

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2012

Public Authority: Office of Fair Trading
Address: Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

Decision (including any steps ordered)

1. The complainant has requested information from the Office of Fair Trading (the "OFT") relating to its investigation of Ryanair's acquisition of Aer Lingus shares, and the involvement of the OFT Chief Executive, Aer Lingus and the government of the Republic of Ireland.
2. The OFT refused to provide some of the requested information and refused to confirm or deny whether some of the requested information was held, citing the international relations exemption (section 27); the law enforcement exemption (section 31); the third party personal information exemption (section 40(2)); the legal professional privilege exemption (section 42); and the statutory prohibition on disclosure exemption (section 44). In addition to this, during the course of the investigation the OFT also relied upon the exemption for information that is accessible by other means (section 21).
3. The Commissioner's decision is that:
 - Request (1) – The OFT correctly relied upon sections 27(1)(b), 42(1) and 21 to withhold this information.
 - Request (2) – The OFT correctly relied upon section 40(2) to withhold this information.
 - Request (4) – The OFT correctly relied upon section 42(1) to withhold this information.

- Requests (5) to (12) – The OFT correctly relied upon section 44(2) to refuse to confirm or deny whether any relevant information was held.

Request and response

4. The complainant wrote to the OFT on 4 February 2011 and asked a number of questions. These were treated by the OFT as a request for information under the FOIA, and were summarised (and numbered) by the OFT in a refusal notice. Using the wording and numbering used by the OFT (in the refusal notice), the complainant requested the following:

“Views exchanged by [the OFT Director of Mergers] and Mr Fingleton [the OFT Chief Executive]

1. Views exchanged by [the OFT Director of Mergers] and Mr John Fingleton in 2007 on whether the OFT ought to commence investigations into minority shareholdings alongside EU processes;

Approach to Mr Fingleton

2. The identity of the advisor to Aer Lingus who approached Mr Fingleton on two occasions at external conferences;

3. Details of when exactly those approaches took place;

4. What, if anything, the advisor said to Mr Fingleton;

Communications from Aer Lingus to the OFT/Mr Fingleton

5. Any communications from Aer Lingus to the OFT between 6 July 2010 and 30 September 2010 in relation to this case;

6. Any response by the OFT to any such communications;

7. Any communications from Aer Lingus to Mr Fingleton between 6 July 2010 and 30 September 2010 in relation to this case;

8. Any response by Mr Fingleton to any such communication;

Communications from the Irish Government to the OFT/Mr Fingleton

9. Any communications from the Irish Government to the OFT between 6 July 2010 and 30 September 2010 in relation to this case;

10. Any response by the OFT to any such communication;

11. Any communications from the Irish Government to Mr Fingleton between 6 July 2010 and 30 September 2010 in relation to this case; and

12. Any response by Mr Fingleton to any such communications."

5. During the course of the investigation the Commissioner informed both the complainant and the OFT that he intended to adopt the wording and numbering used by the OFT in the refusal notice as the basis of the case, as this sets out clearly the nature of the complainant's requests.. He received no objections from either party.
6. For ease of reference these have been referred to as requests (1) to (12) throughout the rest of this notice.
7. In a letter dated 23 February 2011 the OFT responded as follows:
 - In relation to **request (1)** it confirmed that it held information, but stated that it was exempt under sections 27(1)(b) and (c); 27(2); 31(1)(g) and 31(2)(c); 41; and 42(1).
 - In relation to **request (2)** it confirmed that it held information, but stated that it was exempt under section 42. In addition, it stated that it might also be exempt under section 40.
 - In relation to **requests (3) and (4)** it confirmed that it held information similar to that requested. It believed that the information it held in relation to these requests was exempt under section 42. In addition, it stated that the information it held in relation to **request (3)** may be exempt under section 40. Information that it held in relation to **request (4)** was also exempt under section 44(1).
 - In relation to **requests (5) to (8)** it refused to confirm or deny whether it held any relevant information. It believed that it was exempt from the requirement to do so under sections 44(1)(a) and 44(2).
 - In relation to **requests (9) to (12)** it refused to confirm or deny whether it held any relevant information. It believed that it was exempt from the requirement to do so under sections 44(1)(a) and 44(2). It also referred to sections 27, 31 and 41, although it did not state whether it believed these applied.
8. The complainant wrote to the OFT on 3 March 2011 and requested an internal review. On the same day the complainant wrote an additional

letter to the OFT, in which he made an additional request on the topic of approaches to the OFT's Chief Executive – namely where these approaches took place. This was treated as an additional part of request (3) by the OFT – which numbered this request (3)(a).

