

# Freedom of Information

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## Headlines:

- First Scottish decisions, p.15
- Isle of Wight gets it right, p.16
- Pernod seeks Bacardi data, p.16

## Inside this issue:

Editorial	2
Electronic Records Management: Part II—Managing records on a local area network (LAN)	3
The FOI Act Exemptions—Part IV	5
Statutory prohibitions—opportunity missed	8
The re-use of public sector information	11
FOI News	15

## ‘Commercial secrets’ likely to be more readily available

Contractors working with public bodies may need to accept that more of their business details can be made public under the Freedom of Information Act, warns the Information Commissioner.

In his first FOI decision, Richard Thomas said the potential prejudice to the commercial interests of an organisation engaged with a public body would not necessarily be sufficient to protect details such as payments from being disclosed.

The decision concerned a request made to the National Maritime Museum for details of

payments to Conrad Shawcross, an artist, for his exhibition at the museum. The museum refused the request, arguing that disclosure of the payments would prejudice its commercial interests while it was involved in negotiations for a new exhibition. It also said such disclosure would affect Mr Shawcross’ own commercial interests.

Section 43(2) FOIA states that, *Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).*

Mr Thomas ruled that the public interest in protecting the museum’s bargaining position was sufficient to prevent disclosure “for the time being.”

In reaching that decision, the Commissioner gave particular weight to the fact that the museum was dealing with public funds and needed to ensure value for public money.

However, once the negotiations ended, “any prejudice to [the museum’s] commercial interests would no longer outweigh the public interest in releasing the information,” said the Commissioner.

*(Continued on page 15)*

## Commissioner’s First Annual Report

In the first Annual Report to be published by the Information Commissioner since the coming into force of the Freedom of Information Act, Mr Thomas reminds us that, “Knowledge is power,” and states that the phrase underlines the importance of Freedom of Information as the 21<sup>st</sup> Century gets into its stride.

“Freedom of Information brings knowledge to the people,” continues Mr Thomas, and the people “must be the ultimate custodian of power in any genuine democracy.”

The Commissioner’s Office, as of 12th July, had received 1,157 complaints under the Freedom of Information Act. 224 cases had been closed. 933 cases were still being evaluated.

During an event to launch the Annual Report, Mr Thomas said that it’s important that his Office achieves the correct balance between preventing a backlog and ensuring that each and every complaint is looked at carefully. At present, the FOI section of his office is adequately funded by the £5 million annual grant-in-aid it

receives from the Department of Constitutional Affairs (the data protection side of the Commissioner’s activities is now funded entirely by data protection notification fees). However, Lord Falconer has indicated that he does not want FOI to fail merely because the Commissioner’s Office is not properly funded—this assures Mr Thomas of further funds for FOI work if he needs them.

The Annual Report sets out how the Commissioner sees his responsibilities for the  
*(Continued on page 15)*