
STATUTORY INSTRUMENTS

2004 No. 3363

FREEDOM OF INFORMATION

The Freedom of Information (Removal and Relaxation of Statutory Prohibitions on Disclosure of Information) Order 2004

Made - - - - 16th December 2004

Coming into force - - 1st January 2005

Whereas a draft of this Order has been approved by resolution of each House of Parliament in pursuance of section 82(2) of the Freedom of Information Act 2000⁽¹⁾;

Whereas it appears to the Secretary of State that by virtue of section 44(1)(a) of the Freedom of Information Act 2000, the enactments repealed or amended by this Order are capable of preventing the disclosure of information under section 1 of that Act;

Now, therefore, the Secretary of State, in exercise of the powers conferred⁽²⁾ by section 75 of the Freedom of Information Act 2000, hereby makes the following Order to repeal or amend those enactments for the purposes of removing or relaxing the prohibition on disclosure:

Citation and commencement

1. This Order may be cited as the Freedom of Information (Removal and Relaxation of Statutory Prohibitions on Disclosure of Information) Order 2004 and comes into force on 1st January 2005.

Factories Act 1961

2. After section 154 of the Factories Act 1961⁽³⁾ (prohibition on disclosure of information), insert—

“Exception to the prohibition: public authorities

154A. Section 154 does not apply if—

(1) 2000 c. 36.
(2) The functions of the Secretary of State under section 75 were transferred to the Lord Chancellor by the Transfer of Functions (Miscellaneous) Order 2001 (S.I.2001/3500), which Order amended section 75 accordingly. The functions of the Lord Chancellor under section 75 were transferred back to the Secretary of State by the Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), which Order amended section 75 accordingly.
(3) 1961 c. 34, as amended by regulation 2(a) of, and Schedule 1 to, S.I. 1974/1941.

- (a) the person making the disclosure referred to in that section is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000, and
- (b) the information is not held by the authority on behalf of another person.”

Offices, Shops and Railway Premises Act 1963

3. After section 59 of the Offices, Shops and Railway Premises Act 1963(4) (restriction on disclosure of information), insert–

“Exception to restriction: public authorities

59A. Section 59 does not apply if–

- (a) the person making the disclosure referred to in that section is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000, and
- (b) the information is not held by the authority on behalf of another person.”

Medicines Act 1968

4. In section 118 of the Medicines Act 1968(5) (restrictions on disclosure of information), after subsection (1) insert–

“(1A) Subsection (1) of this section does not apply if–

- (a) the person making the disclosure is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000, and
- (b) the information is not held by the authority on behalf of another person.”

Health and Safety At Work Act 1974

5.—(1) Section 28 of the Health and Safety At Work Act 1974(6) (restrictions on disclosure of information) is amended as follows.

(2) In subsection (3), after paragraph (e), insert–

“(f) any other disclosure of information by the recipient, if–

- (i) the recipient is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000, and
- (ii) the information is not held by the authority on behalf of another person.”

(3) In subsection (5), after “disclosed in pursuance of”, insert “any of paragraphs (a) to (e) of”.

(4) 1963 c. 41, as amended by regulation 2(a) of, and Schedule 1 to, S.I. 1974/1943.

(5) 1968 c. 67, as amended by section 32(2) of the Magistrates' Courts Act 1980 (c. 43).

(6) 1974 c. 37. Subsection (1) of section 28 was amended by section 36 of, and Schedule 3 to, the Consumer Protection Act 1987 and section 105(2) of the Railways and Transport Safety Act 2003 (c. 20).

Subsection (3)(a) was amended by section 120 of, and paragraph 30(6)(a) of Schedule 22 to, the Environment Act 1995 (c. 25). Subsection (3)(c) was amended by section 120 of, and paragraph 30(6)(b) of Schedule 22, and Schedule 24 to, the Environment Act 1995.