9. The OFT wrote to the complainant on 30 March 2011 with the results of the internal review:
 - In relation to **request (1)** it stated that this information was exempt under section 42. In addition, it also found that some of the information was exempt under sections 27(1) and (2). It also stated that some of the requested information was exempt under section 44.
 - In relation to **requests (2) and (4)** it upheld its use of section 42. It also stated that this information was exempt under sections 44(1), 40(2) and 40(3)(a)(i).
 - In relation to **requests (3) and (3)(a)** it stated that notwithstanding the statement in the refusal notice that it held information "*similar to that requested*" it did not actually hold information that identified the date and place of those approaches.
 - In relation to **requests (5) to (8)** it refused to confirm or deny whether this information was held, and again cited sections 44(1) and 44(2). It also referred to section 31(3) and stated that it considered that this exemption was particularly likely to apply in this case.
 - In relation to **requests (9) to (12)** it stated that its conclusions were the same as those for requests (5) to (8), and therefore its conclusions in relation to sections 31 and 44 were the same. It also stated that section 27 applied.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. After considering the letter of complaint the Commissioner wrote to the complainant and explained that the scope of the case would be to consider the OFT's refusal to provide the information set out in requests (1), (2) and (4). In addition to this, he would also consider its refusal to confirm or deny whether it held any information that fell under requests (5) to (12). He invited the complainant to let him know whether there

were any other aspects of the case that the complainant wished to be considered. The complainant did not raise any further issues, and therefore the Commissioner has proceeded on this basis.

12. During the course of the investigation the OFT clarified which exemptions it was relying upon in relation to each of the relevant requests. These were as follows:

- **Request (1)** – sections 27(1)(b) and (c), 27(2), 42(1) and 44(1)(a) to withhold the requested information. During the investigation the OFT also applied section 21 to some information that fell under this request.
- **Request (2)** – sections 40(2) and (3)(a)(i), 40(2) and (3)(b), 42(1), and 44(1)(a) to withhold the requested information.
- **Request (4)** – sections 40(2) and (3)(b), or in the alternative 44(1)(a) to withhold the requested information. In addition during the investigation the OFT also applied section 42(1) to some information that fell under this request.
- **Requests (5) to (8)** – sections 31(3) and 44(2) to refuse to confirm or deny whether any relevant information is held.
- **Requests (9) to (12)** – sections 27(4), 31(3) and 44(2) to refuse to confirm or deny whether any relevant information is held.

13. Therefore the scope of this case has been to consider the application of these exemptions to these requests.

Reasons for decision

14. The Commissioner has considered the use of the exemptions to each of these requests in turn. Some of the analysis of the application of the exemptions to the withheld information is contained in a confidential annex, made available only to the OFT, because to disclose it to the complainant would risk disclosing exempt information.

Request (1)

15. As noted above, the OFT has relied upon sections 27(1)(b) and (c), 27(2), 42(1), and 44(1)(a) to withhold the requested information. In addition, it has also relied upon section 21 to withhold a small amount of information that falls under this request. The Commissioner has first considered the application of section 27(1)(b).

