

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 30th November 2005

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| Name of Public Authority | The Post Office Limited. |
| Address of Public Authority | Company Secretary's Office 5th Floor 148 Old Street London EC1V9HQ |

Nature of Complaint

The Information Commissioner (the "Commissioner") received a complaint concerning a request for information made to The Post Office in November of 2004. The Complainant appealed a refusal to release the information under Section 1 of the Freedom of Information Act 2000 (the "Act") on the 8th January 2005. His request was again refused by the Post Office on the grounds that the information falls within section 43 of the FOI Act in that it is commercially sensitive and it would prejudice the commercial interests of the Post Office and others to disclose the information.

The request was for information pertaining to a specified Post Office Branch in Clapham, London, The information requested was:

- "1. The mean waiting time for customers who are served on Saturdays.
2. The proportion of customers wishing to the use the office on Saturdays who enter premises but who leave without being served because the queue is too long.
3. What the current service standards are for the branch, how the branch has performed against them in recent months, any changes that are proposed to those standards after transfer of the branch, how any failure to meet standards by the new franchisee will be rectified, and how any necessary future changes in standards will be imposed."

Although the initial request was made prior to the full implementation of s. 1 rights under the Act, the follow-up request and the appeal took place after the statutory implementation date and were treated by both parties as being covered by the Act.

The Information Commissioner therefore considers the request to be valid for the purposes of s.50 of the FOI Act.

The Commissioner's Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

A full statement of reasons for this decision is provided with this document.

The Commissioner's decision is as follows:

1. The Commissioner accepts the Post Office's statement that it holds no information which falls within the scope of the request other than Mystery Shopper Survey Information. Mystery shopper survey information falls within the third part of The Complainant's request.
2. The Post Office has applied the s 43(2) exemption under the Act. The Commissioner is satisfied that that the exemption applies to the information concerned, that it engages the commercial interests of the Clapham branch, and that its disclosure would be likely to prejudice the interests of the Post Office and others.
3. The public interest in disclosing the information rests with maintaining the exemption in this instance.
4. It is therefore the Commissioner's decision that the information held by the Post Office which falls within the scope of the request is exempt from disclosure under section 1 of The Freedom of Information Act 2000.

Action Required

In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by The Post Office.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

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| Information Tribunal | Tel: 0845 6000 277 |
| Arnhem House Support Centre | Fax: 0116 249 4253 |
| PO Box 6987 | Email: informationtribunal@dca.gsi.gov.uk |
| Leicester | |
| LE1 6ZX | |

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 30th day of November 2005

Signed:

Richard Thomas
Information Commissioner.

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

STATEMENT OF REASONS FOR DECISION

The following document provides a statement of reasons for the decision in case ref: FS50065668

1. Is the Request Valid?

Although the initial request was made prior to the full implementation of s. 1 rights under the Act, the follow-up request and the appeal took place after the statutory implementation date and were treated by both parties as being covered by the Act.

The Information Commissioner therefore considers the request to be valid for the purposes of s.50 of the FOI Act.

2. The request.

The Complainants request was for information on a specified branch of the Post Office in Clapham, London and was worded as follows:

“1. The mean waiting time for customers who are served on Saturdays

2. The proportion of customers wishing to the use the office on Saturdays who enter premises but who leave without being served because the queue is too long?

3. What the current service standards are for the branch, how the branch has performed against them in recent months, any changes that are proposed to those standards after transfer of the branch, how any failure to meet standards by the new franchisee will be rectified, and how any necessary future changes in standards will be imposed.”

3. What information falls within the scope of the request?

The Post Office Limited states that it holds no information falling within parts 1 & 2 of the Complainant's request.

As regards point 3 of the request, the Post Office holds a number of documents relating to mystery shopper surveys. These are carried out over the entire Post Office network and provide observational feedback on specific aspects of customer service at individual branches, recorded by a post office employee acting in the guise of a normal customer.

The Post Office does not consider that the survey information constitutes a performance measure or service standard of the Clapham Common branch. The surveys only record a snapshot in time and the results can therefore vary greatly

from one visit to a branch to the next. Due to this the collected data is not used as a branch service indicator but to identify broad trends or problems on a network wide basis. The Post Office also claims that the information pertaining to any particular branch would not be acted upon other than in rare circumstances where the results warrant it.

The Post Office therefore suggests that as the information is not used at branch level, is not an accurate measure used for ascertaining particular problems and is not, on the whole used as a method of obtaining service standard information it is not therefore a service standard. They submit that the information does not therefore qualify as falling within the remit of question 3 above.

The Commissioner considers that the information is a form of performance measure, all be it an imperfect measurement when considered at branch level. Although of limited durability, the Post Office relies on such data to monitor its overall performance and the effectiveness and performance of its counter staff in applying its sales and service techniques. This information is collected over the entire network with a view to making changes to its network wide approach where an analysis of the data provided suggests that this would be beneficial.

Although the information is only the record of a limited number of visits and only a limited section of the total information obtained by the Post Office has been requested, this does not in itself change the nature of that information. The totality of the information is a form of performance measure which is actively used by Post Office to determine its current operating standards. Any one part of this information therefore retains the nature of being a performance service measure, and the questions which mystery shopper are set indicate a form of set service standards.

It is our view therefore that the mystery shopper information falls within the scope of the third part of The Complainant's request.

4. The Commercial Interests Exemption

Secondly, the Commissioner notes the Post Office's argument that the information is commercially sensitive and that the disclosure of such information may prejudice the Post Office and others' commercial interests. The Post Office therefore submits that the information falls within the s.43 exemption.

