

FOIA s.44 – Absolute exemption: Prohibitions on disclosure

Norman Slann v IC & Financial Services Authority

EA/2005/0019

11th July 2006

Cases:

Facts

The Appellant had requested the Financial Services Authority (FSA) to disclose the monthly mortgage rates that it provided to the Statistics Office. The figures were assembled by calculating a weighted average of the “base rate” of the 23 largest building societies in the country. The calculation used the mortgage balances and interest rates for each individual society. It would be possible for anyone to whom the information was released to reverse the calculation in order to extract data that was commercially sensitive to the building societies concerned. The FSA refused to release the information on the ground that it had been provided by the individual building societies, under compulsion, to enable the FSA to discharge its functions of supervising the financial sector. It was treated by the FSA as confidential information, which it was prohibited from disclosing without consent of the organisations that had provided it, under s.348 of the Financial Services and Markets Act 2000 (FSMA). On that basis, the FSA refused to disclose the information as it was subject to the absolute exemption under s.44 FOIA.

The IC held that the FSA had complied with the Act on the basis of the prohibition of disclosure.

Findings

The Tribunal was not provided with any evidence to show that the information was in the public domain. Therefore, the tribunal were satisfied that it was confidential information under s.348 FSMA. They held that it could not be disclosed without the consent of the 23 building societies and the IC had been right to accept the reasons advanced by the FSA as to why consent would not have been forthcoming and did not therefore have to be sought.

Conclusion

The Tribunal upheld the IC’s decision and dismissed the appeal.