Section 27 – international relations exemption

16. Section 27(1)(b) states that information is exempt if its disclosure under the FOIA would, or would be likely to, prejudice relations between the United Kingdom (the "UK") and any international organisation or international court. This is a qualified exemption, and is therefore subject to a public interest test.
17. This exemption has been applied to most of the withheld information that falls under request (1). However, a small amount of information has been withheld under sections 21, 42(1), and 44(1)(a). It has applied this exemption to all the information it has identified that falls under this request, other than that identified in paragraph 2 of the confidential annex attached to the end of this notice.
18. The OFT considers that the disclosure of the information it has applied this exemption to would be likely to prejudice relations between the UK and an international organisation, namely the European Commission.
19. Because of the nature of the OFT's arguments the Commissioner cannot discuss them freely in this notice, as to do so may give some indication as to the contents of the withheld information. However, given the nature of the request – and what the OFT informed the complainant at internal review – he can confirm that the information in question relates to discussions with the European Commission, relating to the Ryanair bid for Aer Lingus.
20. Further details of the OFT's arguments, and the Commissioner's consideration of those arguments, are contained in paragraphs 3 to 18 of the confidential annex. For the reasons set out in those paragraphs the Commissioner is satisfied that the disclosure of the withheld information would be likely to prejudice relations between the UK and the European Commission. Therefore, this exemption is engaged in relation to this information.
21. The Commissioner has gone on to consider whether the public interest in maintaining section 27(1)(b) outweighs the public interest in disclosure.
22. The complainant has argued that the public interest in disclosure is significant. In particular he has argued that:
 - There is a public interest in openness and accountability.
 - The OFT's investigation into Ryanair's shareholding in Aer Lingus had attracted considerable media attention. It would be in the public interest to increase public knowledge and understanding of the OFT's actions.

- There is a strong public interest in ensuring that the OFT's decision making is fair and transparent, and has not been unduly influenced by a foreign government.
23. In favour of maintaining the exemption, the Commissioner notes that when considering the public interest consideration should be given to protecting what is inherent in the exemption – the avoidance of unwarranted prejudice to relations between the UK and an international organisation. He considers that there is a strong public interest in avoiding unwarranted prejudice of this kind.
 24. In reaching a decision as to the balance of public interest arguments the Commissioner has been mindful of the particular circumstances of this case.
 25. The Commissioner considers that the public interest factors in favour of disclosure are strong in this case. The withheld information relates to a period when decisions were being made as to whether different competition authorities should intervene in relation to Ryanair's bid for control of Aer Lingus. As these decisions were about whether to intervene (at a state or community level) in a major business transaction, the Commissioner considers that there is a public interest in increasing public understanding of the decision making process undertaken by the relevant authorities at this time. He considers that the disclosure of this information would go towards increasing public understanding of this decision making process.
 26. However, this has to be balanced against the public interest in favour of maintaining the exemption. In particular, the public interest in disclosure has to be balanced against the public interest in avoiding the prejudice set out in section 27(1)(b), i.e. avoiding unnecessary prejudice to the UK's relations with an international organisation. When attributing weight to this public interest factor, the Commissioner accepts that it is very strongly in the public interest that the UK enjoys effective relations with international organisations such as the European Commission. He also notes the OFT's statement that the UK's relationship with the European Commission is an important one, for example for the smooth and efficient operation of the EU and UK competition and consumer regimes.
 27. After considering all these points the Commissioner has decided that the public interest in disclosure is outweighed by the public interest in maintaining this exemption. Therefore the information that falls under request 1 to which the OFT has applied section 27(1)(b) is exempt from disclosure and was correctly withheld on these grounds.

28. As noted above, the OFT has not applied section 27 to all of the withheld information that falls under request (1). Instead, it has relied upon sections 42(1) and 44(1) to withhold some information, and section 21 to withhold one further piece of information. The Commissioner has gone on to consider the application of section 42(1) to the relevant information.

Section 42(1) - legal professional privilege exemption

29. This provides an exemption for information in respect of which a claim to legal professional privilege ("LPP") could be maintained in legal proceedings. This exemption is subject to the public interest test.
30. The Commissioner has considered the application of this exemption to the information identified in paragraph 2 of the confidential annex.
31. There are two types of LPP; advice privilege and litigation privilege. In this case the OFT has confirmed that it considers that this information is subject to litigation privilege.
32. For litigation privilege to apply, the information must record communications that were confidential, made between a client and a professional legal adviser for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation.
33. In this case the OFT has argued that this information records legal advice that was given at a time when litigation was a reasonable prospect, and was given *"for the purpose of acquiring or obtaining legal advice in regard to that litigation."* It has added that the privilege attached to this information has not been waived.
34. The Commissioner is not able to detail the contents of the relevant information in this decision notice. However, having considered the information, he is satisfied that it amounts to confidential communications for the purpose of providing and obtaining legal advice in relation to prospective or contemplated litigation, and that therefore LPP applies to it.
35. The OFT has also argued that if the Commissioner does not consider that this information is subject to litigation privilege, it would in any event be subject to advice privilege.
36. For advice privilege to apply, the information must record communications that were confidential, made between a client and professional legal advisers acting in their professional capacity and made for the sole or dominant purpose of obtaining legal advice in relation to proposed or contemplated litigation.

