IN THE HIGH COURT OF SOUTH AFRICA
CAPE OF GOOD HOPE PROVINCIAL DIVISION

CASE NO: 1289/03

In the matter between:

ANDREW CHRISTOPHER DAVIS **APPLICANT**

and

CLUTCHO (PTY) LTD **RESPONDENT**

Advocate for Applicant: Adv. P. A. van Eeden

Advocate for Respondent: Adv. B. J. Manca

JUDGMENT DELIVERED THIS 10th DAY OF JUNE 2003

Meer J:

INTRODUCTION

This is an application concerned with the right of a shareholder in a private company to obtain access to information from the company under the Promotion of Access to Information Act No 2 of 2002 ("the Act").

The applicant, who owns 30% of the shares in respondent company requested access to certain company books of account for the purpose of determining the value of his shares. The respondent refused

applicant's request for access and the applicant now applies to Court in terms of Section 78 (2)(d)(1) of the Act for an order that the books of account be made available to him.

The Act

The Act is a relatively new one. It was enacted to give effect to the constitutional right of access to information embodied in section 32 of the Constitution[1], by providing for access to information held by the state and private bodies subject to justifiable limitations[2], if such information is required for the exercise or protection of any rights. It aims at fostering a culture of transparency and accountability in public and private bodies by giving effect to the right of access to

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1 The Constitution of the Republic of South Africa Act 108 of 1996.
Section 32 of the Constitution states:

> "(1) Everyone has the right of access to -
>
> (a) any information held by the state; and
>
> (b) any information that is held by another person and that is required for the exercise and protection of any rights.
>
> (2) National legislation must be enacted to give effect to this right and may provide for reasonable measures to alleviate the administrative and financial burden on the state."

2 "Section 9 **Objects of Act.** –The objects of this Act are –

> (a) to give effect to the constitutional right of access to --
>
> (i) any information held by the state; and
>
> (ii) any information that is held by another person and that is required for the exercise and protection of any rights:
>
> (b) to give effect to that right --
>
> (i) subject to justifiable limitations , including, but not limited to , limitations aimed at the reasonable protection of privacy, commercial confidentiality and effective, efficient and good governance; and
>
> (ii) in a manner which balances that right with any other rights , including the rights in the Bill of Rights in Chapter 2 of the Constitution;".

In respect of private companies, section 67 protects access to records privileged from production in legal proceedings, section 68 protects records pertaining to commercial information of a private body in certain instances, and section 69 provides for the protection of research information of private bodies.

information[3].

In order to analyse the nature of the application it is necessary to refer to key provisions of the Act.

Part 3 of the Act deals with access to records of private bodies. It provides for the circumstances and manner in which access to records of a private body may be requested, the procedure to be followed by the head of a private body in granting or refusing the request for access to information[4] and enables a person aggrieved by a refusal of a private company to consent to access, to apply to court for an assessment of the validity of a refusal.[5]

Of particular relevance for the purposes of determining this application are sections 50 (1)(a) of the Act which states that records requested from a private body must be required for the exercise and protection of any rights, and section 68 of the Act, (quoted later in this judgement) which prescribes the grounds upon which a request for access to records may be refused by the head of a private company.

Section 50(1) states:

> "**50. Rights of access to records of private bodies.-** (1) A requester must be given access to any record of a private body if–
>
> (a) that record is required for the exercise or protection of any rights;

3 See the very useful commentary on the Act by Iain Currie and Jonathan Klaaren *The Promotion of Access to Information Act Commentary* (2002) *Siber*Ink, Cape Town at 1.
4 Section 56
5 Sections 78(2)(d) and 82

(b) that person complies with the procedural requirements in this Act relating to a request for access to that record; and
(c) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part."

The applicant seeks to invoke the provisions of the Act in requesting access to certain books of account held by the respondent company. He does not accept that respondent's reasons for refusal are valid in terms of section 68 of the Act.

The question as to whether the records requested by applicant are required for the exercise and protection of any rights, as well as the validity of respondent's refusal must be considered within the following facts and circumstances pertaining to this application.

Background Facts

The respondent is a small private company that is run as a family business. It has a workshop which *inter alia* services clutches and brakes.

The sole director of the company is applicant's father, Frederic Davis Armitage.

70% of the shares of the company are owned by the Davis Family Trust, of which applicant's father is a trustee. Applicant's brother, Gordon, is the manager of the business.

