

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 3 November 2008

Public Authority: Student Loans Company Limited
Address: 100 Bothwell Street
Glasgow
G2 7JD

Summary

The complainant made a request to the Student Loans Company Ltd (the "SLC") for a copy of the "customer service guide" for employees of the Smith Lawson & Company collection team. The complainant qualified the initial request by stating that it was a request for any documents, guides or customer service policies that were used by these staff. The SLC initially informed the complainant that it did not hold any information which fell under the scope of his request. After the complainant sought an internal review the SLC confirmed that it did hold some material that fell within the scope of his request, but withheld this information under section 43(2). After investigating this complaint the Commissioner decided that the exemption was not engaged, and as such the requested information should be disclosed. Therefore the Commissioner found that the SLC had acted in breach of section 1(1)(b) in that it had wrongly relied upon section 43(2) to withhold this information. The Commissioner also found that the SLC had not met the requirements of section 10(1).

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant contacted the SLC by email dated 21 March 2006 and requested the following information under the Act:

"Customer Service guide for employees working on behalf of SLC's 'Smith Lawson & Company' collection team.

The above title is descriptive and is not to be taken literally. The request is for any documents, guides or customer service policies that apply generally to staff who have customer contact and who work for SLC's in house debt collection agency that is outwardly presented as 'Smith Lawson & Company'. The document(s) will be any that are circulated or available generally to staff for training, guidance or reference purposes in connection with customer service related activity. It is anticipated that the documentation sought will perform a similar function to SLC's Service Standard Guidelines, which appears to be primarily for use by non-Smith Lawson & Company employees.

The request is not limited by format; that is, it [is] not limited to 'published' or 'official' documentation, but may include, for instance, staff circulars, memoranda or carbon-copied emails, so long as the communication fits the above description."

Smith Lawson and Company is a trading arm of the SLC which carries out debt collection on the SLC's behalf.

3. The SLC responded in an email dated 4 April 2006 and informed the complainant that,

"We have no publication that matches the 'Customer Service Guide for employees working on behalf of SLC's Smith Lawson and Company collection team'. However within the Collections Department and Smith Lawson and Company we ensure compliance with the OFT Guidance on Debt Collection and the CSA's Code of Practice."

The SLC provided the complainant with a copy of the CSA code of practice, and directed him to the website of the Office of Fair Trading for a copy of the OFT's guidance. It also informed him of his right to request an internal review, and his right to complain to the Commissioner.

4. In a letter to the SLC dated 20 April 2006 the complainant requested an internal review. He argued that a dedicated customer service team would be likely to operate, "to some degree under exclusive written guidance or instruction." He also drew SLC's attention to the open nature of his request, "which is not limited to formal or official documentation and covers all available media."
5. The SLC responded in a letter dated 22 May 2006. It informed the complainant that it did hold a document which fell under the scope of his request – a service guide entitled, 'Smith Lawson & Company Training Manual'. However it believed that the Manual was exempt from disclosure under section 43(2) of the Act. In applying this exemption it explained that it had considered the public interest test and that it had reached its decision,

"...on the fact that the Training Manual sets out in detail the operational processes that Smith Lawson & Company undertakes in seeking to make arrangements for the recovery of overdue loan balances. My view is that if these processes were to become known, it may provide borrowers with

information that they could subsequently use to avoid or delay making payment of their loans. This would not be in the public interest as the loan payments are made by the Company on behalf of the Government and all monies recovered are returned to the Government.”

For ease of reference the ‘Smith Lawson & Company Training Manual’ will be referred to as the ‘Manual’ throughout the rest of this Notice.

6. Finally, the SLC informed the complainant of his right to complain to the Commissioner.

The Investigation

Scope of the case

7. The complainant contacted the Commissioner on 18 July 2006 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the SLC was correct to withhold the Manual. The complainant also stated that he believed that the SLC had interpreted his request too narrowly and directed the Commissioner to the open nature of his request. Finally the complainant referred to the length of time it had taken the SLC to confirm that it held a copy of the Manual.