37. If, to any extent, this withheld information does not relate to proposed or contemplated litigation, the Commissioner is also satisfied that it directly records legal advice, and as such would be subject to advice privilege.
38. Therefore section 42 is engaged in relation to this information.
39. As noted above, this exemption is subject to the public interest test. Therefore the information in question should only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.
40. In respect of the public interest in disclosure, the complainant's arguments are as detailed at paragraph 22 above.
41. In regard to the public interest in maintaining the exemption the Commissioner considers that:
 - It is in the public interest to safeguard openness in all communications between client and lawyer to ensure access to full and frank legal advice.
 - It is important that the OFT is able to seek legal advice so it can make its decisions in the correct legal context.
 - There is an inbuilt public interest in the maintenance of LPP.¹
42. As noted at paragraph 25 above, the Commissioner considers that there is a strong public interest in increasing the public's understanding of the decision making process undertaken by the relevant authorities at this time as to whether to intervene in relation to Ryanair's bid for control of Aer Lingus. However, having considered the withheld information in question, the Commissioner does not consider that the contents of this information would add much to this understanding. Therefore the Commissioner has not attributed a significant amount of weight to this public interest factor.
43. Bearing these all points in mind, the Commissioner considers that the public interest in maintaining this exemption outweighs the public interest in favour of disclosure. Therefore this information should be withheld.

¹ *Bellamy v Information Commissioner & Secretary of State for Trade and Industry* [EA/2005/0023], para 35.

Section 21 – Information accessible to the applicant by other means

44. Section 21(1) can be applied when information is reasonably accessible to the applicant by other means. It is an absolute exemption and is therefore not subject to a public interest test.
45. The OFT has applied section 21(1) to a newspaper article that is included within the withheld information that falls under request (1). The OFT has argued that this article was available on the internet, and was therefore accessible to the applicant by other means.² The Commissioner is satisfied that at the time of the request this information was reasonably accessible to the complainant.
46. Bearing this in mind, the Commissioner considers that section 21(1) can be applied to this information. Therefore he upholds the use of section 21(1) in respect of this item.

Request (2)

47. As noted above, the OFT has relied upon sections 40(2) and (3)(a)(i), 40(2) and (3)(b), 42(1), and 44(1)(a) to withhold the information that is held that falls under this request. The Commissioner has first considered the application of sections 40(2) and (3)(a)(i) to this information.

Section 40(2) – third party personal information

48. The OFT has provided arguments in relation to the application of section 40(2) to the information in question, which the Commissioner is not able to detail in this notice (as to do so may give some indication as to the contents of the withheld information). However, the Commissioner can state that the OFT is seeking to rely upon section 40(2) to withhold this information in certain circumstances, but seeks to rely upon section 44(1) of the FOIA in other circumstances. These arguments are detailed at paragraphs 19 and 20 of the confidential annex. However, for the reasons set out at paragraph 21 of the confidential annex, the Commissioner has considered the application of section 40(2) to this information.
49. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied.

² The article in question was titled "Ryanair bid for Aer Lingus set to be blocked" and was published in the Financial Times on 12 June 2007.

50. In this case the OFT has argued that the condition in section 40(3)(b) is satisfied. This provides an exemption for information which is personal data of a third party by virtue of being unstructured information held by a public authority (known as category (e) data), that is the personal data of an individual, the disclosure of which to any member of the public would breach any of the principles of the Data Protection Act 1998 (the "DPA").³
51. The OFT has sought to rely upon this exemption to withhold the information it holds that falls under the scope of this request – namely the identity of the advisor to Aer Lingus who approached the OFT's Chief Executive. The OFT has argued that the disclosure of this information would be unfair and therefore in breach of the first data protection principle.
52. In order to establish whether this exemption has been correctly applied the Commissioner has first considered whether the withheld information is category (e) data. Having considered the withheld information the Commissioner is satisfied that the information in question is category (e) data. Therefore he has gone on to consider whether this information is personal data.
53. Section 1 of the DPA defines personal data as data which relate to a living individual, who can be identified:
- from that data, or
 - from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
54. In this case, the information in question relates to the identity of an individual that fits under the description set out in this request. Bearing in mind the withheld information, the wording of the request, and other information in the public domain, the Commissioner is satisfied that this withheld information is the personal data of a third party.
55. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first data protection principle. This requires that personal data is:
- processed fairly and lawfully, and
 - that one of the conditions in schedule 2 is met.