Subsection (3)(c)(ii) was amended, in relation to England and Wales, by section 190 of, and paragraph 46 of Schedule 25 to, the Water Act 1989 (c. 15), and in relation to Scotland, by section 120 of, and paragraph 30(6)(c) of Schedule 22 to, the Environment Act 1995 and by article 2 of, and paragraph 8(a) of the Schedule to, S.I. 2004/1822.

Subsection (3)(c)(iii) was repealed by section 120 of, and paragraph 30(6)(d) of Schedule 22, and Schedule 24 to, the Environment Act 1995. Subsection (5)(a) was amended by section 120 of, and paragraph 30(6)(f)(i) of Schedule 22 to, the Environment Act 1995. Subsection (5)(b) was amended, in relation to Scotland, by article 2 of, and paragraph 8(b) of the Schedule to, S.I. 2004/1822 and by section 120 of, and paragraph 30(6)(f)(ii) and (iii) of Schedule 22, and Schedule 24 to, the Environment Act 1995, and in relation to England and Wales, by section 190 of, and paragraph 46 of Schedule 25 to, the Water Act 1989.

(4) After subsection (9) insert—

“(9A) Subsection (7) above does not apply if—

- (a) the person who has obtained any such information as is referred to in that subsection is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000, and
- (b) the information is not held by the authority on behalf of another person.”

Biological Standards Act 1975

6. Section 5 of the Biological Standards Act 1975(7) (restrictions on disclosure of information) is repealed.

National Health Service Act 1977

7. In Schedule 11 to the National Health Service Act 1977(8), after paragraph 5 (restrictions on disclosing information) insert—

“5A. Paragraph 5 above does not apply if—

- (a) the person who has obtained any such information as is referred to in that paragraph is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000, and
- (b) the information is not held by the public authority on behalf of another person.”

Audit Commission Act 1998

8.—(1) The Audit Commission Act 1998(9) is amended as follows.

(2) In section 49 (restriction on disclosure of information)—

- (a) in subsection (1), omit paragraph (e);
- (b) after subsection (1), insert—

“(1A) Subsection (1) does not apply in relation to disclosure by a person who is, or acts on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000.”

(3) After section 49, insert—

“Disclosure of information by or on behalf of public authorities

49A.—(1) This section applies if information relating to a particular body or other person is obtained by the Commission or an auditor, or by a person acting on behalf of the Commission or an auditor—

(7) 1975 c. 4, as amended by section 32(2) of the Magistrates' Courts Act 1980.

(8) 1977 c. 49. Schedule 11 has been repealed in relation to health service medicines by sections 38(6) and 65 of, and Schedule 5 to, the Health Act 1999 (c. 8).

(9) 1998 c. 18. Section 49 of the Audit Commission Act 1998 has been amended by section 22(3) and (5)(a) of the Local Government Act 1999 (c. 27). Subparagraphs (ba) and (bb) were inserted into subsection (1) by section 147 of, and paragraph 12(1) and (10)(a) of Schedule 9 to, the Health and Social Care (Community Health and Standards) Act 2003 (c. 43). Subparagraph (c) of subsection (1) was amended by section 147 of, and paragraphs 12(1) and (10)(b) of Schedule 9 to, that Act. Subparagraph (da) of subsection (1) was inserted by section 66 of, and paragraphs 21 and 33 of Schedule 2 to, the Public Audit (Wales) Act 2004 (c. 23). The first subparagraph (dd) of subsection (1) was inserted by section 133 of, and paragraphs 1 and 11 of Schedule 8 to, the Greater London Authority Act 1999 (c. 29). The second subparagraph (dd) in subsection (1) was inserted by section 107 of, and paragraph 30 of Schedule 5 to, the Local Government Act 2000 (c. 22). The powers to disclose under subsection (1) were extended by section 17 of and paragraph 41 of Part I of Schedule 4 to, the Anti-Terrorism, Crime and Security Act 2001 (c. 24).

