



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Appeal Reference: EA/2017/0035

Decided at Field House Without a Hearing

Before

**THE HONOURABLE MR JUSTICE LANE
ANNE CHAFER
DAVID WILKINSON**

Between

STEPHEN FLANAGAN

Appellant

and

INFORMATION COMMISSIONER

First Respondent

COMPANIES HOUSE

Second Respondent

DECISION AND REASONS

1. The appellant requested information from Companies House regarding the details of an objection made to an application for the dissolution of a limited company. Companies House withheld the information on the basis of the exemptions contained in sections 41(1) and 40(2) of the Freedom of Information Act 2000. Following

confirmation of that decision in an internal review, the appellant complained to the Information Commissioner.

2. On 23 February 2017, the Information Commissioner issued a decision that Companies House was entitled to rely on the exemption in section 41(1). The appellant appealed against that decision to the Tribunal. The parties were each content for a decision to be made without a hearing and, in all the circumstances, we consider that we can justly do so. In reaching our unanimous decision, we have considered each item of written evidence, together with the written submissions, supplied by the parties.
3. Chapter 1 of Part 31 of the Companies Act 2006 provides a scheme for the voluntary striking off of companies registered at Companies House. On 15 February 2015, the 1 Click Charitable Trust Trading Limited ("the Company") applied to be struck off under these provisions.
4. The statutory scheme includes a requirement to advertise the proposed striking off and Companies House accordingly advertised it in the London Gazette on 1 March 2016. On 27 April 2016, an objection was received from Her Majesty's Revenue and Customs and on 29 April 2016 an objection was received from another objector ("the third-party objector").
5. Companies House does not require evidence in support of objections from HMRC, since these are taken to have been made in good faith. An HMRC objection results in suspension of the striking off for a period of six months.
6. Objections from third parties, however, must be supported by evidence for the objection. Any suspension in these circumstances lasts for three months although an objection may be renewed.
7. Guidance on the government website states that:-

"Objector's details are not in the public domain and we will only provide these if consent is given. When registering your objection, please state whether you are prepared for your details to be given."
8. During August 2016, the appellant was in correspondence with Companies House, seeking details of the two objections, including the identity of the third-party objector. Notwithstanding that, by the relevant time, the third-party objection had lapsed, the appellant nevertheless asked for a copy of the third-party objection on 22 August 2016. The following events have been described above. In upholding the position of Companies House, with regard to section 41(1) of FOIA, the Information Commissioner found that:-

"(a) The information in question was supplied by another person;

- (b) It had the necessary quality of confidence, being non-trivial and not freely available;
 - (c) It was imparted to Companies House in circumstances giving rise to an expectation of confidentiality, given that (i) this is the published practice of Companies House, and (ii) the objector had expressly refused consent for their identity to be disclosed in this case;
 - (d) If a detriment to the confider was required, unauthorised use of the information would constitute a detrimental invasion of privacy;
 - (e) No public interest defence to an action for breach of confidence would be available and there was no wider public interest in disclosure of the information, which would be of interest only to the appellant.
9. In his grounds of appeal, the appellant contended that the Information Commissioner had overlooked what he described as established case law of “know your accuser”, which he said applies throughout UK law unless excluded by statute. The company in question was said by the appellant to have been placed in an impossible position, as it was unable to deal with the objections if it did not know what they were and who made them.
10. Section 41(1) of FOIA provides as follows:-
- “(1) 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.”
11. The elements of a breach of confidence are that:-
- “(a) The information was imparted in circumstances conferring an obligation of confidentiality;
 - (b) The information has the necessary quality of confidentiality; and
 - (c) Disclosure would cause a detriment to the person who imparted the information.”
12. It is defence for an action of a breach of confidence that it was in the public interest to disclose the confidential information. This means that, despite its overtly absolute nature, an exemption claim under section 41(1) will involve a public interest balance, similar to that undertaken in the case of so-called “qualified” FOIA exemptions (as to which, see section 2).

13. The Information Commissioner, through her Counsel, Peter Lockley, contends that the appellant's reference to the "law of know your accuser" appears to relate to the right to a fair trial, as enshrined in Article 6 of the European Convention on human rights and/or the common law right to a fair hearing.
14. The Tribunal agrees with the Information Commissioner that the striking off procedure, with which we are concerned, is an administrative function, which falls outside the scope of Article 6 (see Begum v Tower Hamlets London Borough Council [2003] UKHL 5). Article 6 is, in any event, not engaged by "interim" measures in the course of proceedings: R (Wright v Secretary of State for Health [2009] UKHL 3). The process by which Companies House considers objections is not a final determination of a person's rights.
15. Furthermore and in any event, the availability of judicial review is an adequate safeguard, not only for the purposes of Article 6 but also at common law (Bryan v United Kingdom (1995) 21 EHRR 342).
16. As a result, Companies House would not have a defence to any action for breach of confidence, were it to disclose the withheld information to the appellant, pursuant to Article 6. As far as fairness is concerned, judicial review, rather than disclosure under FOIA, provides an adequate safeguard.
17. Plainly, in the Tribunal's view, the information provided by the third-party objector to Companies House was given in the expectation of confidentiality. That is made express on the government website. In the case of the disclosure of personal information, detriment is, in effect, automatic: Higher Education Funding Council for England v ICO and Guardian News and Media Limited (EA/2009/0036).
18. The submissions made by Mr Eric Metcalf, Counsel, on behalf of Companies House, are broadly in the same vein. He, however, points out that his client's information-gathering function would be frustrated if the identities of objectors were liable to be disclosed by way of requests made under FOIA:-

"For example, an employee of a company seeking dissolution or acquittal may legitimately fear retaliation by its directors if their identity became known. For these reasons, the relevant CH Guidance provides as follows:

Objector's details are not in the public domain and we will only provide these if consent is given. When registering your objection, please state whether you are prepared for your details to be given ...".

19. Against this background, the Tribunal agrees with Companies House that, without such a guarantee of confidentiality, persons with relevant information may be less forthcoming and less willing to object and, thereby, the statutory functions of Companies House would be inhibited. Plainly, such a situation would be contrary to the public interest.

20. In his reply of 1 June 2017, the appellant has put forward no argument, which begins to cast doubt on the correctness of the submissions of the respondents, with which we agree.

Decision

21. This appeal is dismissed.

Date Promulgated:
31 October 2017

Lane J
30 October 2017