Chronology

8. The Commissioner wrote to the SLC on 16 May 2008 and asked for a copy of the Manual. He drew the SLC’s attention to the wide scope of the complainant’s request, and asked it to confirm whether it held any other information which would fall under the scope of the request. If it did, he asked the SLC to confirm whether it was prepared to release this information, or whether it believed this information was exempt, and if so why. If it did hold any further information he also asked to be provided with a copy of this information. In relation to its use of section 43(2) the Commissioner asked the SLC to provide further submissions. He asked the SLC to confirm whether it believed that this exemption applied to the whole of the Manual, or only certain parts of it. He also asked it to clarify whose commercial interests it believed were likely to be prejudiced by the disclosure of the Manual, further arguments as to how this prejudice would be caused, and further details as to how it had carried out the public interest test.
9. The SLC responded to the Commissioner in a letter dated 17 June 2008 and provided a copy of the Manual. It informed the Commissioner that it did not hold any further information which fell under the scope of the complainant’s request. It also provided further submissions as to its use of section 43(2) and confirmed that it believed that this exemption applied to the whole of the Manual. It confirmed that it believed that the disclosure of this document would be likely to prejudice the commercial interests of the SLC and that it did not consider disclosure would prejudice the commercial interests of any third parties. It also provided public interest arguments in favour of withholding the information.

10. The Commissioner wrote to the SLC again on 2 July 2008, in order to clarify whether it held any further information which would fall under the scope of the complainant's request.
11. The SLC responded in a letter dated 16 July 2008 and informed the Commissioner that it was carrying out further checks in order to establish whether it held any further information. It wrote to him again on 17 July 2008 and informed him that after carrying out further checks it was satisfied that it did not hold any further information which fell under the scope of the request.

Analysis

Procedural matters

Section 10

12. Section 10 of the Act requires that a public authority must comply with section 1(1) promptly and in any event no later than the twentieth working day following the date of receipt. Section 1(1) states that any person making a request for information to a public authority is entitled to be informed in writing as to whether the public authority holds the information and if so have the information communicated to him.
13. The complainant made his request on 21 March 2006. The SLC initially informed the complainant that it did not hold any information which fell under the scope of his request, and did not confirm that it held a copy of the Manual until 22 May 2006.
14. In failing to confirm that it did hold information which fell under the scope of his request in line with the requirements of section 1(1)(a) of the Act, within twenty working days from receipt of the request, the Commissioner finds that the SLC breached the requirements of section 10(1).
15. The full text of section 10 can be found in the Legal Annex at the end of this Notice.

Exemption

Section 43

16. Section 43(2) provides an exemption from disclosure for information which would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). In this case the SLC has stated that the disclosure of the Manual would be likely to prejudice the commercial interests of the SLC.

17. In order to form a view on whether the exemption is engaged the Commissioner has first considered whether the Manual relates to the SLC's commercial interests. As the SLC has specifically argued that it only believes that the disclosure of this information would be likely to prejudice its own commercial interests the Commissioner has only considered this question in relation to the SLC.

18. The term 'commercial interests' is not defined in the Act. However, the Commissioner has considered his awareness guidance on the application of section 43. This comments that,

“...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services.

The underlying motive for these transactions is likely to be profit, but this is not necessarily the case, for instance where a charge for goods or the provision of a service is made simply to cover costs.

While the essential feature of commerce is trading, the information which falls within the exemption may relate only indirectly to the activity of buying and selling.”¹

19. The Commissioner believes that there is a distinction to be drawn between commercial interests and financial interests, and while there may be cases where prejudice to the financial interests of a public authority may affect its commercial interests, this is not always the case.

20. The Commissioner has also noted guidance issued by the Scottish Information Commissioner in relation to commercial interests and section 33(1)(b) of the FOI (Scotland) Act 2002. This guidance states that,

“...commercial interests will specifically relate to any commercial trading activity it undertakes, e.g. the ongoing sale and purchase of goods and services, commonly for the purpose of revenue generation. Such activity will normally take place within a competitive environment.”²

The Commissioner believes that this is useful in understanding the definition of 'commercial interests'.

21. During his investigation of this case the Commissioner asked the SLC to demonstrate how any prejudice (actual or likely) which would be caused by the disclosure of the Manual would relate to the commercial interests of the SLC, rather than its financial interests.

22. In response the SLC, in its letter to the Commissioner of 17 June 2008 stated that,

¹ Freedom of Information Act - Awareness Guidance No 5, page 4.

