



IN THE FIRST-TIER TRIBUNAL (INFORMATION TRIBUNAL)

EA/2012/0162

BETWEEN:

THE DEPARTMENT OF HEALTH

Appellant

-and-

THE INFORMATION COMMISSIONER

Respondent

-and-

**THE ASSOCIATION OF THE BRITISH PHARMACEUTICAL INDUSTRY
("ABPI")**

Second Respondent

CONSENT ORDER

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

IT IS ORDERED BY CONSENT that:

1. This Appeal be disposed of in the terms set out in Annex B of this order.
2. There be no order for costs.

[Signed on original]

HH Judge Shanks

Dated this 29th day of January 2013

Signed.....

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Caxton House
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London
SW1H 9NA**

For the Appellant

Signed.....

**The Information Commissioner's Office
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SK9 5AF**

For the Respondent

Signed.....

**ABPI
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For the Second Respondent

ANNEX A

Statement of reasons for consent order

1. This appeal concerned the Commissioner's Decision Notice dated 5 July 2012 [Reference number FS50413464]. That Notice sets out the terms of the original information request and the requestor's clarified request at paragraph 5.
2. At the time of its review of 5 August 2011, the Appellant provided the information requested at points 1 and 2 of the requestor's clarified request but confirmed that that it intended to withhold the information requested at paragraphs 3 to 9 of that clarified request. It relied on section 43(2) FOIA in this respect.
3. Subsequently, during the course of the Commissioner's investigation, the information at points 3 and 4 of the clarified request was communicated to the requestor, leaving items 5 to 9 of the clarified request to be determined by the Commissioner.
4. In the said Decision Notice, the Commissioner decided that section 43(2) FOIA was not engaged in relation to items 5 to 9 of the clarified request.
5. The Appellant appealed against the Decision Notice.
6. During the course of the appeal, the Appellant disclosed the information at points 5 to 7 of the clarified request to the requestor.
7. Although, in its clarified request, the requestor had sought "all" information held in relation to points 8 and 9 of the clarified request, it confirmed in correspondence to the Tribunal of 20 August 2012 that it was content to receive only "high level" information in relation to those points. Such high level information was duly disclosed by the Appellant and, in correspondence of 7 November 2012, the requestor confirmed that it was satisfied that it had been provided with all of the information it had sought pursuant to its request.
8. Therefore, the Appellant has now disclosed the information directed in the Commissioner's Decision Notice in relation to points 5 to 7 of the clarified request,

and the requestor has confirmed that it is satisfied by the extent of disclosure now made by the Appellant in relation to items 8 and 9 of its clarified request.

9. The parties note that, further to the matters set out at paragraphs 29 – 31 of the Decision Notice, whilst the Commissioner concluded that information about prices under the Pharmaceutical Price Regulation Scheme did not fall within the exemption under section 43 FOIA, that conclusion was based on the information provided by the Department of Health to him during the course of his investigation in this particular case.
10. It is acknowledged that had the Commissioner, during the course of his investigation, been provided with the information that has now been provided in the course of this appeal, he might (although not necessarily would) have reached a different conclusion in relation to the engagement of section 43FOIA.
11. The parties acknowledge that the Commissioner's decision notices are issued on a case by case basis and relate only to the circumstances of that particular case. As such, they do not form a binding precedent for future cases.
12. Accordingly, and notwithstanding that the Commissioner's decision in relation to items 8 and 9 of the clarified request has not been determined by the Tribunal, the parties accept that for this appeal to proceed further would be disproportionate and an unnecessary expenditure of public funds. As such, its continuance would be contrary to the overriding objective.
13. 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. Mindful of all of the matters set out at Annex A of this Order, and the Appellant having now disclosed the information ordered in the Commissioner's Decision Notice of 5 July 2012 (Reference number FS50413464) in relation to points 5 to 7 of the requestor's clarified request, and the requestor having confirmed that it is satisfied by the extent of disclosure now made to it in relation to items 8 and 9 of its clarified request, this appeal be disposed of by agreement of the parties, pursuant to Rule 37(1) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

2. No further steps are required to be taken by any party.