that subsection.
- (4) Information is not confidential information if—
 - (a) it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not precluded by this section; or
 - (b) it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.
- (5) Each of the following is a primary recipient for the purposes of this Part—
 - (a) the Authority;
 - (b) any person exercising functions conferred by Part VI on the competent authority;
 - (c) the Secretary of State;
 - (d) a person appointed to make a report under section 166;
 - (e) any person who is or has been employed by a person mentioned in paragraphs (a) to (c);
 - (f) any auditor or expert instructed by a person mentioned in those paragraphs.
- (6) In subsection (5)(f) “expert” includes—
 - (a) a competent person appointed by the competent authority under section 97;
 - (b) a competent person appointed by the Authority or the Secretary of State to conduct an investigation under Part XI;
 - (c) any body or person appointed under paragraph 6 of Schedule 1 to perform a function on behalf of the Authority.

349 Exceptions from section 348

- (1) Section 348 does not prevent a disclosure of confidential information which is—
 - (a) made for the purpose of facilitating the carrying out of a public function; and
 - (b) permitted by regulations made by the Treasury under this section.
- (2) The regulations may, in particular, make provision permitting the disclosure of confidential information or of confidential information of a prescribed kind—

- (a) by prescribed recipients, or recipients of a prescribed description, to any person for the purpose of enabling or assisting the recipient to discharge prescribed public functions;
 - (b) by prescribed recipients, or recipients of a prescribed description, to prescribed persons, or persons of prescribed descriptions, for the purpose of enabling or assisting those persons to discharge prescribed public functions;
 - (c) by the Authority to the Treasury or the Secretary of State for any purpose;
 - (d) by any recipient if the disclosure is with a view to or in connection with prescribed proceedings.
- (3) The regulations may also include provision—
- (a) making any permission to disclose confidential information subject to conditions (which may relate to the obtaining of consents or any other matter);
 - (b) restricting the uses to which confidential information disclosed under the regulations may be put.
- (4) In relation to confidential information, each of the following is a “recipient”—
- (a) a primary recipient;
 - (b) a person obtaining the information directly or indirectly from a primary recipient.
- (5) “Public functions” includes—
- (a) functions conferred by or in accordance with any provision contained in any enactment or subordinate legislation;
 - (b) functions conferred by or in accordance with any provision contained in the Community Treaties or any Community instrument;
 - (c) similar functions conferred on persons by or under provisions having effect as part of the law of a country or territory outside the United Kingdom;
 - (d) functions exercisable in relation to prescribed disciplinary proceedings.
- (6) “Enactment” includes—
- (a) an Act of the Scottish Parliament;
 - (b) Northern Ireland legislation.
- (7) “Subordinate legislation” has the meaning given in the [1978 c. 30.] Interpretation Act 1978 and also includes an instrument made under an Act of the Scottish Parliament or under Northern Ireland legislation.

THE FINANCIAL SERVICES AND MARKETS ACT 2000 (DISCLOSURE OF CONFIDENTIAL INFORMATION) REGULATIONS 2001

DISCLOSURE OF CONFIDENTIAL INFORMATION GENERALLY

Disclosure by and to the Authority, the Secretary of State and the Treasury etc.

3. - (1) A disclosure of confidential information is permitted when it is made to any person -

(a) by the Authority or an Authority worker for the purpose of enabling or assisting the person making the disclosure to discharge any public functions of the Authority or (if different) of the Authority worker;

(b) by the Secretary of State or a Secretary of State worker for the purpose of enabling or assisting the person making the disclosure to discharge any public functions of the Secretary of State or (if different) of the Secretary of State worker;

(c) by the Treasury for the purpose of enabling or assisting the Treasury to discharge any of their public functions.

(2) A disclosure of confidential information is permitted when it is made by any primary recipient, or person obtaining the information directly or indirectly from a primary recipient, to the Authority, the Secretary of State or the Treasury for the purpose of enabling or assisting the Authority, the Secretary of State or the Treasury (as the case may be) to discharge any of its, his or their public functions.

(3) Paragraphs (1) and (2) do not permit disclosure in contravention of any of the directive restrictions.'