- (a) pursuant to a provision of this Act or of Part 1 of the Local Government Act 1999, or
 - (b) in the course of an audit or study under this Act or under Part 1 of the Local Government Act 1999.
- (2) A person who is, or acts on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000, may disclose any such information—
- (a) in the circumstances in which he would (but for section 49(1A)) be authorised to do so under section 49(1);
 - (b) in accordance with section 41(4); or
 - (c) in any other circumstances, except where such a disclosure would, or would be likely to, prejudice the effective performance by such a person of a function imposed or conferred on the person by or under an enactment.
- (3) A person mentioned in subsection (2) who discloses any such information otherwise than as authorised by subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum.”

Access to Justice Act 1999

9. In section 20 of the Access to Justice Act 1999⁽¹⁰⁾ (restriction of disclosure of information), after subsection (4) insert—

“(4A) Subsection (1) does not prevent the disclosure of information after the end of the restricted period, if—

- (a) the disclosure is by a person who is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000, and
- (b) the information is not held by the authority on behalf of another person.

(4B) The restricted period is the period of one hundred years starting at the end of the calendar year in which a record containing the information was first created.”

Signed by authority of the Secretary of State

Date 16th December 2004

Cathy Ashton
Parliamentary Under Secretary of State
Department for Constitutional Affairs

⁽¹⁰⁾ 1999 c. 22. The disclosure powers under subsection (2) were extended by section 17 of, and paragraph 47 of Part I of Schedule 4 to, the Anti-Terrorism, Crime and Security Act 2001.

EXPLANATORY NOTE

(This note is not part of the Order)

Section 75 of the Freedom of Information Act 2000 (“the Act”) gives the Secretary of State the power to make an order to repeal or amend an enactment for the purpose of removing or relaxing a prohibition that, by virtue of section 44(1)(a) of the Act, is capable of preventing disclosure under section 1 of the Act.

Section 1 gives any person who makes a request to a public authority for information the right to: a) be informed in writing whether the public authority holds the information of the description specified in the request, and b) if that is the case, to have that information communicated to him. Section 44(1)(a) provides that information is exempt from disclosure under section 1 if its disclosure, otherwise than under the Act, by the public authority holding it is prohibited by or under any enactment.

Article 2 to this Order inserts a new section 154A into the Factories Act 1961. Section 154 makes it an offence for a person to disclose information about any manufacturing process or trade secret that he has obtained in pursuance of powers conferred by sections 148 or 153 of the Factories Act 1961, unless that disclosure is made in the performance of his duty. By section 154A, the offence provisions in section 154 do not apply if the person making the disclosure is, or is acting on behalf of a person who is, a public authority for the purposes of the Act.

Article 3 inserts a new section 59A into the Offices, Shops and Railway Premises Act 1963 (“the 1963 Act”). Section 59 of the 1963 Act makes it an offence for a person to disclose information he has obtained from premises that he has entered in the exercise of powers conferred by the 1963 Act, unless that disclosure is made in the performance of his duty or for the purposes of any legal proceedings, or of a report of any such proceedings. By section 59A, the offence provision in section 59 does not apply if the person making the disclosure is, or is acting on behalf of a person who is, a public authority for the purposes of the Act.

Article 4 inserts a new subsection (1A) after subsection (1) of section 118 of the Medicines Act 1968 (“the 1968 Act”). Section 118 of the 1968 Act provides that where a person discloses to any other person certain information he shall be guilty of an offence, unless the disclosure was made in the performance of his duty. Section 118 relates to information about any manufacturing process or trade secret obtained by entry to premises by virtue of section 111 of the 1968 Act, or to any information obtained by or furnished to that person in pursuance of the 1968 Act. By section 118(1A), the offence provision in section 118(1) does not apply if the person making the disclosure is, or is acting on behalf of a person who is, a public authority for the purposes of the Act.