In 1999, applicant bought 30% of the shares in the company and was appointed as a director. He was also employed as workshop manager.

In the beginning of 2002, conflict developed between the applicant and his brother, Gordon, which culminated in the applicant being removed as a director and fired in September of that year.

In his founding affidavit, applicant states that in January 2002 he became concerned about the manner in which the respondent was being managed when he discovered that various companies had closed respondent's credit facilities

because his brother, Gordon, had not paid their accounts. He had requested a director's meeting as a consequence but a meeting was not convened. He then requested and obtained various company documents from the auditors including financial statements and loan accounts. His concerns were increased when he discovered from the financial statements that his monthly salary of R16 600 was reflected in the amount of R8000 only. This, he said, suggested to him that the financial statements were not a true reflection of Respondent's financial transactions.

Respondent, in its answering affidavit, denies the allegation of financial mismanagement although it concedes there were temporary problems with its credit facilities early in 1992.

Applicant was removed as a director of the company by resolution of the shareholders taken at a meeting of 12 August 2002. The minutes of that meeting state that no reasons were given for the resolution and, in fact, record the Chairman as stating that reasons were not needed to be given for applicant's removal. On 20 September 2002 applicant was fired by his brother, Gordon, and as of that date he was barred from respondent's place of business.

Applicant's dismissal was referred to arbitration in terms of the Labour Relations Act 66 of 1995 in March 2003.The applicant's case was, however, dismissed as the arbitrator found that she had no jurisdiction to hear the matter, apparently on the basis that applicant was not an employee, but a partner in the business.

After the termination of his directorship, applicant sought to sell his shares in respondent in

accordance with the articles of association, more specifically with clause 7.7.1-7.7.4 thereof[6], which specify the procedure for the sale and valuation of shares. An attempt was made to reach agreement with other shareholders on the purchase of applicant's shares by them, and a valuation pursuant to clause 7.7.3 of the articles was obtained from respondent's auditors, determining their value at R100 000. The applicant was not satisfied with this valuation.

On 22 January 2003, the applicant requested access to respondent's books of account in terms of section 50 of the Act. The request identified, (as is required at section 53(2)(d) of the Act), the right he sought to exercise, and explained why the information was required for the exercise of such right. This appears in the following extract from the prescribed Form C:

> "1. Dui aan watter reg uitgeoefen of beskerm word: *Die reg om die werklike*

6 "7.7.1 If a member of the company desires to sell all or any of his shares of the company he shall give notice, in writing, of his intention to sell, to the directors of the company, and state the price he requires for the shares.

7.7.2 The directors shall within 14 days of the date of receipt of the notice referred to in article 7.7.1 advise every other member of the company of the contents thereof and each such member shall be entitled to acquire the shares so offered within 14 days after the date of receipt of such advice at the same selling price that the proposed seller wishes to obtain: Provided that if more than one member makes an offer for all of the shares so offered, the shares shall be sold to each such member in equal proportions, and where fractional proportions of shares remain, such members shall become joint holders of such fractional proportions of the shares.

7.7.3 If the members of the company are unable to agree upon the selling price of the shares, the auditor of the company shall be requested to determine the true and fair value thereof and the members shall accept the value as the selling price of the shares.

7.7.4 If none of the members of the company offers to purchase the shares within the time referred to in article 7.7.2, or if members of the company offer to purchase a part of the shares so offered, the member who is offering the shares for sale may offer the shares or the remaining portion of the shares which have not been purchased by members of the company, for the sale to any other person, at a price at least equal to the price as in article 7.7.1 above, and the company in general meeting shall approve the registration of the shares in the name of that person unless they have good reason to refuse such registration."

finansiele posisie van die maatskappy (clutches) vas te stel.

2. Verduidelik waarom die rekord wat versoek word, benodig word om voormelde reg uit te oefen of te beskerm: *Dit sal my in staat stel om die finansiele rekords te rekonstrukteer en dan die waarde van my 30 % aandele to bepaal."*

Put simply applicant sought to exercise his right to ascertain the true financial position of the company. The purpose for requesting the records was to enable the applicant to reconstruct respondent's financial records and value his 30% shares in the respondent.

