

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 August 2020

**Public Authority:** Companies House (part of the Department for Business, Energy and Industrial Strategy)

**Address:** Crown Way  
Cardiff  
CF14 3UZ

#### **Decision (including any steps ordered)**

---

1. The complainant requested details of objections made to an application for a voluntary strike-off from the company register. Companies House withheld the requested information and relied on sections 40(2) and 41 of the FOIA to do so.
2. The Commissioner's decision is that Companies House has correctly applied section 41 to withhold the requested information.
3. The Commissioner does not require further steps.

#### **Nomenclature**

---

4. Companies House is not listed as a separate public authority in Schedule 1 of the FOIA because it is an executive agency of the Department for Business, Energy and Industrial Strategy (DBEIS). However, as it has its own FOI unit and as both the complainant and the Commissioner have corresponded with "Companies House" during the course of the request and complaint, the Commissioner will refer to "Companies House" for the purposes of this notice – although the public authority is, ultimately, DBEIS.

## Request and response

---

5. On 29 January 2020, the complainant requested information of the following description:

*"An objection has been received to the application from the Directors of J. R. Brown Interior Installations Ltd (10021816) that the company be dissolved. Please provide me with a copy of the objection.*

*"You may, of course, redact any personal information from the objection correspondence."*

6. On 5 February 2020, Companies House responded. It refused to provide the requested information and relied on section 40(2) and 41 of the FOIA to do so.
7. The complainant requested an internal review on the same day. Companies House sent the outcome of its internal review on 28 February 2020. It upheld its original position.

## Scope of the case

---

8. The complainant contacted the Commissioner on 28 February 2020 to complain about the way his request for information had been handled.
9. At the outset of her investigation, the Commissioner asked Companies House if it still wished to rely on both exemptions and, if it did, to provide submissions in respect of each exemption.
10. On receiving the submissions, it was not immediately clear to the Commissioner that *all* of the requested information would be personal data (although *some* of it clearly would). Rather than delay consideration of the complaint to make further enquiries on this point, as the Commissioner considered that she had sufficient evidence to make a decision in respect of section 41, she has only considered whether Companies House was entitled to rely that exemption. If section 41 is engaged, the Commissioner does not need to make a decision in respect of section 40(2).

## Reasons for decision

---

11. Section 41 of FOIA states that:

*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.*

12. Companies House explained that a solvent company that has ceased trading may apply voluntarily to have itself struck off the register of companies. Once a company has been struck off, the ability of individuals, or other companies, to pursue grievances with that corporate entity is severely reduced. Therefore before the registrar will agree to a strike-off, the company must publish its application and there is then a two month window in which any person or company can object to the strike-off. A company cannot be struck off the register until there are no valid objections outstanding.
13. There can be many reasons why an objection might be valid: the company may have creditors; it may be involved in an outstanding employment grievance; it may not have followed the proper strike-off proceedings or it may have been trading unlawfully. If there is sufficient evidence, Companies House may investigate the objection further.
14. The first step in establishing whether section 41 would apply to the withheld information is that the information must have been obtained, by the public authority, from another person.
15. Whilst the request itself envisaged just a single objection, Companies House noted that it had in fact received more than one objection. The Commissioner considers that her considerations would have been the same had there been only a single objection.
16. The Commissioner considers that it is implicit from the request that any information falling within scope must have been obtained from another person. Having reviewed the withheld information, it is clear that it was all provided to Companies House by other people. Therefore the condition in section 41(1)(a) is met.

*Would disclosure constitute an actionable breach of confidence?*

17. For section 41 to apply, the public authority must also be able to demonstrate that disclosure of the information could lead to an actionable breach of confidence. This means that not only must disclosure lead to a breach of a duty of confidence, but it must also be an *actionable* breach.
18. The test for a breach of confidence was first set out in the High Court case of *Coco v A N Clark (Engineers) Limited [1968] FSR 415*. The Court considered that, in order to bring an action for a breach of confidence, three elements would need to be established:
  - the information must have the necessary quality of confidence,
  - it must have been imparted in circumstances importing an obligation of confidence, and
  - there must have been an unauthorised use of the information to the detriment of the confider.
19. Information can carry the quality of confidence providing that is not trivial in nature and that it is not otherwise accessible. Companies House explained to the Commissioner that:

*"The details of the objections are not trivial. They were submitted to Companies House in order to inform the Registrar's consideration as to whether to allow the company's application to be voluntarily struck off the register. The objections were supported by evidence including court papers and invoices. The possible outcome of these objections not being made is that the directors would have been free to dissolve the company without meeting any liabilities towards creditors. This is a potentially serious matter."*
20. Companies House also confirmed that the precise details of any objection are not put into the public domain and therefore this information would not otherwise be accessible. The Commissioner sees no reason to doubt this and is therefore satisfied that the information does have the necessary quality of confidence.
21. The Commissioner also asked Companies House about the circumstances in which the information was imparted. Companies House informed the Commissioner that the website, via which objections can be registered, makes it clear that the *content* of any objection will be treated in confidence. Any objections which are submitted are usually followed up by further correspondence from the registrar emphasising this point.

