# Freedom of Information Act 2000 (FOIA)

## Decision notice

**Date:** **28 May 2013**

**Public Authority:** **Insolvency Service**
**Address:** **4 Abbey Orchard Street**
**London**
**SW1P 2HT**

### Decision (including any steps ordered)

1. The complainant has requested information relating to changes in insolvency legislation and associated policies. The public authority has confirmed that it holds information but found that it was exempt under section 35(1)(a) of the FOIA. The Commissioner's decision is that the exemption is engaged and that the public interest in maintaining it outweighs that in disclosure. He does not require the public authority to take any steps.

### Background

2. The complainant has a history of correspondence with this public authority in respect of a previous court case, *Capewell v Customs & Excise & Ors [2004] EWCA Civ 1628* which can be found online[1]. Further related cases can be found via the same link.

3. The request is for minutes of a meeting entitled: "*Meeting with large regulators to discuss system reform – 13 June 2012*".

[1] http://judgmental.org.uk/judgments/EWCA-Civ/2004/[2004]_EWCA_Civ_1628.html

## Request and response

4. On 28 September 2012 the Commissioner received the following information request from the complainant:

> *"Re the Acca meeting on the 13th June 2012, with the insolvency service and other regulators,*
>
> *Subject = fees and complaints not automatically being as in my case rejected on jurisdictional grounds*
>
> *I require the whole document that has been produced as a product of this meeting I have been informed of this by the ACCA …".*

5. The public authority responded on 18 October 2012, confirming that it held the information but stating that it was exempt from disclosure by virtue of section 35(1)(a) and (b) of the FOIA.

6. Following an internal review the public authority wrote to the complainant on 29 October 2012; this was not received by the complainant at that time. Following correspondence with this office a further copy was passed to him on 2 January 2013. In the internal review the public authority maintained its position.

7. During the course of the Commissioner's investigation the public authority withdrew reliance on section 35(1)(b), so this will not be further considered.

## Scope of the case

8. The complainant first contacted the Commissioner about this request on 31 October 2012; at this point he had not received his internal review. Following its receipt he wrote again on 2 January 2013. He asked the Commissioner to consider the withholding of the requested information.

## Reasons for decision

### Section 35 - formulation of government policy

9. Section 35 is a class-based exemption. This means that if, as a matter of fact, information falls within any of the categories listed in that section, it is exempt.

10. The public authority is relying on section 35(1)(a). In other words, it is claiming that the withheld information is held by a government department and relates to the formulation or development of government policy.

11. This exemption is intended to prevent harm to the internal deliberative process of policy-making within government. In the Commissioner's view, the term 'relates to' should be interpreted broadly to include any information which is concerned with the formulation or development of the policy in question and does not specifically need to be information on the formulation or development of that policy.

12. Additionally, the public authority has explained to the Commissioner:

> *"Stage of the policy lifecycle. The meeting to which the minutes relate was one in a series of consultations undertaken with the RPBs* [Responsible Professional Body] *on a voluntary reform package to be agreed with the bodies and thereafter form the policy under which they operate. The fine details of the policy processes are currently being worked on. … the broad framework of the policy was announced by the responsible Minister in December 2012. It is anticipated that new proposals and final draft policy will be provided to the Minister by the end of April 2013 and the new policy will become effective from that date. As such the policy at the time* [the complainant] *made his request the proposals was in development stage".*

13. In this case the withheld information relates to the formulation of government policy on changes to insolvency legislation. Having viewed the withheld information, the Commissioner is satisfied that it falls within the category of information relating to 'the formulation or development of government policy'. He therefore finds this limb of the exemption to be engaged.

*The public interest*

14. Although the Commissioner is satisfied that the exemption is engaged, the public interest test must be applied to determine whether or not the withheld information should be disclosed.

*Public interest arguments in favour of disclosing the requested information*

15. The public authority did not provide any specific arguments in favour of disclosure of the information. However, in summing up its public interest considerations it made the following comments:

> *"… the factors of participation and public involvement in policy making, assessment of any advice provided to Ministers and*

*accountability and public spending consideration that may favour disclosure".*

16. The Commissioner considers that, generally speaking, the public interest is served where access to the information would:

- further the understanding of, and participation in, the debate of issues of the day;
- facilitate the accountability and transparency of public authorities for decisions taken by them;
- facilitate accountability and transparency in the spending of public money;
- allow individuals to understand decisions made by public authorities affecting their lives and, in some cases, assist individuals in challenging those decisions.

17. The Commissioner also notes the complainant's personal interest in this request. In correspondence with him the public authority advised:

> *"… I would [additionally] emphasise that 'public interest' in the context of the Act means that the wider public interest rather than any personal interest you may hold in the information. I note from your email …. that you consider that the meeting discussed 'your issues'. I can assure you that none of your personal issues were discussed or referred to in the minutes of the meeting".*

Having viewed the withheld information the Commissioner can confirm that this is the case.

*Public interest arguments in favour of maintaining the exemption*

18. In favour of maintaining the exemption, the public authority advised:

> *"The information contained in the document you have requested is part of wider range of information being gathered and considered by The Service's Policy Team that will in due course be used to inform the Minister responsible of the issues arising and potential solutions to be considered. The process of consultation with stakeholders and interest parties is not yet completed and The Service must consider the effect of any premature disclosure where there is ongoing and future consultations and the 'chilling effect' that disclosure may have on those processes.*
>
> *Any change in policy in this area must be agreed by the Minister and can only take place once all the factors and options have been*

*considered and agreed. Any change of policy will be published in due course.*

*In my opinion the factors set out above for not disclosing the information requested outweigh the factors of participation and public involvement in policy making, assessment of any advice provided to Ministers and accountability and public spending consideration that may favour disclosure".*

*Balance of the public interest arguments*

19. When balancing the competing public interests in a case, the Commissioner is deciding whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.

20. The Commissioner considers that disclosure of the requested information would enable the public to gain a better understanding of the issues in this policy area which would thereby further public discussion and debate. This adds weight to the public interest in favour of disclosure.

21. The Commissioner does, however, consider that the relevant government policy in this case is still under development and has not been announced or implemented. There is therefore a strong public interest in protecting the safe space for Ministers and officials to be able to develop policy of a live issue away from external scrutiny. The Commissioner also considers that there is a strong public interest in Ministers and officials being able to discuss issues openly and candidly. If the requested information were disclosed whilst government policy is still under development Ministers and officials may be less open in their further discussions. The Commissioner considers that the timing of the request adds significant weight to the public interest in favour of maintaining the exemption. He further notes that the public authority has also stated *that "any change of policy will be published in due course",* which will therefore serve the public interest at that point by keeping it informed.

22. The Commissioner considers that whilst there is a public interest in informing public debate surrounding the issues to which the potential policy options relate, he considers that in this case there is a very strong public interest in allowing Ministers and officials the safe space to further develop the policy in question and to be able to continue to effectively discuss issues in a frank and open manner. The Commissioner therefore

considers that the public interest in disclosure is outweighed by the public interest in favour of maintaining the exemption in this case.

## Right of appeal

23. 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
    Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

24. 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.

25. 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 .....**

**Jon Manners**
**Group Manager**
**Information Commissioner's Office**
**Wycliffe House**
**Water Lane**
**Wilmslow**
**Cheshire**
**SK9 5AF**