



IN THE MATTER OF AN APPEAL TO THE FIRST-TIER TRIBUNAL (INFORMATION RIGHTS) UNDER SECTION 57 OF THE FREEDOM OF INFORMATION ACT 2000

Appeal No: EA/2012/0046

BETWEEN:

HER MAJESTY'S REVENUE AND CUSTOMS

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER APPROVAL

PURSUANT to Rule 37(1) of the Tribunal Procedure (First-tier) (General Regulatory Chamber) Rules 2009, the Tribunal approves the Consent Order in this matter in the form attached hereto, which has been agreed by all parties and dated 14th June 2012.

Signed:

[Signed on original]

Angus Hamilton DJ(MC)

Tribunal Judge

Dated: 2 July 2012

IN THE FIRST TIER TRIBUNAL (INFORMATION RIGHTS)

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BETWEEN:

HER MAJESTY'S REVENUE AND CUSTOMS

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

CONSENT ORDER

Pursuant to rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, upon reading the parties' agreed statement (in Annex A),

IT IS ORDERED BY CONSENT THAT:

1. The appeal be allowed.
2. The Decision Notice FS50387400 dated 30 January 2012 to be substituted in the terms set out in Annex B.
3. No further steps are required to be taken by the Appellant
4. There be no order for costs.

Dated this 14th day of June 2012

ANNEX A

Statement of reasons for consent order

1. This appeal concerned the Respondent's Decision Notice FS50387400 dated 30 January 2012. That Notice sets out the terms of the original information request at paragraph 5.
2. In the said Decision Notice, the Respondent decided that the Valuations Office Agency (an executive agency of the Appellant) incorrectly applied section 41 and 43 of the Freedom of Information Act 2000 ("FOIA") when withholding the disputed information from the requestor. The Respondent therefore ordered that the Valuations Office Agency disclose the requested information to the requestor.
3. The Appellant appealed against the Decision Notice. When pursuing that appeal, the Appellant introduced, in its grounds of appeal, a late-pleaded exemption under FOIA, namely the absolute exemption to disclosure at section 44 FOIA.
4. The Appellant's reliance on section 44 FOIA was based upon the interaction of sections 18 and 23 of the Commissioners for Revenues and Customs Act 2005 ("CRCA").
5. The exemption at section 44 FOIA and the provisions of sections 18 and 23 CRCA had not been raised by the Valuations Office Agency during the Commissioner's investigation. The first time that these matters were raised before the Respondent was at the point at which the Appellant's grounds of appeal was served on him on 29 February 2012.
6. The Respondent very much regrets this state of affairs.
7. However, the Respondent accepts that:
 - i. The Appellant is, in the current circumstances, entitled to rely on a late-pleaded exemption to disclosure;

- ii. In the present case, the provisions of section 18 and 23 CRCA together engage the absolute exemption to disclosure at section 44 FOIA ; and
 - iii. Therefore, the disputed information does not fall to be disclosed under FOIA.
8. In view of all the circumstances and subject to the Tribunal's views, the parties jointly submit that it is appropriate for these proceedings to be concluded by way of consent order, and that it is appropriate for the Tribunal to consider their joint application without holding a hearing (as envisaged by rule 37(2)).

ANNEX B

1. The Decision Notice FS50387400 dated 30 January 2012 be varied to record that, in the present case, the provisions of section 18 and 23 CRCA engage the absolute exemption to disclosure at section 44 FOIA.
2. No further steps are required to be taken.