

Freedom of Information Act 2000

Decision notice

Date: 1 March 2017

Public Authority: National Savings and Investment
Address: 1 Drummond Gate
London
SW1V 2QX

Decision (including any steps ordered)

1. The complainant requested information relating to dormant National Savings and Investment (NS&I) products. NS&I refused the request under section 44(1)(a) of the Freedom of Information Act 2000 (the Act), as it considered that disclosure of the information was barred by other statutory instruments.
2. The Commissioner's decision is that NS&I is entitled to refuse the request under section 44(1)(a) of the Act. However, NS&I did breach section 17(1) of the Act as it did not notify the complainant of its refusal to disclose the requested information within the statutory timeframe.
3. No steps are required.

Request and response

4. On 7 December 2015, the complainant wrote to NS&I and requested information in the following terms:

"I would like to request a list of all deceased customers' names and unclaimed assets over £1000 held in dormant (i.e. last transaction pre-October 2000) NS&I products/accounts. These will be instances where the customer has died and NS&I have updated their records accordingly, but for various reasons the asset has went unrecovered by the executor(s).

I do not require details of the type of asset, the date of death, nor the deceased person's address or executor contact details. I only require their full names and the value of the asset held within the following: -

- *Investment Accounts*
- *Saving Certificates*
- *All Residual Account assets (closed products)*

*I am aware that the release or publication of such data is generally restricted as per the Data Protection Act 1998. However, the Data Protection Act **ONLY** relates to living individuals, not deceased individuals, and as such my request does not infringe on the Data Protection Act onto which state/government organisations and public authorities are bound in relation to the disclosure of personal data."*

5. NS&I responded on 4 April 2016. It stated that the withheld information was exempt under section 44(1)(a) of the Act as disclosure was prohibited by the following enactments:
 - Savings certificates – disclosure prohibited by section 82 of The National Savings (No. 2) Regulations 2015 ('the Regulations').
 - Investment accounts and residual account assets – disclosure prohibited under section 12 of The National Savings Bank Act 1971 ('the Bank Act').
6. Following an internal review the NS&I wrote to the complainant on 19 August 2016. It upheld the section 44(1)(a) refusal of the complainant's request.

Scope of the case

7. The complainant initially contacted the Commissioner on 12 August 2016 to complain about NS&I's delay in issuing its internal review. Following the NS&I issuing its internal review, the complainant confirmed on 5 September 2016 that he wished to appeal against the NS&I's refusal to disclose the information held within the scope of his request.
8. The Commissioner considers the scope of the case to be whether NS&I is entitled to rely on the exemption contained at section 44(1)(a) as the basis for refusing to disclose the information held within the scope of the complainant's request. The Commissioner will also look at the time taken by NS&I to issue its refusal notice and internal review.

Reasons for decision

Section 44(1)(a) – prohibitions on disclosure

9. Section 44(1)(a) of the Act states:

“44. Prohibitions on disclosure

(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,”

10. Section 44(1)(a) is an absolute exemption. This means that it is not subject to the public interest test set out in section 2(2)(b) of the Act. The complainant has argued that disclosure would be in the public interest and has submitted a number of arguments in support of his view. However, because the exemption contained at section 44(1)(a) is absolute, the Commissioner has not taken these arguments into account in reaching her decision on the application of the exemption.

11. NS&I has cited two separate enactments to justify its use of section 44(1)(a) of the Act. The Commissioner will address each of these enactments in turn.

Savings certificates – section 82 of the Regulations

12. Section 82 of the Regulations states:

82 Obligation of secrecy

(1) Subject to paragraphs (2) and (3), a person employed in connection with activity arising under these Regulations may not disclose to any person, other than the Director of Savings or a person employed in putting these Regulations into effect –

(a) in relation to bonds and certificates –

(i) the name of the purchaser or holder of a bond, a certificate, or a children's certificate; or

(ii) the number of those purchased or held by a person;

...

(c) the amount paid in relation to a bond, stock, a certificate or children's certificate.