5. The s.43 exemption

Section 43 of The Freedom of Information Act states that:

(1) Information is exempt information if it constitutes a trade secret.

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1) (a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

The Commissioner accepts that the Post Office's arguments in support of the application of the s.43 exemption have merit, particularly in light of the fact that the Post Office's direct competitors are not under a similar duty to disclose such information.

The Commissioner accepts the arguments put forward by the Post Office that the monopoly it has over certain of its services is in the process of being eroded through legislation, and that the total range of services being provided by the Post Office and its partners now extend far beyond the provision of services over which it has such a monopoly. The Post Office therefore essentially operates as a commercial venture within a competitive environment.

The Commissioner notes the Post Office's argument that in a competitive market the possibility of negative marketing based on imperfect data is a real possibility. He also notes the statement that such marketing techniques have been used in this area in the past. As no evidence has been produced to substantiate this claim, the weight placed on this argument by the Commissioner is light, however the possibility of this occurring is never the less taken into account in the Commissioner's decision.

The Commissioner notes that the possibility of future negotiations on franchising the branch could be affected where mystery shopper survey information provides a misleading or negative impression of a branch's performance due to its transient nature. In itself, this would also not be an overriding reason for non disclosure, (as the Post Office is able to explain the problems associated with interpreting such data, such as its transient nature and the fact that it provides only a specific snapshot in time). However, the Commissioner accepts that an element of prejudice could be introduced by disclosing the information and accepts that this should be taken in to account to a very limited degree in making his decision.

The Post Office provides further arguments that the surveys provide information which relates to the marketing strategies used at the service counter. It argues that the release of such information would provide a valuable insight into the strategies and priorities used by the Post Office for product promotion and sales techniques at the counter level.

The Commissioner is persuaded that the disclosure of this information could divulge the strategies and methods of marketing goods and services employed by the Post Office, which could be of benefit to the Post Office's commercial rivals. The methods and strategies are commercially sensitive in that the counter point strategies are used to enhance and direct counter staff in the appropriate way to deal with customers as a way of providing a competitive edge over the Post Office's commercial rivals. If disclosed, the methodology used to analyze service levels at Post Office branches, and the marketing strategies used to sell its services would be divulged, and could be adopted by commercial competitors to the Post Office's disadvantage.

The Post Office has agreed partnerships with private commercial companies. The partnerships involve agreement for the Post Office to provide third party services on site, (i.e. the sale of the goods and services of private organisations within the Post Office) for consideration. Disclosure of the information in question could provide strategic information relating to the provision of those private services offered by the Post Office. Enforced disclosure of such information may dissuade potential partners from agreeing contracts for the Post Office to deliver such services in the future; alternative outlets not being subject to such disclosure.

The Commissioner is therefore satisfied that the S 43(2) applies to the information contained within the surveys. The information concerned engages the commercial interests of the branch, and its disclosure would be likely to prejudice the commercial interests of the Post Office and others.

6. The Public Interest Test

Section 43 is a qualified exemption which requires a public interest test to be carried out if the information is to be exempted from disclosure.

The applicable test is set out in section 2 (2) (b) of The Freedom of Information Act 2000. It states:

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1 (1) (b) does not apply if or to the extent that –

in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

It is the Commissioner's view that it is in the public interest to have a transparent and accountable Post Office. Decisions made by the Post Office regarding the use of public funds in the service of the public good should be open and accountable where such transparency is not detrimental to the efficiency and efficacy of the Post Office in its functions. This principle should only be overturned where there are public interest aspects which are more compelling than this maxim; i.e. where the public good is best served by non disclosure. However, the public interest in disclosing the information in this case is lessened by the fact that the information does not, of itself provide any robust or meaningful information which would substantially increase the transparency or accountability of the Post Office or enlighten the public on current issues surrounding it.

The nature of this information would put the Post Office at a commercial disadvantage to its direct rivals and would undermine the creation of a level playing field in the provision of such services. Maintaining the exemption will help ensure that level playing field. The Commissioner recognises the strong public interest arguments in favour of the Post Office having parity of treatment with that of the other local service providers in order that normal market forces may take effect to the benefit of the general public.

A viable and competitive branch will support the creation of an active commercial market, where market forces ensure that services in the local area remain competitive and serve the best interests of consumers. The public interest therefore rests in there being a branch in the Clapham area, competing with other commercial ventures offering similar services without suffering the disadvantage of having to release its marketing and sales strategies to its rivals.

Although a public authority for the purposes of The Freedom of Information Act, the Post Office operates in an increasingly competitive market. It is a recognised fact that smaller branches throughout the network are increasingly under the threat of closure from competition, restructuring and other non-associated reasons. Many are closed and are not replaced, thereby, in many cases, depriving the local area of a valuable asset to the local community.

The viability of the Post Office may be damaged where disclosure could substantially damage its commercial activities and hence its competitiveness. This risks a reduction of the services able to be offered by the branch, or at worst the branch closing. It is generally in the public interest to have branches of the Post Office at a local level for the purposes of serving the community local to the branch. It is also important for the purposes of retaining high street services for the general community, at a time when there is a recognised decline in services being offered on the high street.

On balance therefore, whilst the Commissioner places a great deal of weight on the transparency and accountability of the actions and decisions taken by public authorities, the information in question would be of limited use to the general public in highlighting such issues. Furthermore, the information has the potential of being of reasonable commercial value to a competitor or potential partner to the Post Office which could in turn prejudice the commercial interests and thereby the viability of the Clapham branch.

It is the Commissioner's view therefore that the weight of the public interest rests in maintaining the exemption in this instance.