² Exemption Briefing Series – Commercial interests and the economy, page 7.

<http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=2583&SID=123>

“Smith Lawson & Company is a trading arm of SLC formed for the purpose of debt collection on our behalf. Therefore, any information released about Smith Lawson & Company would directly affect SLC. The withheld document contains information about the procedures for recovering overdue loan balances. Once this information is released into the public domain it could have a detrimental effect on the collection of outstanding debts. Therefore, I would be of the view that disclosure would be likely to cause prejudice rather than cause prejudice.

As outlined above the release of this information could have a detrimental effect on SLC's ability to collect loan repayments. It could also potentially damage our reputation as a lender if borrowers have access to information which they could use to avoid or delay making loan repayments. The collection of borrowed funds is a fundamental part of our function. Consequently the release of this document could threaten our way of working and undermine our ability to fulfil our role.

I would be of the view that the prejudice would be likely rather than actual. SLC have no way of restricting access to the information once released. Any debtor could potentially use this information to their benefit.

Whilst the disclosure of information could have an obvious financial impact on our collection rates I think the above paragraph illustrates that a much wider commercial impact would be suffered by SLC if this information is released.”

However, the SLC did not provide any further detailed arguments as to how the potential prejudice would relate to its commercial interests rather than its financial interests.

23. In considering this the Commissioner has also noted the SLC's comments in its initial application of this exemption. In its internal review the SLC informed the complainant that it thought section 43(2) was engaged because the Manual, “sets out in detail the operational processes that Smith Lawson & Company undertakes in seeking to make arrangements for the recovery of overdue loan balances...if these processes were to become known, it may provide borrowers with information that they could subsequently use to avoid or delay making payments on their loans.” It did not provide any further arguments as to how the withheld information related to its commercial interests.
24. In considering whether the disclosure would be likely to prejudice the SLC's commercial interests the Commissioner has been mindful of his technical guidance as referred to at paragraph 18 above.
25. The Commissioner notes the SLC's argument that the disclosure of the Manual would increase the ability of borrowers to avoid repayment of their loans, leading to a detrimental effect on the collection of outstanding debts. However, the Commissioner has also noted that the SLC does not own the debts itself. In his

letter of complaint to the Commissioner the complainant has pointed out that the SLC only administers the student loans and that,

“...all loans administered by [SLC] are owned by Finance for Higher Education Ltd and the Department for Education and Skills.”

The Commissioner notes that the SLC has only argued that it believes that its own commercial interests would be likely to be prejudiced by the disclosure of the Manual. It has not advanced any arguments regarding actual or potential prejudice to the commercial interests of either of the above third parties.

26. The SLC has stated that the disclosure of the Manual would be likely to prejudice its ability to collect loan repayments, and that this is one of its core functions. However, it has not gone on to demonstrate how this would relate to its commercial interests.
27. The Commissioner accepts that in many circumstances the disruption of a company's ability to carry out its core business purposes may lead to the likely prejudice of its commercial interests by, for example, its clients using alternative companies to carry out services on their behalf. However, he again notes that the SLC has not advanced this argument, or provided any evidence, that this would be a likely repercussion of the disclosure of this information.
28. Further to this the Commissioner also notes that the SLC is wholly owned by the Secretary of State for Innovation, Universities and Skills and Scottish Ministers, is entirely government funded and is a non profit making company, formed solely for the administration of the student loans scheme.³ The SLC has not argued that it is operating in a competitive environment, nor has it provided the Commissioner with any evidence that it is in competition with other bodies for the carrying out of its functions.
29. Bearing these points in mind, and the guidance referred to in paragraphs 18 and 20 above, the Commissioner is not persuaded that the Manual relates to the SLC's commercial interests. Therefore he believes that this exemption is not engaged.
30. The full text of section 43 can be found in the Legal Annex at the end of this Notice.

Does the SLC hold any further info which would fall under the scope of the request?

31. After carrying out its internal review the SLC confirmed to the complainant that the only information it held that fell under the scope of the request was the Manual.

