

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 October 2014

Public Authority: The Office of the Immigration Services
Commissioner

Address: 5th Floor
Bloomsbury Street
London
WC18 3HF

Decision (including any steps ordered)

1. The complainant has requested the details of the professional indemnity insurance of a named company which provides immigration services. The Office of the Immigration Services Commissioner (OISC) responded that although it held the requested information it was unable to provide the details of the insurance policy because section 93 of the Immigration and Asylum Act 1999 (I&AA) prohibited its disclosure. The OISC informed the Information Commissioner that it therefore considered the information exempt under section 44 of FOIA. Section 44 provides that information protected by a statutory prohibition is exempt from disclosure.
2. The Commissioner finds that the requested information is covered by the statutory prohibition provided by section 93 of the I&AA and is therefore exempt.
3. The Commissioner does not require the OISC to take any further action in this matter.

Request and response

4. On 27 February 2014, the complainant wrote to the OISC and requested information in the following terms:

"... details of the professional indemnity insurance of the [named company] for the period 2011-2014".

5. The OISC responded on 14 March 2014. Although it did not cite a particular exemption from FOIA it did state that it was prevented from disclosing the information under section 93 of the I&AA.
6. Following an internal review the OISC wrote to the complainant on 5 June 2014. It maintained its position that it was unable to disclose the requested information because of section 93 of the I&AA.

Scope of the case

7. The complainant contacted the Information Commissioner 17 June 2014 to complain about the fact that his request for information had been refused.
8. During the course of the Information Commissioner's investigation the OISC clarified that it was relying on section 44 of FOIA to withhold the requested information. The Commissioner considers that the issue to be decided is whether the insurance policy can be withheld under section 44 of FOIA.

Reasons for decision

9. Section 44(1)(a) of FOIA states that information is exempt if its disclosure is prohibited by or under any enactment. In other words, if another piece of legislation means the OISC would be breaking the law if it provided the insurance policy, the OISC can refuse the request.
10. In this case the OISC has argued that to disclose the insurance policy would breach section 93 of the I&AA. Section 93 is set out below in full. References to the 'Commissioner' in that section are references to the Immigration Services Commissioner.

93 Information.

(1) No enactment or rule of law prohibiting or restricting the disclosure of information prevents a person from—

(a) giving the Commissioner information which is necessary for the discharge of his functions; or

(b) giving the Tribunal information which is necessary for the discharge of its functions.

(2) No relevant person may at any time disclose information which—

(a) has been obtained by, or given to, the Commissioner under or for purposes of this Act,

(b) relates to an identified or identifiable individual or business, and

(c) is not at that time, and has not previously been, available to the public from other sources,

unless the disclosure is made with lawful authority.

(3) For the purposes of subsection (2), a disclosure is made with lawful authority only if, and to the extent that—

(a) it is made with the consent of the individual or of the person for the time being carrying on the business;

(b) it is made for the purposes of, and is necessary for, the discharge of any of the Commissioner's functions under this Act or any Community obligation of the Commissioner;

(c) it is made for the purposes of any civil or criminal proceedings arising under or by virtue of this Part, or otherwise; or

(d) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.

(4) A person who knowingly or recklessly discloses information in contravention of subsection (2) is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

(5) "Relevant person" means a person who is or has been—

(a) the Commissioner;

(b) a member of the Commissioner's staff; or

(c) an agent of the Commissioner.

11. As can be seen, section 93(2) of I&AA makes it an offence for the Immigration Services Commissioner, or any of his staff, to disclose

information they have obtained for the purposes of carrying out their functions under the Immigration & Asylum Act without lawful authority. For this statutory prohibition to apply the information must relate to an identifiable person, or business, and must not be available from other public sources.

12. The OISC has explained that it is a mandatory requirement that all immigration advisers have in place professional indemnity insurance cover in respect of any civil liability that may be incurred in relation to their immigration work and advice services. The Immigration Services Commissioner will not grant authorisation to practise to any adviser without such insurance being in place. In light of this the Information Commissioner is satisfied that the insurance policy was provided to the OISC for the purposes of carrying out its functions.
13. The Information Commissioner has been provided with a copy of the insurance policy. Having read the policy the Information Commissioner is satisfied that it both relates to, and identifies the company named in the request together with the proprietor of that company. The OISC has advised the Information Commissioner that this information is not available from public sources. He is therefore satisfied that the insurance policy meets the criteria set out in section 93(2) of the I&AA. Therefore the OISC cannot disclose the information without lawful authority.
14. Section 93(3) sets out the conditions under which information can be disclosed with lawful authority. The OISC has informed the Information Commissioner that it has considered whether any of these conditions can be satisfied. It concluded that none of them could be and that having considered the legitimate interests of all parties the OISC was satisfied that disclosure was not necessary in the public interest.
15. From this explanation the Information Commissioner understands that the individual carrying out the named business has not given their consent to the disclosure, therefore the condition set out in section 93(3)(a) is not satisfied. Nor is the disclosure needed in order for the OISC to carry out any of its duties under the I&AA, or indeed in order to meet any of its European Community obligations. Therefore section 93(3)(b) is not satisfied. Furthermore the Information Commissioner understands that the OISC has considered whether the disclosure is necessary in the public interest in accordance with section 93(3)(d). Having considered section 93(3)(d) the OISC has concluded that the disclosure is not required in the public interest. This is a matter of judgement for the OISC and it is not for the Information Commissioner to challenge the reasonableness of that judgement. The Information Commissioner wishes to emphasise that this in no way infers that he considers there are any grounds for challenge as this is not the case.

16. Section 93(3)(c) provides that the OISC would have lawful authority to disclose the requested information if the disclosure was for the purpose of any civil proceedings. The Information Commissioner is aware from the complainant's submissions that he is in dispute with the named company and therefore may believe that access to the details of the insurance policy would enable him to make a claim against that company's insurance policy. The Information Commissioner would not accept an argument that it is necessary to obtain the details of a person's professional indemnity insurance in order to pursue a claim against that person. Normally the purpose of professional indemnity insurance is to protect a professional adviser by providing cover should they incur legal costs in defending a claim against them in respect of the advice they have provided, as well as providing cover for the cost of any compensation awarded by a court. It is for the insurance holder to make a claim on that policy once such costs have been incurred. It is not a policy against which another party can claim. Therefore it does not appear necessary to disclose the insurance policies for the purposes of any civil proceedings. In light of this the Information Commissioner finds that the condition provided by section 93(3)(c) is not satisfied.
17. As the Information Commissioner finds that none of the conditions which would allow the insurance policy to be disclosed with lawful authority are met, he is satisfied that the statutory prohibition provided by section 93(2) of the I&AA stands. The OISC could not disclose the information without breaching that prohibition. In light of this the Information Commissioner concludes that the OISC is entitled to rely on section 44(1)(a) of FOIA to refuse the request. The Information Commissioner does not require the OISC to take any further action in this matter.

Right of appeal

18. 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@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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

Pamela Clements
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