22. Whilst Companies House will normally ask objectors to consent to having their details provided to the company applying for the strike-off (so that any outstanding dispute can be settled), there is an explicit statement that details will not be shared without the objector's consent and will only be shared with the company or its authorised representatives.

23. When considering whether information has been imparted in circumstances which imply a duty of confidence, the judgement in *Coco* stated that:

*"if the circumstances are such that any reasonable man standing in the shoes of the recipient of the information would have realised, that upon reasonable grounds the information was being given to him in confidence then this should suffice to impose upon him the equitable obligation of confidence."*

24. In this particular case, the Commissioner is satisfied that all the individuals who submitted objections did so with the reasonable expectation that the information they provided would be treated in confidence. They were explicitly told that their identities and the reasons for their objections would not be placed in the public domain (as would be required by disclosure under the FOIA). The Commissioner is therefore satisfied that the information was imparted in circumstances where confidentiality would reasonably have been expected.

25. Finally, the Commissioner has considered whether an unauthorised use of the information would be likely to cause detriment. In her view, it would.

26. The Commissioner's guidance<sup>1</sup> and established case law take the view that any disclosure which intrudes on the privacy of an individual can be viewed as a form of detriment in its own right. The withheld information does refer to the private lives of some of the objectors.

27. Companies House also explained that:

*"We are of the view that given the expectations of the objectors, public disclosure would be an unauthorised use of the information. Although the objections would inevitably impact on the business activities of the directors of the company concerned – i.e. the company's application for strike-off would not be granted and they*

---

<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1432163/information-provided-in-confidence-section-41.pdf>

*would continue to be subject to the obligations of a director – disclosure may reveal details of the objectors' personal or home lives, thereby causing detriment in terms of their expectation of privacy...in our view disclosure into the public domain may also undermine any action [the objectors] wished to take against the company."*

28. The Commissioner agrees that publication of this information would cause detriment to those who supplied it. Taking all the above into consideration, the Commissioner is satisfied that, were disclosure of this information to occur outside of the FOIA, the objectors would have standing to contest a breach of confidence.

*Would the breach be actionable?*

29. In order for section 41 to apply, the Commissioner must also consider whether an action taken for a breach of confidence would be likely to succeed. When the FOIA was discussed in Parliament prior to becoming law, the minister made clear in relation to this exemption that:

*"the word "actionable" does not mean arguable ... It means something that would be upheld by the courts; for example, an action that is taken and won. Plainly, it would not be enough to say, "I have an arguable breach of confidence claim at common law and, therefore, that is enough to prevent disclosure". That is not the position. The word used in the Bill is "actionable" which means that one can take action and win." (Hansard Vol.619, col. 175-176)*

30. The objectors would be unlikely to succeed in bringing an action against Companies House if it were likely to be able to rely on a public interest defence against such a claim.
31. The Court of Appeal ruled in *HRH Prince of Wales V Associated Newspapers Limited* [2008] Ch 57:

*"Before the Human Rights Act came into force the circumstances in which the public interest and publication overrode a duty of confidence were very limited. The issue is whether exceptional circumstances justified disregarding the confidentiality that would otherwise prevail. Today the test is different. It is whether a fetter of the right of freedom of expression is, in the particular circumstances, 'necessary in a democratic society'. It is a test of proportionality"*

32. When asked to consider the possibility of a public interest defence, companies House responded to say:

*"The matter of an objection being made is a matter of public interest, and this is shown on the public record. However, the details of such objections are a matter for the Registrar to consider and may be of interest to the directors of the company concerned. We cannot determine any wider public interest in revealing this information.*

*"The public interest is best served by providing an environment where objectors can disclose information freely to CH on the understanding that it will remain confidential. To breach this confidentiality may dissuade people from raising objections with CH and therefore encourage companies to act with impunity. Therefore, our opinion is that the public interest lies in maintaining the confidentiality rather than in the disclosure of the withheld information."*

33. There will always be a public interest in accountability and transparency, but the Commissioner notes that this is only a weak interest and is unlikely to override the rights of individuals on its own.
34. The complainant has made no suggestion that, in withholding the information, Companies House is concealing evidence of misconduct, illegality or gross immorality. Having viewed the withheld information, the Commissioner is satisfied that there is nothing contained within it which would give her cause to doubt that Companies House is dealing with objections appropriately.
35. The Commissioner therefore cannot identify any substantial public interest which would justify the intrusion into the privacy of the objectors. She is thus satisfied that, in the event of a claim for a breach of confidence, Companies House would have only a very weak public interest defence and thus such a claim would be likely to succeed.
36. As disclosure outside of the FOIA would constitute an actionable breach of confidence, the Commissioner is satisfied that Companies House is entitled to rely on section 41 of the FOIA to withhold the requested information.



## Right of appeal

---

37. 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: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**