

Section 41

Section 41(1) of the Act ('Information provided in confidence') provides that information is exempt information if: it was obtained by the public authority from any other person (including another public authority); and, disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

The Commission considers that both requirements are met. The information was provided in confidence for internal use, to aid the Commission in our licensing function. We also consider that it would be detrimental to the provider of the information if the information were disclosed and that disclosure would constitute an actionable breach. Bearing in mind that detriment, we do not consider there to be a public interest which would lead the court to refuse to uphold the duty of confidentiality.

Section 43

Section 43 of the Act (commercially sensitive information) provides that information is exempt information if: its disclosure under the Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). Section 43 is a qualified exemption so we are required to consider whether maintaining the exemption is in the public interest.

Factors in favour of disclosure

- We recognise that there is a legitimate public interest in promoting the accountability and transparency of the Commission, so that people can understand the decisions made by the Commission
- There is an interest in showing what the Commission takes into consideration when assessing an operators suitability so as to minimise the risk to consumers

Factors in favour of maintaining the exemption

- We consider that disclosing the information could discourage licensees from freely providing information to the Commission in future, which would prejudice the Commission's ability to monitor and regulate its licensees.
- The Commission currently publishes that names of all companies who have a licensing history with us. Releasing further information regarding these companies disclosure would be likely to prejudice the Commission's licensing functions.
- Releasing details of the company's financial position prior to being licensed would not provide an accurate picture of their financial position when trading ceased nor would it aid unpaid customers to access money that has been lost

Weighing the balance

The main argument favouring disclosure is increased transparency around decision making, demonstrating the viability of the operator at the application stage. This needs to be balanced against the impact that disclosure would have on information being freely provided to the Commission in future applications.

Having weighed these issues, the Commission is of the view that the public interest is best served through maintaining this exemption.