In amplification hereof applicant states in his founding affidavit that:

- as a shareholder in the company he has the right of access to the financial records requested because of his suspicion that all transactions are not correctly written up in the financial statements. The records, being books of first entry, compiled from bank statements and invoices will enable him to determine the actual income of respondent and the value of his 30% shareholding which he wishes to sell;

-he is mistrustful of the valuation placed on his shares by respondent's auditors and is not bound by such value;

-he cannot protect his R100 000 investment in respondent as he can no longer take part in its management; and

-he must urgently determine if he is being financially prejudiced by the discrepancies between the financial records and the financial statements. If this is so, he intends instituting an action against the respondent.

In his replying affidavit, applicant states that during 1999 his father informed him that his shareholding was worth R300 000. Given the subsequent growth in the business and turnover since then, his shareholding is currently worth in excess of R300 000.

On 30 January 2003, applicant's request for access to the aforementioned information was refused in a letter from respondent's attorneys to the applicant.

The reason for the refusal, as set out in the letter, is as follows:

> "Regarding your client's request for certain records and information from my client, it is my instructions that, in view of the fact that the other shareholder in the Company is no longer interested in purchasing your client's shares in the Company, the question regarding the value thereof is no longer relevant, and the information and records which are requested is therefore denied."

Applicant submitted that the ground for refusal in the letter did not constitute a valid reason in terms of section 68 of the Act (quoted later), and he consequently launched this application in March 2003 as a matter of urgency.

In addition to the reason in its letter of January 2003, the respondent subsequently furnished further reasons for refusal of the information in its answering affidavit, dated 14 March 2003, in opposition to this application.

The reasons stated therein are that the records are highly relevant to the respondent's financial viability. Access to them would enable the applicant to have detailed insight into the respondent's margins, customer lists, financial planning and profit margins. Disclosure of the information would therefore be likely to cause harm to the commercial and financial interests of the respondent, more particularly, because the applicant may use that information to set himself up in a business in competition with the respondent.

Mr **Van Eeden**, for the applicant, argued correctly that the concession by respondent (in its further reasons), that the records requested were highly relevant to respondent's financial viability, gainsaid its denial (in its letter of January 2003 refusing the information) that the applicant needs those financial records in order to value its shareholding.

Applicant questioned respondent's right to adduce further reasons to those in its letter of refusal which formed the basis of the application. He nonetheless responded to them by submitting that:

- because of his involvement in respondent's business, he already has knowledge of its margins, and customer lists until at least September 2002;

- any potential competition flows from the fact of his past involvement in the business and not from his exercise of his right to information. He was not seeking the customer lists, and he suggested that respondent delete the names of individual customers from the records requested if it so wished. Applicant also undertook not to make the information available to any other person save his lawyer;

- the records he sought could not provide insight into financial planning as they related to past transactions.

In addition, applicant submitted that respondent's further reasons were also not valid reasons in terms of Section 68 of the Act.

The Dispute Between The Parties

At issue between the parties and the focus of argument was whether the records requested by applicant were required for the exercise or protection of any rights, as specified at section 50(1)(a) of the Act, and whether respondent's refusal of

applicant's request for information was valid in terms of section 68 of the Act. I shall deal with these in turn.

Were the records requested required for the exercise of his rights?

For convenience, I quote section 50(1)(a) again:

> "**50. Rights of access to records of private bodies.-** (1) A requester must be given access to any record of a private body if–
>
> (a) that record is required for the exercise or protection of any rights".

Mr **Van Eeden** argued that the applicant had made out a proper case, in terms of section 50 (1) (a) of the Act, that the records requested were required for the exercise or protection of his rights.

The phrase "required for the exercise or protection of any rights" at section 50 appears in the constitutionally enshrined right of access to information in section 23 of the Interim Constitution[7] *and* section 32 (1)(b) of the Final Constitution[8].

The phrase has been considered by our courts within the context of the Interim and Final Constitutions only, its most recent consideration as far as I have been able to ascertain, being by the Appellate Division in *Cape Metropolitan Council v Metro Inspection Services* CC 2001 (3) SA 1013 at para 28, where **Streicher** JA said:

7The Constitution of the Republic of South Africa Act 200 of 1993
8The Constitution of the Republic of South Africa Act 108 of 1996

> "Information can only be required for the exercise or protection of a right if it will be of assistance in the exercise or protection of the right. It follows that, in order to make out a case for access to information in terms of s 32, an applicant has to state what the right is that he wishes to exercise or protect, what the information is which is required and how that information would assist him in exercising or protecting that right."

