



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 5 May 2006

Public Authority: General Register Office / Office for National Statistics

**Address: 1 Drummond Gate
London
SW1V 2QQ**

Summary Decision and Action Required

The Commissioner's decision in this matter is that the Public Authority has dealt with the Complainant's request in accordance with Part I of the Act.

- 1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**
 - 1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the complainant's request for information made to the General register Office/Office for National Statistics ('the public authority') has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').
 - 1.2 Where a complainant has made an application for a decision, unless:
 - a complainant has failed to exhaust a local complaints procedure, or
 - the application is frivolous or vexatious, or
 - the application has been subject to undue delay, or
 - the application has been withdrawn or abandoned,the Commissioner is under a duty to make a decision.
 - 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.
- 2. The Complaint**
 - 2.1 The complainant has advised that on 18 January 2005 the following information was requested from the public authority in accordance with section 1 of the Act.

- 2.2 'I would be obliged if you could send me all of the documents you hold on which this decision is based.'
- 2.3 The decision in question is that made by the General Register Office to allow the complainant's deceased brother's fiancé ('the confider') to register the death of the complainant's brother.
- 2.4 The General Register Office responded on the 15 February 2005 providing some of the information requested and invoking section 41 of the Act with regard to a letter from the confider to the Deputy Registrar dated the 4 January 2005. The information provided consisted of:

Correspondence dated 22 December 2004 from the Registrar at Northampton to the confider.

Correspondence dated 5 January 2005 from the Registrar at Northampton to the Northampton registration service manager.

Fax correspondence dated 6 January 2005 from the registration service manager to the General Register Office.

- 2.5 The complainant requested an internal review on the 24 February 2005. Internal reviews for the General Register Office are conducted by the Office for National Statistics.
- 2.6 The Office for National Statistics responded on the 8 April 2005 and upheld the original decision not to provide the information withheld under section 41.
- 2.7 Following this the complainant submitted a complaint to the Information Commissioner, specifying the reason for the complaint as the failure of the Public Authority to provide access to the information withheld under section 41 and that the Office for National Statistics/General Register Office had failed to conduct an internal review of the original refusal within twenty working days.

3. Relevant Statutory Obligations under the Act

- 3.1 **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(2) provides that:

"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—

- (a) the information is exempt information by virtue of a provision conferring absolute exemption...”

Section 41 provides that:

41. - (1) 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.

(2) The duty to confirm or deny does not arise if, or to the extent that, the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) constitute an actionable breach of confidence.

4. Review of the case

- 4.1 On behalf of the Commissioner, the case officer to whom the complaint was allocated obtained access to and studied the information which has been withheld from the complainant. His consideration of the case focused upon the question of whether the refused information is subject to a breach of confidences and whether, if that is the case, disclosure might give rise to an actionable breach of confidence.
- 4.2 It is clear that the information was obtained from a member of the public rather than being created by the public authority itself. Section 41(1)(a) of the Act is thus satisfied.
- 4.3 Consideration was also given to the question of whether the nature of the information and the circumstances under which it was provided to the public authority created an obligation of confidence.
- 4.4 The starting point of the public authority was stated in a letter to the case officer on 1 November 2005:

“I start from the position that members of the public have an underlying and reasonable expectation that their formal correspondence with a Registrar and/or the GRO is held by that authority in confidence, most particularly when the correspondence relates to private and/or significant matters. The information provided by correspondents in these situations is often very personal and sensitive and can be crucial to the satisfactory resolution of a problem. It is essential therefore that correspondents believe this information will be treated confidentially and with discretion by a Registrar/GRO so that they feel able to provide it fully and truthfully.”

- 4.5 Although no explicit undertakings of confidentiality appear to have been sought or offered in this particular case, the Commissioner is persuaded that the expectation

of those providing information to the public authority in circumstances such as have arisen in this case are likely to be those suggested by the public authority.

- 4.6 The Commissioner is also satisfied that the information in question is not generally in the public domain and comprises material that cannot be fairly characterised as trivial or “mere tittle tattle”. As such, the Commissioner is satisfied that disclosure would be likely to cause some distress to the confider and also that there would be likely an adverse affect on other individuals who may be asked to provide information to the public authority.
- 4.7 The Commissioner has also considered the arguments made by the complainant and whether these might provide grounds for the disclosure of information which should otherwise be withheld. In particular, the complainant draws a comparison between the manner in which her father’s letter was treated and that of the confider. The complainant’s father’s letter raised the possibility that the statement made to register the death was inaccurate. Information contained in the complainant’s father’s letter was disclosed by the public authority in a letter of the 22 December 2004 to the confider. (It was this letter which led to the provision of the disputed information by the confider to the public authority.) The complainant questions the different treatment of the letters.
- 4.8 For its part, the public authority states that it saw a clear distinction between the two cases, in that the disclosure of the information contained in the complainant’s father’s correspondence was necessary to ensure the proper function of the registration service. It appears to the Commissioner that the disclosure of limited information in exceptional circumstances as appears to have occurred in this was is justified. He therefore accepts the argument made by the public authority. In any event, the Commissioner does not accept that disclosure of information contained in a letter from the complainant’s father undermines the obligation of confidence owed to the confider.
- 4.9 In summary, the Commissioner agrees that to respond in full to the complainant’s request would involve the disclosure of confidential information. He is not satisfied that any of the generally accepted exceptions to the duty of confidence exist in this case. He is satisfied, therefore, that disclosure would constitute an actionable breach of confidence.
- 4.10 In addition, the complainant asked the Commissioner to consider whether the public authority had failed to respond to a request for internal review within 20 working days. The Act contains no statutory time scale for the conduct of internal reviews. The Department for Constitutional Affairs Code of Practice issued under section 45 of the Act states in para. 56 that ‘[public authorities] should be capable of producing a prompt determination of the complaint.’ In this particular case, a response was given after 31 days. The Commissioner does not consider that this period was unreasonable.

5. The Commissioner’s Decision

- 5.1 The Commissioner’s decision in this matter is that the Public Authority has dealt with the Complainant’s request in accordance with Part I of the Act.

6. Right of Appeal

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

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

6.2 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 5th day of May 2006

Signed

**Phil Boyd
Assistant Commissioner**

**Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**