

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 30 May 2012

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

### Decision (including any steps ordered)

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1. The complainant has requested all information that concerns a complaint communicated to Companies House - including the name of the informant - that alleged an ongoing dispute at a named company.
2. Companies House refused to disclose the identity of the informant claiming the information constitutes personal data (section 40). It also refused to disclose any documentation that it held concerning the complaint stating the information was provided to it in confidence (section 41).
3. The Commissioner finds that section 41 applies to all of the requested information including the name of the informant. The Commissioner's decision is that Companies House correctly withheld the information in accordance with the FOIA.
4. The Commissioner requires no remedial steps to be taken by the public authority.

### Request and response

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5. On 09 November 2011 Companies House wrote to the complainant, director of named company, stating that they had been notified of an ongoing dispute. For this reason Companies House were excluding his named company from the Protected Online Filing scheme ("PROOF").
6. On 11 November 2011 the complainant requested information from Companies House in the following terms:

*"We have today received a letter from Companies House, enclosed, stating that there is an ongoing dispute with the [named] company?"*

*We are somewhat confused by this? We are not aware of any ongoing dispute with the company could you perhaps inform us what this is please?"*

7. On 15 November 2011 Companies House responded to the request for information. It refused to disclose the identity of the informant claiming the information constitutes personal data (section 40). It also refused to disclose any documentation that it held concerning the complaint submitted, stating the information was provided to it in confidence (section 41).
8. On the same day the complainant wrote to Companies House and requested an internal review.
9. On 08 December 2011 Companies House upheld its refusal notice after conducting an internal review.

## Scope of the case

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10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The Commissioner would expect a public authority to take into account contemporaneous dealings with the applicant to clarify the information that was being requested.<sup>1</sup> In this case no clarification was sought. However, both parties acknowledge that the information requested is the identity of the informant and any documentation that concerns the complaint submitted to Companies House by the informant.
12. Therefore, the focus of the investigation will be to determine whether Companies House correctly relied upon the exemptions at section 40 to withhold the identity of the informant and section 41 to withhold information relating to the complaint itself.

## Background

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13. The Commissioner notes that Companies House is not a public authority itself, but is an executive agency of the Department for Business,
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<sup>1</sup> *Boddy v North Norfolk District Council* [EA/2007/0074], para 25.

Innovation and Skills. However, for the sake of clarity, this decision notice refers to Companies House as if it were the public authority.

14. Companies House is a registry of company information, holding the records of over two million companies together with details of all the officers and shareholders associated with these companies. To gain the benefit of limited liability, these companies and their officers are legally obliged to submit certain information to the Registrar of Companies which is then made available to the public. This information can be submitted electronically or on paper and can be submitted by the company or their representatives. The Registrar does not have the statutory power or capability to verify the accuracy of the information that is sent to Companies House.
15. Damage can be caused to companies by hijackers or fraudsters who attempt to change the details on the register for financial gain. Although the intention of the PROOF scheme is to alert companies to possible hijack and fraud situations, it has also provided a way for disputing directors and company offices to try and control what information is placed in the public domain.
16. If Companies House is notified by an individual that there is a dispute within a company that may have a bearing on its filing history and if that company is registered in the PROOF scheme, the company will be removed from the scheme.

*"Just as we cannot get involved in internal disputes or act as arbitrator in such matters, we also cannot be seen to prejudice one party against another. By removing the company from the scheme we ensure that no one party has a controlling factor in what information is placed on the public register so opening up the company file to allow the filing of paper documents provides a 'level playing field' for all parties concerned. [...] The only check that we are able to conduct in such circumstances is to ensure that the complainant or informant has, or has had some official connection to the company in the past."*

## Reasons for decision

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17. Section 41(1) provides that information is exempt if it was obtained from any other person and disclosure of the information to the public by the public authority holding it would amount to a breach of confidence actionable by that or any other person.
18. Section 41(1) states:

*"Information is exempt information if –*

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

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

19. In considering whether disclosure of information constitutes an actionable breach of confidence the Commissioner will consider the following:
  - Whether the information has the necessary quality of confidence;
  - Whether the information was imparted in circumstances importing an obligation of confidence; and
  - Whether disclosure would be an unauthorised use of the information and to the detriment of the confider.
20. The Commissioner finds that information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial.
21. Complaints made to Companies House contain information obtained from a third person, namely the informant. Therefore the requirement of section 41(1)(a) is satisfied.
22. The complainant was unaware of any alleged dispute whatsoever, until the company was removed from PROOF. He remains oblivious to any details. During the investigation of the case the Commissioner conducted his own searches (by use of an internet search engine), but was unable to find any evidence that details of a dispute had been put into the public domain. The Commissioner is therefore satisfied that the information is not otherwise accessible.
23. The information constitutes a complaint submitted to Companies House by a person who has, or has had some official connection to the named company in the past. The complaint submitted by the informant to Companies House alleges that there is an ongoing dispute at the named company. The complainant clearly considers the information about his company to be important as, besides the allegation resulting in its exclusion from the PROOF scheme, it could also hinder the reputation and success of its business. Given the nature of the information the Commissioner is satisfied that it is not trivial.
24. Therefore the Commissioner is satisfied that the information provided by the informant has the necessary quality of confidence.

25. The Commissioner has gone on to consider whether the information was imparted in circumstances importing an obligation of confidence.
26. Even if information might otherwise be regarded as confidential, a breach of confidence will not be actionable if it was not communicated in circumstances giving rise to an obligation of confidence. In this instance, an alleged dispute was communicated to Companies House by an individual in what could be described as a 'tip-off'. Companies House argued that as such the informant expects "*a degree of confidentiality*". The Commissioner agrees that the expectation of confidence was implicit in this instance.
27. The Commissioner has gone on to consider whether disclosure of the information would be to the detriment of the confider.
28. The Commissioner has taken into account the commercial nature of the information and the wider context in which it is held. The Commissioner has also considered the contentious nature of disputes which involve companies within the PROOF scheme and has therefore concluded that the information would result in detriment to the informant if it were disclosed.
29. The Commissioner is satisfied that the information was obtained from a person other than the public authority holding it and that disclosure would amount to an actionable breach of confidence. However, before the Commissioner can decide if the exemption is engaged he must consider whether a public interest defence to a breach of confidence could be established.
30. In the Commissioner's view disclosure will not constitute an actionable breach of confidence if there is a public interest in disclosure which outweighs the public interest in keeping the information confidential.
31. If Companies House is notified by an individual that there is a dispute within a company that may have a bearing on its filing history and if that company is registered in the PROOF scheme, the company will be removed from the scheme. In this instance Companies House was notified of an alleged dispute at the named company. The complainant argues that he "*can take no action to resolve a dispute that does not exist*". He therefore sees no way to re-gain entry to the PROOF scheme.
32. The complainant argued that disclosure would highlight an abuse of the public authority's procedures by a malicious individual undertaking a form of corporate sabotage. The complainant also argued that disclosure would shed light on the work of the public authority and demonstrate how flawed rules concerning confidentiality allow individuals to harm successful businesses. The Commissioner recognises the complainant's

concerns. There is a public interest in ensuring scrutiny of the activities of public authorities. However, it must be remembered that disclosure in this instance would release a 'tip off' that relates exclusively to the named company.

33. In weighing this against the public interest in keeping the information confidential, the Commissioner has also been mindful of the wider public interest in preserving the principle of confidentiality.
34. It is in the public interest that confidences should be respected. The encouragement of such respect may in itself constitute a sufficient ground for recognising and enforcing the obligation of confidence.<sup>2</sup> The Commissioner is mindful of the need to protect the relationship of trust between confider and confidant and not to discourage or otherwise hamper a degree of public certainty that such confidences will be respected by a public authority.
35. In light of all the information at hand, the Commissioner considers that Companies House would not have a public interest defence for breaching its duty of confidence. The Commissioner cannot conclude that there is a strong enough public interest argument to disclose the requested information.
36. Therefore the Commissioner finds that the requested information is exempt under section 41 and Companies House was correct to withhold this information.
37. The Commissioner, bearing in mind the findings above, concludes that the name of the informant is also exempt under section 41. Therefore he has not gone on to consider the public authority's application of section 40.

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<sup>2</sup> *Bluck v ICO & Epsom and St Helier University Hospital NHS Trust* [EA/2006/0090], para 8.

## Right of appeal

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38. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed** .....

**Pamela Clements**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
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