³ <http://www.slc.co.uk/about%20us/remit/index.html>

32. In his complaint to the Commissioner the complainant argued that the SLC had interpreted his request too narrowly, and that it must hold other information that would fall within the scope of his request.
33. In cases where it is disputed whether a public authority holds any further information which would fall under the scope of a request, the Commissioner has to consider whether on the balance of probabilities any further information is held by that authority. This approach has been confirmed by the Information Tribunal in *Bromley V The Information Commissioner and The Environment Agency* [EA/2006/0072] which dealt with a case whose central issue was whether the authority held any further information which fell under the scope of a request. In making its decision the Tribunal stated:

“There can seldom be absolute certainty that information relevant to a request does not remain undiscovered somewhere within a public authority’s records. This is particularly the case with a large national organisation like the Environmental Agency, whose records are inevitably spread across a number of departments in different locations. The Environmental Agency properly conceded that it could not be certain that it holds no more information. However it argued...that the test to be applied was not certainty but the balance of probabilities. This is the normal standard of proof and clearly applies to Appeals before this Tribunal in which the Information Commissioner’s findings of fact are reviewed. We think that its application requires us to consider a number of factors including the quality of the public authority’s initial analysis of the request, the scope of the search that it decided to make on the basis of that analysis and the rigour and efficiency with which the search was then conducted. Other matters may affect our assessment at each stage, including, for example, the discovery of materials elsewhere whose existence or content point to the existence of further information within the public authority which had not been brought to light. Our task is to decide, on the basis of our review of all these factors, whether the public authority is likely to be holding relevant information beyond that which has already been disclosed.”⁴

34. Bearing this in mind, in his letter to the SLC dated 16 May 2008 the Commissioner drew its attention to the complainant’s concerns that it had interpreted his request too narrowly and asked it to confirm whether it held any further information which would fall under the scope of his request. The SLC informed him that it did not (see paragraph 9 above).
35. Following this the Commissioner wrote again to the SLC on 2 July 2008, and referred it to the above tribunal decision. He drew the SLC’s attention to the wording of the request and asked it to confirm whether it held any other information, in the form of emails / staff memos / or minutes of staff meetings, that may give guidance to customer-facing staff within Smith Lawson & Company about how to deal with customers, such as informing staff of changes to

⁴ EA/2006/0072, para 13.

procedures for dealing with customers, or informing staff of new policies for dealing with customers.

36. The SLC responded to the Commissioner on 16 July 2008 and explained that, "At the time of the initial request and on several subsequent occasions we did check whether any additional information was held by us which would fall within the scope of [the complainant's] request. No information was found at that time. However, in light of your letter I have asked the Collections Manager to re-check to make sure that no documents have been missed."
37. Following this, in a letter dated 17 July 2008, the SLC wrote to the Commissioner and stated that, "I have now heard from the Collections Manager and as far as she is aware SLC hold no other documents which would fall within the scope of [the complainant's] request."
38. After considering their responses, and on the basis of the findings of the Tribunal in EA/2006/0072 the Commissioner is satisfied that the SLC do not hold any further information which would fall within the scope of the request. In reaching this decision the Commissioner notes that he has not been provided with any evidence that the SLC does hold further information relevant to the request.

The Decision

39. The Commissioner's decision is that the SLC did not deal with the request for information in accordance with section 1(1)(b) of the Act in that it inappropriately relied upon section 43(2) to withhold the Manual.
40. In failing to comply with the requirements of section 1(1)(b) within twenty working days it also breached section 10(1).

Steps Required

41. The Commissioner requires the SLC to take the following steps to ensure compliance with the Act:

The Manual should be disclosed to the complainant within 35 calendar days of the date of this Notice, giving effect to the complainant's preference for means of communication so far as is reasonably practicable.

Failure to comply

42. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

43. Either party has the right to appeal against this Decision Notice to the Information 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@tribunals.gsi.gov.uk.

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

Dated the 3rd day of November 2008

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex

Section 10

- (1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
- (2) Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.
- (3) If, and to the extent that –

 - (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
 - (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.
- (4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.
- (5) Regulations under subsection (4) may –

 - (a) prescribe different days in relation to different cases, and
 - (b) confer a discretion on the Commissioner.
- (6) In this section –

“the date of receipt” means –

 - (a) the day on which the public authority receives the request for information, or
 - (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.

Section 43

- (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).