Article 5 amends section 28 of the Health and Safety At Work etc Act 1974 (“the 1974 Act”). Section 28(2) of the 1974 Act contains a general prohibition on the disclosure of “relevant information”, which is defined by section 28(1)(a) as being information that is obtained by a person under section 27(1) of the 1974 Act, or furnished to any person under section 27A by virtue of section 43A(6) of the 1974 Act or in pursuance of a requirement imposed by any of the relevant statutory provisions. The “relevant statutory provisions” are specified in section 53 of the 1974 Act. Article 5(2) inserts a new subparagraph (f) after subsection (3)(e) in section 28, creating a further gateway for the disclosure of relevant information by a recipient where the recipient is, or is acting on behalf of a person who is, a public authority for the purposes of the Act. A “recipient”, in relation to any relevant information, means the person by whom the information was obtained or to whom it was furnished (section 28(1)(b) of the 1974 Act).

Article 5(3) amends section 28(5) of the 1974 Act so that a person to whom information is disclosed pursuant to the new section 28(3)(f) is not prohibited from further disclosing that information.

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Article 5(4) inserts a new subsection (9A) after subsection (9) of section 28 of the 1974 Act, which disapplies the provisions of subsection (7) of section 28 where the person who has obtained information in the exercise of powers under sections 14(4)(a) and 20 of the 1974 Act is, or is acting on behalf of a person who is, a public authority for the purposes of the Act. Subsection (7) of section 28 prohibits the disclosure of information obtained in the exercise of those powers, except for the purposes of: the discloser's functions; any legal proceedings or any investigation or inquiry held by virtue of section 14(2) of the 1974 Act or for the purposes of a report of any such proceedings or inquiry, or of a special report made by virtue of that section; or with consent.

Article 6 repeals section 5 of the Biological Standards Act 1975. Section 5 provides that a person is guilty of an offence if he discloses any information obtained by him in the course of and by virtue of his membership of or employment by the National Biological Standards Board and which relates to a manufacturing process or a trade secret, unless the disclosure is made in the performance of his office or employment.

Article 7 inserts a new paragraph 5A after paragraph 5 of Schedule 11 to the National Health Service Act 1977 ("the 1977 Act"). Paragraph 5 of Schedule 11 to the 1977 Act prohibits any person who obtains information under section 57 of that Act, otherwise than in connection with the execution of that section and Schedule 11, or of an order made under that section, from disclosing information unless that disclosure is for the purposes of criminal proceedings, or of a report of any criminal proceedings, or with permission granted by or on behalf of a Minister of the Crown. By the new paragraph 5A, the restrictions in paragraph 5 do not apply if the person who has obtained any information as is referred to in that paragraph is, or is acting on behalf of a person who is, a public authority for the purposes of the Act.

Article 8 amends section 49 of the Audit Commission Act 1998 ("the 1998 Act"). Article 8(2) removes the restrictions on the disclosure of information obtained in the course of any study pursuant to any provision of the 1998 Act or of Part I of the Local Government Act 1999. Article 8(3) creates a new section 49A which relates to disclosure of information obtained under the 1998 Act or Part 1 of the Local Government Act 1999 by a person who is, or is acting on behalf of a person who is, a public authority for the purposes of the Act. Such information may be disclosed in any circumstances, including those in which disclosure would be authorised (but for section 49(1A)) under section 49(1), except where disclosure would, or would be likely to, prejudice the performance by such a person of any of his statutory functions. A person to whom section 49A(2) applies who discloses information otherwise than as authorised by subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum.

Article 9 amends section 20 of the Access to Justice Act 1999, by inserting new subsections (4A) and (4B) after subsection (4) of that section. These provide, in relation to the disclosure of information by a person who is, or is acting on behalf of a person who is, a public authority for the purposes of the Freedom of Information Act 2000, once the period of one hundred years starting at the end of the calendar year in which a record containing the information was created has expired, nothing in section 20(1) of the Access to Justice Act 1999 shall prohibit the disclosure of information.