This accords with the views on the phrase "required for the exercise or protection of any rights" expressed in:

- *Shabalala v Attorney General, Transvaal and Another* 1995 (1) SA 608 (T) at 624C-D where **Cloete** J, discussing section 23 of the Interim Constitution, stated that "required" conveys an element of need; the information does not have to be essential but it certainly has to be more than useful.

- See also *Nortje and Another v Attorney- General, Cape, and Another* 1995 (2) SA 460 (C) at 474G where **Marais** J, also commenting on section 23 of the Interim Constitution, stated that the word "required" must be understood as meaning "reasonably required" as opposed to simply "needs" or "desires". This was endorsed by **Farlam** J in *Van Huyssteen and Others NNO v Minister of Environmental Affairs and Tourism and Others* 1996 (1) SA 283 (C) at 299-300.

-See also *Inkatha Freedom Party and Another v Truth and Reconciliation Commission and Others* 2000 (3) SA 119 at 137H-I where **Davis** J stated:

> "In short, the content of the right must be examined within the context within which it is

claimed. The very wording of s 32, which contains the phrase 'required for the exercise of rights', points in the direction of such an enquiry for what is required is dependent on the facts."

Mr. **Manca** contended that, notwithstanding section 32 of the Constitution and the provisions of the Act, the applicant did not have the right of access to information.

He argued that a prerequisite for obtaining access to information under the Act was an antecedent legal right to such information. The applicant, he said, as a shareholder, did not have the antecedent legal right to inspect the books of record of the company because no such right was accorded to a shareholder either by the Companies Act No. 61 of 1973 ("the Companies Act"), at common law or in respondent's articles of association. He could therefore not exercise a right which was not recognised in law.

The Companies Act at section 284(3) accorded that right to directors only, and not shareholders. Mr **Manca** contended that ordinary members of a company, like applicant, only have rights of inspection of books of account if the articles of association expressly so provide, which was not the case here. In any event, the Companies Act provided sufficient protection to a shareholder wishing to establish the financial position of a company, without necessitating reliance on the Act. Section 302 of the Companies Act, for example, obliged a company to send annual financial statements to the members of a company. He referred

also to section 252 of the Companies Act which sets out a shareholder's remedies in cases of oppressive or unfairly prejudicial conduct by the company, and enables such a shareholder to approach a court on application for appropriate relief. I note that neither of these sections, however, caters for access to accounting records.

Mr **Manca** also referred to sections 281[9], 286[10], 298[11], 300[12], 309[13], 206[14] and 113[15] of the Companies Act, none of which, in my view, provide adequate relief for a person in applicant's position. These sections do not enable shareholders in the position of applicant to acquire the requisite information to safeguard their investments or to gain information about the value of their shares. It is clear that those rights afforded by the Companies Act, to shareholders, fall short by far of the constitutional right of access to any information at section 32 of the Constitution, and section 50(1)(a) of the Act.

The effect of Mr **Manca**'s submissions is that the Companies Act would take precedence over, and limit the fundamental right of access to information at section 32 of the Constitution, and mirrored in the Act. This would be contrary to the constitutional imperative against legislation limiting rights entrenched in the Bill of Rights, as well as the imperative that legislation must be

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9 Section 281 provides for the auditor's right of access to books and accounting records, and to be heard at general meetings.

10 Section 286 provides that the directors of a company shall cause to be made out annual financial statements, and shall lay them before the annual general meeting.

11 Section 298 provides for the approval and signing of financial statements by the directors of a company.

12 Section 300 provides for auditor's duties as to annual financial statements and other matters.

13 Section 309 stipulates for the rights of members and others to copies of annual financial statements and interim reports.

14 Section 206 provides for the rights of members to inspect minute books of a company.

15 Section 113 caters for the inspection of the register of members.

interpreted to give effect to the Bill of Rights.

Section 36(2) of the Constitution states:

"(e)xcept as provided in subsection (1)[16] or in any provision of the Constitution, no law may limit any right entrenched in the Bill of Rights."

Section 39(2) states :

"(w)hen interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objects of the Bill of Rights."

The Companies Act cannot, contrary to section 36(2) of the Constitution, limit the right of access to information at section 32 of the Constitution, and mirrored in the Act, nor can it be interpreted to exclude such right, which would thus be contrary to the spirit of the Bill of Rights. To the extent that the Companies Act does not provide for access to information, section 32 of the Constitution, and the Act, must be read into the Companies Act. It could never have been the intention of the legislature that a shareholder aggrieved by financial statements, as in this case, should be barred from access to the information required to shed light on such statements in order to exercise his rights to sell shares or even prosecute a case against the company in terms of remedies available to him in terms of either the Companies Act or the common law.