³ Category (e) data is defined in an amendment to the DPA listed in section 68 of the FOIA. This covers information which is held in a manual form by a public authority, but is not held in a structured manual file.

56. The Commissioner has first considered whether the disclosure of the withheld information would be fair.
57. In considering whether disclosure of this information would be fair the Commissioner has taken the following factors into account:
- whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;
 - the individual's reasonable expectations of what would happen to their information; and
 - are the legitimate interests of the public sufficient to justify any negative impact to the rights and freedoms of the data subject.
58. The OFT has argued that the information relates to a private individual, who was the employee of a private company. This individual had no responsibility for the spending of public money. Therefore disclosure of this information would be an unwarranted invasion of privacy. In addition to this, it has also argued that the individual concerned would have had no reasonable expectation that their name would be disclosed into the public domain in this context. Finally, the OFT has argued that disclosure of this information is not necessary to meet the legitimate interests of the public.
59. The OFT has provided additional arguments in relation to these three factors which the Commissioner cannot detail in this notice, as to do so may give some indication as to the contents of the withheld information. Further details of the OFT's arguments are contained in paragraph 22 of the confidential annex.
60. The Commissioner notes that the individual in question was an employee of a private company, with no responsibility for the expenditure of public money. In addition to this, and taking into account the arguments detailed in the confidential annex, he is satisfied that the individual concerned would have had no reasonable expectation that their identity would have been put into the public domain in this context. Taking these factors into account, the Commissioner considers that the disclosure of this information would be an invasion of the individual's privacy.
61. In relation to the legitimate interests in disclosure of this information, the Commissioner considers that the public interest arguments in favour of disclosure already discussed in relation to section 27 are also relevant here. In particular, as noted at paragraph 25 above, the Commissioner considers that there is a strong public interest in increasing the public's understanding of the decision making process undertaken by the relevant authorities at this time as to whether to intervene in relation to

Ryanair's bid for Aer Lingus. Given that the information in question here relates to a contact between an Aer Lingus advisor and the OFT's Chief Executive during this period, the Commissioner considers that this public interest argument gives a legitimate interest in the disclosure of this information.

62. However, this has to be balanced against any negative impact to the rights and freedoms of the data subject. Taking into account his findings that the disclosure of this information would be an invasion of the individual's privacy, and the arguments provided by the OFT (including those in the confidential annex), the Commissioner finds the arguments in favour of withholding this information particularly weighty. The Commissioner also considers that the legitimate interest in the disclosure of this information has been somewhat met by the OFT's confirmation to the complainant that such a meeting took place (by confirming to the complainant that it held information that fell under the scope of this request). Taking all these factors into account, he considers that the disclosure of the identity of the individual concerned would be unfair. As such, he considers that this information is exempt from disclosure under this exemption.

Request (4)

63. As noted above, the OFT has relied upon sections 40(2) and (3)(b), 42(1), and 44(1)(a) to withhold the information that is held that falls under this request. The Commissioner has first considered the application of 42(1) to this information.

Section 42(1) - legal professional privilege exemption

64. The details of this exemption are already set out at paragraph 30 above.
65. The information that the Commissioner considers falls under this request is set out at paragraph 23 of the confidential annex.
66. In this case the OFT has confirmed that it considers that this information is subject to litigation privilege.
67. As noted above, for litigation privilege to apply, the information must record communications that were confidential, made between a client and a professional legal adviser for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation.
68. The OFT has confirmed that this information amounts to a confidential communication made within a client and professional legal advisor relationship for the dominant purpose of recording and obtaining legal advice at a time when litigation was anticipated. It has also added that the privilege attached to this information has not been waived.

69. The Commissioner is not able to detail the contents of the information in question. However, having considered this information, he is satisfied that it was recorded for the purpose of providing or obtaining legal advice in relation to proposed or contemplated litigation, and that therefore LPP applies to it. Therefore, section 42 is engaged in relation to this information.
70. The Commissioner has gone on to consider whether the public interest in maintaining this exemption outweighs the public interest in disclosure.
71. The Commissioner has already considered the public interest test in relation to the application of this exemption to the information held by the OFT that would fall under request (1). These considerations can be found at paragraphs 42 to 43 above.
72. Taking into account the arguments provided by the complainant and the OFT, and after considering the withheld information, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in favour of disclosure. Therefore this information should be withheld.