- (2) *The Director of Savings (or a person authorised by the Director of Savings for this purpose) –*
- (a) *may disclose information to a person in connection with an offence committed in relation to a bond, stock, a certificate, or children's certificate, or for the purpose of ascertaining whether or not an offence has been committed;*
 - (b) *is not prevented from complying with a notice served under Schedule 36 to the Finance Act 2008 (powers of officers of Revenue and Customs to obtain information and documents and inspect business premises) or section 18 of the Taxes Management Act 1970 (which relates to the obtaining of information as to interest paid without deduction of income tax); or*
 - (c) *in relation to children's certificates, may issue a children's certificate in documentary form with the name of the purchaser on it, unless the purchaser at the time of purchase requests that their name not appear.*
- (3) *Information within paragraph (1) may be disclosed to a person under arrangements made and conditions imposed by the Director of Savings to enable that person to provide, or assist in connection with the provision of, relevant information to –*
- (a) *a purchaser or holder of a bond, certificate or children's certificate; or*
 - (b) *the holder of any stock,*
- and that person, for those purposes, is subject to the prohibition in paragraph (1) as if a person employed in putting these Regulations into effect.*
- (4) *In paragraph (3) "relevant information" means information about investment opportunities, services or facilities available from or through the Director of Savings, including information about –*
- (a) *the National Savings Bank;*
 - (b) *the National Savings Stock Register; or*
 - (c) *any means by which the Treasury raise money under the auspices of the Director of Savings.*
13. In determining whether section 82 of the Regulations is sufficient to prohibit disclosure of the requested information, the Commissioner has

considered whether the section sufficiently covers the withholding of the relevant information.

14. The Commissioner is satisfied that section 82 of the Regulations relate to the "savings certificates" as mentioned in the complainant's request. Part IV of the Regulations is specifically concerned with savings certificates, and they are mentioned throughout the Regulations in other instances – including in section 82.
15. The complainant has argued that as his request was for the accounts of deceased individuals then the information could be disclosed, as the information will no longer be personal data as per the Data Protection Act 1998 (DPA) because personal data is defined in the DPA as data which relates to a living individual.
16. Section 88 of the Regulations covers the process NS&I follow in the event of the death of a savings certificate holder. This makes it clear that NS&I will make a payment to a designated individual or account following the production of probate or letters of administration. However, it is clear that the savings certificate will still be the property of the deceased should this not occur. This means that the complainant's arguments about personal data are not relevant in this instance, as the Regulations continue to be applicable to a savings certificate even after the death of its owner.
17. Section 82 of the Regulations provides that there are very specific conditions that have to be met before NS&I can disclose the name of a person who owns a savings certificate:
 - The subsections at 82(2) detail some of these conditions, and it is clear that none of these would permit disclosure in response to a freedom of information request.
 - Subsection 82(3) provides that the Director of Savings may make arrangements and set conditions that would permit NS&I staff to provide the relevant information, but no such arrangements have been made in relation to requests under the Act.
18. The Commissioner is satisfied that disclosure of the names and assets of deceased owners of savings certificates is prohibited by section 82 of the Regulations. Therefore, disclosure is prohibited under the Act as per section 44(1)(a).