This is reinforced by the pre-amble to the Act which states that the Act seeks to counter

"a secret and unresponsive culture in public and private bodies which often led to an abuse of power and human rights violations",

16Subsection (1) provides that: " The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including- (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose."

and also

> "the right of access to any information held by a public or private body may be limited to the extent that the limitations are reasonable and justifiable in an open and democratic society".

In my view, the Act must permit a shareholder, like the applicant, to obtain access to information in the books of account to safeguard his investment in the company or to ensure that he has knowledge of the value of his shares. If the Companies Act does not provide an equivalent process to safeguard his proprietary interest in the company, then it cannot be contended that the Act should be superseded by the Companies Act. In the as yet unreported Constitutional Court decision of *Ingledew v The Financial Services Board and Two Others*[17], it was acknowledged that the Act is applicable in instances of concurrent rights to information; all the more so in the instant case given the absence of a right to the information sought under the Companies Act and consequently the absence of concurrent rights.

Regard being had to the above, I have come to the view that applicant has established that the records requested by him are reasonably required for the exercise and protection of his rights as a shareholder to value and sell his shares, to verify his concerns about financial mismanagement and take any resultant steps, and to protect his investment in the Company. The records will be of assistance to him in the exercise and protection of such rights and a denial thereof would go against the principles of accountability and transparency inherent in the Act and Constitution.

Validity of Respondent's Refusal of Access to Information

The validity of respondent's refusal to consent to the information requested must

17 CCT6/02 (unreported) decided on 13 May 2003 at paragraph 36

be assessed in light of the relevant provisions of the Act.

Section 56(3)(a) specifies the mandatory requirements of a notice refusing access to information, and section 68 specifies the grounds upon which the head of a private body may refuse access to information. Section 81(3) stipulates that respondent bears the burden of establishing compliance with the provisions of these sections in refusing the information requested.

Section 56 states:

> "56. **Decision on request and notice thereof.—**(1) Except if the provisions regarding third party notification and intervention contemplated in Chapter 5 of this Part apply, the head of the private body to whom the request is made must, as soon as reasonably possible, but in any event within 30 days, after the request has been received or after the particulars required in terms of section 53(2) have been received-
>
> a) decide in accordance with this Act whether to grant the request; and
>
> b) notify the requester of the decision and, if the requester stated, as contemplated in section 53 (2) (e), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible.
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> (2) If the request for access is granted, the notice in terms of subsection (1) (b) must state-
>
> a) the access fee (if any) to be paid upon access;
>
> b) the form in which access will be given; and
>
> c) that the requester may lodge an application with a court against the access fee

to be paid or the form of access granted, and the procedure, including the period allowed, for lodging the application.

(3) If the request for access is refused, the notice in terms of subsection (1)(b) must—

(a) state adequate reasons for the refusal, including the provisions of this Act relied on;

(b) exclude, from any such reasons, any reference to the content of the record; and

(c) state that the requester may lodge an application with a court against the refusal of the request, and the procedure (including the period) for lodging the application."

Neither the letter of January 2003 refusing applicant's request for access to the information sought, nor the subsequent reasons furnished by respondent complied with these requirements.

Section 68 provides thus:

"**68 Commercial information of private body.**—1)Subject to subsection (2), the head of a private body may refuse a request for access to a record of the body if the record—

(a) contains trade secrets of the private body;

b) contains financial, commercial, scientific or technical information, other than trade secrets, of the private body, the disclosure of which would be likely to cause harm to the commercial or financial interests of the body;

(c) contains information, the disclosure of which could reasonably be expected —

i) to put the private body at a disadvantage in contractual or other negotiations; or

ii) to prejudice the body in commercial competition; or

(d) is a computer program, as defined in section 1 (1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by the private body, except insofar as it is required to give access to a record to which access is granted in terms of this Act.

(2) A record may not be refused in terms of subsection (1) insofar as it is consists of information about the results of any product or environmental testing or other investigation supplied by the private body or the results of any such testing or investigation carried out by or on behalf of the private body and its disclosure would reveal a serious public safety of environmental risk.

(3) For the purposes of subsection (2), the results of any product or environmental testing or other investigation do not include the results of preliminary testing or other investigation conducted for the purpose of developing methods of testing or other investigation."

The reason provided in the letter of January 2003 refusing the request for information clearly does not incorporate any of the grounds specified at section 68.

The subsequent reasons do not adequately meet the grounds for refusal either, nor is there compliance with section 81(3) of the Act in that respondent has not discharged the burden of establishing the existence of the reasons for refusal as set out at section 68 of the Act. Mr **Van Eeden** correctly stated that respondent had not established that its margins of profit contained trade secrets. Nor had it shown that the disclosure of the records requested would be likely to cause harm to respondent's commercial and financial interests. It was not sufficient for respondent simply to claim that the disclosure of its margins disentitled applicant to the relief he seeks.

Respondent did allude to commercial competition, a ground specified at section 68 (1) (c) (iii), but respondent did not provide sufficient grounds as it is required

to do in terms of sections 53 and 68 read with 81(3), to sustain a refusal for such reason. Respondent's reasons for refusal are accordingly not in accordance with the Act and therefore not valid reasons.

Mr **Van Eeden** argued also that the respondent was not entitled to advance additional reasons over and above those furnished in the letter of January 2003 for the refusal of the information requested, and it was therefore not open to it to advance further reasons as it had done in its answering affidavit. He said that the initial reasons in the aforementioned letter were those in terms of section 56(3)(a) which had precipitated this application, and the application should accordingly be assessed in accordance with those reasons alone.

An application to Court in terms of section 78(1)(d) flows from an applicant being aggrieved by a decision of the head of a private body to refuse a request for access and is based on the reason for such refusal. Section 82 of the Act, however, exhorts a Court hearing an application to grant any order that is just and equitable. It may well be that the circumstances of a particular case will dictate that for a Court to grant an order that is just and equitable, further reasons have to be entertained. This will vary from case to case. It would, I believe, be inequitable to prescribe a hard and fast rule in this regard. In the case at hand, the initial basis for refusal was clearly not the real reason therefore, but appeared to have been hurriedly formulated in a letter of response. The real reasons clearly emerged later in respondent's answering affidavit. I took the view in the circumstances, that any order granted could only be just and equitable if these further reasons were to be considered and ventilated. This occurred and they, too, were ultimately rejected for not being in compliance with the Act.

Conclusion

All of the above leads me to conclude that from the facts averred in applicant's affidavits which have been admitted by the respondent, together with the facts alleged by the respondent:

-the applicant has satisfied the requirements of section 50 (1) (a) of the Act in that the records sought by him are required for the exercise and protection of his rights as a shareholder to value and sell his shares, verify his suspicions concerning financial mismanagement and protect his interest in respondent;

-the respondent's notification of the refusal of the request does not comply with the terms of section 56 (3)(a) of the Act, and the reasons for the refusal do not constitute valid reasons in terms of section 68 of the Act; and

-the applicant has accordingly made out a case which entitles him to the information sought.

I do not, however, consider it necessary for applicant to have access to respondent's customer lists for the purpose of exercising the rights he seeks to protect. This the applicant himself has conceded. It would be equitable if the information were restricted to applicant and his legal representative only. These are justifiable limitations of applicant's right of access to information imposed in the interests of respondent's privacy and commercial confidentiality in accordance with section 9(2) (b) (1) of the Act.

Since it is the applicant who requires the information, he should bear the costs of accessing the information. The fact that he has applied to Court to exercise his right of access to the information does not detract from this.

ORDER

Accordingly I make the following order:

1. The Respondent is ordered to furnish the applicant with the following documents within 30 working days of the date of this order:

A printout of:

(a) the respondent's cash book from the date it commenced business to date;
(b) the respondent's detailed general ledger for the same period;
(c) the respondent's debtors' ledger for the same period;
(d) the respondent's creditors' ledger for the same period; and
(e) any journal reflecting the shareholders' loan accounts for the same period.

The names of respondent's customers are to be deleted from such documents should the respondent so wish.

2. In the event of the respondent not furnishing the applicant with the aforementioned documents within the period mentioned in paragraph 1 above, the sheriff for the district of Worcester shall be authorized to take possession of the said documents from the respondent 's premises and hand them over to the applicant.

3. The applicant is prohibited from disclosing the information in the aforementioned documents or the documents themselves to any person other than his legal representative.

4. The respondent shall bear the costs of this application.

MEER J