Requests (5) to (12)

73. As noted above, the OFT has refused to confirm or deny whether it holds any of the information requested in these requests. In relation to requests (5) to (8) it has relied upon sections 31(3) and 44(2) to refuse to confirm or deny whether any relevant information is held. In relation to requests (9) to (12) it has relied upon sections 27(4), 31(3) and 44(2) to refuse to confirm or deny whether any relevant information is held.
74. The Commissioner has first considered the application of section 44(2) in relation to all of these requests.

Section 44(2) – Statutory prohibition on disclosure

75. Section 44(1)(a) states that information is exempt if its disclosure is prohibited by or under any enactment. Section 44(2) provides that the duty to confirm or deny that information is held does not apply if the confirmation or denial itself would fall within any of the provisions of 44(1).
76. The OFT states it is prohibited under Part 9 section 237 of the Enterprise Act 2002 (the "EA02") from disclosure of "specified information" as defined by section 238 of the EA02. The OFT also explained that to confirm or deny whether it held information set out in requests (5) to

(12) would be to reveal specified information and therefore section 44(2) exempts the OFT from the duty to confirm or deny in this case.

77. If a public authority is exempt from the duty to confirm or deny whether information is held, it does not have to go on to consider whether that information should be disclosed.
78. The Commissioner has gone on to consider whether this exemption applies in this case.
79. Section 237 of the EA02 prevents the disclosure of specified information that relates to the affairs of an individual, or business of an undertaking which a public authority has obtained in connection with the performance of certain functions. Specified information must not be disclosed during the lifetime of the individual or while the business continues to exist unless the disclosure is permitted under sections 239 to 243 of the EA02. Section 238 of the EA02 defines specified information as information that:

"...comes to a public authority in connection with the exercise of any function it has under or by virtue of –

(a) Part 1, 3, 4, 6, 7, or 8;

(b) an enactment specified in Schedule 14..."

80. The Commissioner is satisfied that section 237 of the EA02 can act as a prohibition on disclosure for the purposes of section 44(1)(a) of the FOIA.⁴
81. The Commissioner must first establish whether the requested information would be specified information in order for section 237 of the EA02 to apply.
82. The OFT has explained that if information of the type requested were held it would have been received by it in the exercise of its functions under Part 3 of the EA02. This sets out one of the OFT's functions as being to

"...obtain and review information relating to merger situations, and includes a duty to refer to the UK Competition Commission for further investigation any relevant merger situation where it believes that it is or may be the case that the merger has resulted or may have been expected to result in a substantial lessening of competition on a UK market."

⁴ *Dey v the Information Commissioner and the OFT* [EA/2006/0057]

83. The Commissioner is satisfied that specified information under section 238 of EA02 can be received by the OFT in connection with the exercise of its functions under Part 3 of EA02.
84. Given the wording of these requests, the Commissioner is satisfied that were the information to be held it would relate to the affairs of an individual or business of an undertaking. Furthermore he is satisfied that if this information was held it would be about a business (i.e. Ryanair) that continues to exist. Bearing these points in mind, the Commissioner considers that if the requested information was held it would be specified information, since it would relate to both whether a complaint or complaints had been made to the OFT in relation to Ryanair, and would also reveal details of what information had or had not been obtained by the OFT in relation to its functions.
85. Sections 239 to 243 of the EA02 provide certain gateways for disclosure of specified information. However, the Commissioner is satisfied that none of the gateways in sections 239 to 243 are relevant or apply to the information requested. Nor has the complainant argued that any of these gateways apply to the information he has requested.
86. Therefore the Commissioner considers that to confirm or deny if the requested information is held would result in the disclosure of specified information. Therefore the OFT is exempt from the duty to confirm or deny whether this information is held under section 44(2) of the FOIA, by virtue of section 237 of the EA02. This is an absolute exemption, and is therefore not subject to a public interest test.

Right of appeal

87. 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

88. 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.

89. 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

Graham Smith
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