Investment accounts & residual account assets – section 12 of the Bank Act

19. Section 12 of the Bank Act states:

"12 Secrecy

- (1) Subject to the following provisions of this section, the persons engaged in the receipt or payment of deposits shall not disclose the name of any depositor nor the amount deposited or withdrawn except to the Director of Savings or to such persons as may be concerned with carrying this Act into operation.*
- (2) Subsection (1) above shall not prevent the disclosure, by a person authorised for the purpose by the Director of Savings, of information to any person in connection with an offence committed with reference to the account of a depositor or for the purpose of ascertaining whether or not an offence has been so committed.*
- (2A) Subsection (1) above shall not prevent the disclosure, by a person authorised by the Director of Savings, of information to any person for a permitted purpose.*
- (2B) A permitted purpose is a purpose connected with the provision of information about –*
- (a) the business of the National Savings Bank;*
 - (b) any other means by which money is raised under the auspices of, by or through the Director of Savings.*
- (2C) A person to whom information is disclosed in pursuance of subsection (2A) above shall not –*
- (a) use the information for a purpose other than a permitted purpose;*
 - (b) disclose the information to any other person."*
20. As with the previous enactment, in determining whether section 12 of the Bank Act is sufficient to prohibit disclosure of the requested information, the Commissioner has considered whether the section sufficiently covers the withholding of the relevant information.
21. The Bank Act was brought in to consolidate certain other enactments relating to the then National Savings Bank (now NS&I). As the requested information relates to names and accounts details of deposits made at NS&I the Commissioner considers that the legislation is appropriate to the subject matter of the request.
22. As with saving certificates, the complainant has argued that as his request was for the accounts of deceased individuals then the information could be disclosed, as the information will no longer be personal data as per the Data Protection Act 1998 (DPA) as personal data is defined in the DPA as data which relates to a living individual.

23. In the Commissioner's view, the "name of any depositor" as mentioned in section 12 of the Bank Act would not carry the same definition as personal data as per the DPA. It is clear from the Bank Act that the name of a depositor is a term that applies to an individual regardless of whether they are alive or dead. This is clear from the language of the Bank Act.¹
24. Similar to how the Regulations handle the privacy of savings certificates, the Bank Act also allows for disclosure of held information in the event of specific circumstances:
- Subsection 12(2) allows for disclosure of information in relation to an offence being committed, which would not permit disclosure in response to a freedom of information request.
 - Subsection 12(2A) allows for disclosure of information for a permitted purpose, with the definitions of the permitted purpose being detailed at subsection 12(2B). In this instance, the Commissioner has taken "business" of the bank to refer to its commercial activities, as opposed to any legal requirement that might be created at some point in the future (such as the right to provide requested information under the provisions of the Act).
25. The Commissioner is satisfied that the Bank Act is an appropriate enactment to cover the names and deposit details for accounts held at NS&I by deceased individuals. She is also satisfied that section 12 of the Bank Act sufficiently prohibits disclosure of this information, and so this aspect of the request can be refused under section 44(1)(a) of the Act.

Summary

26. The Commissioner has found that the requested information relating to saving certificates can be withheld under section 82 of the Regulations, and that investment accounts and residual account assets can be withheld under section 12 of the Bank Act. The Commissioner's decision is that section 44(1)(a) of the Act is engaged as all aspects of the request are prohibited by other enactments, and so NS&I is entitled to refuse the complainant's request.

Section 17(1) – time taken to issue a refuse notice

27. Section 17(1) of the Act states:
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¹ See [section 8\(1\)\(m\)](#) as an example

(1) 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

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

28. The time for complying with section 1(1) is set out in section 10(1) as a maximum of 20 working days. NS&I received the request on 7 December 2015 but did not respond to the request until 4 April 2016. This is a total of 80 working days.
29. As NS&I did not issue a valid refusal notice within 20 working days following receipt of the request it breached section 17(1) of the Act. As the response has been issued no steps are required. The Commissioner asks that NS&I ensures such lengthy delays are avoided in future.

Other matters

Time taken to issue an internal review

30. The complainant requested an internal review from NS&I on 8 April 2016. NS&I did not issue its internal review until 19 August 2016, which is 93 working days after it was requested.
31. There is no statutory time limit for a public authority to issue an internal review. However, the Commissioner's guidance states that public authorities should "ensure the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances."²
32. It is not acceptable for a public authority to take 93 working days to carry out an internal review, particularly one where there is no duty to consider the balance of the public interest. The Commissioner asks that NS&I avoids such lengthy delays in future.

² <https://ico.org.uk/media/for-organisations/guide-to-freedom-of-information-4-8.pdf#page=56>

Right of appeal

33. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

34. 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.
35. 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

Terna Waya
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF