

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2018

Public Authority: Companies House

Address: Crown Way
Cardiff
South Glamorgan
CF14 3UZ

Decision (including any steps ordered)

1. The complainant has requested the email address relating to a submission made to Companies House.
2. The Commissioner's decision is that Companies House has correctly applied section 40(2) to withhold this information.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 3 May 2017, the complainant requested information in the following terms:

"This matter is of some importance and full details of who actually submitted the information on both occasions in 2012 is required by the Company, therefore please could you advise which email address was used to electronically file the details.

If at all possible, it would be of further help to know a) when the application was first made to register our Company for electronic filing and b) what email address was used when the application was made."

5. On 16 May 2018, Companies House responded. It confirmed that forms could only be filed by individuals with authorisation to do so. It explained that an email address can contain both personal and corporate information. It also explained that email addresses are not placed into

the public domain and are considered confidential. Companies House refused to provide the requested email address under sections 40 and 41 of the FOIA. Companies House also confirmed that it did not hold information regarding when the company registered for electronic filing but it could confirm that the first records filed electronically were from 2005. It also provided a link to see the filed documents and company records.

6. On 24 June 2017, the complainant wrote to Companies House to explain that she did not submit your request under the FOIA, rather, that she was making a private request on the basis of general and statutory duties to her company as director. She asked Companies House to reconsider her request.
7. On 26 June 2017, Companies House responded and set out that it considered that the request was valid under the FOIA as it was a request for information that is not in the public domain. It confirmed that it was refusing to provide the information as it is both personal and confidential. Companies House again explained that the forms could only be filed by individuals authorised to do so by the company.
8. On 26 June 2017, the complainant wrote to Companies House and requested an internal review of the handling of her request for information. She explained that, as the requested email address was used to update her details, she disagreed that it was not her personal information. She explained that her details had been changed by someone not authorised to do so and that she considered that fraud has been committed.
9. On 20 July 2017, Companies House provided the complainant with the outcome of its internal review. It upheld its decision to withhold the information under section 40 and 41.

Scope of the case

10. The complainant contacted the Commissioner on 3 August 2017 to complain about the way her request for information had been handled.
11. The Commissioner considers the scope of this investigation to be whether Companies House is entitled to withhold the disputed information under either section 40 or 41. The Commissioner has not investigated the second element of the request as Companies House's confirmation that the information is not held has not been disputed.
12. The Commissioner can only consider whether a request has been handled correctly under the FOIA. She cannot comment or issue

decisions regarding allegations of fraud or the internal procedures of a public authority. The Commissioner has explained to the complainant that if she is concerned regarding issues outside of the FOIA, it may be appropriate to contact the relevant authority or obtain legal advice.

Background

13. Companies House provided a background to its powers under the Companies Act 2006.
14. Companies House is primarily a registry of company information relating to limited companies and other entities. The Registrar of Companies ("Registrar") is not an arbiter of fact and has no investigative powers under the Companies Act. She must accept documents in good faith and those documents delivered to her are subject to limited examination checks to ensure that they have been completed correctly. Information provided on the documents are not verified or checked for their accuracy. The placing of this information on the public register should not be taken to indicate that the information has been verified for accuracy.
15. The Companies Act requires all companies to keep certain registers that contain information about their officers. These include a register of their directors and if appropriate a register of secretaries. Whenever there is a change to an officer's details, such as if the company terminates the appointment of an officer or if a new officer is appointed, it must update these registers. The company must then file a corresponding form, notifying the registrar of the change within 14 days of the change taking place.
16. Companies House explained that the filing of a form with Companies House does not have legal effect upon registration, but takes effect when the change is entered into the appropriate company register by the company. Therefore, the form being filed with Companies House is a notification of an event that has already taken place.
17. Companies House further explained that it is for a company itself to determine the processes by which officers are appointed and terminated, and this will be set out in the company's own memorandum and articles of association.

Reasons for decision

18. Section 40(2) of the FOIA states that personal data is exempt from disclosure if to do so would breach any of the data protection principles contained within the Data Protection Act 1998 (DPA).
19. Personal data is defined in section 1(1) of the DPA as:

"... data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any person in respect of the individual."
20. Companies House has provided the withheld information to the Commissioner and explained that the email address identifies a living individual.
21. The Commissioner has reviewed the withheld information and it is clearly a personal email address which includes a personal identifier. Therefore, in the particular circumstances of this request the Commissioner is satisfied that the email constitutes personal data.
22. As set out above, information is exempt from disclosure where disclosure would breach one of the data protection principles. The most relevant data protection principle in this case is the first data protection principle which states:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

 - (a) at least one of the conditions in Schedule 2 is met, and*
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*
 23. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
 - The reasonable expectations of the individual(s) in terms of what would happen to their personal data. Such expectations could be shaped by;
 - what the public authority may have told them about that would happen to their personal data;

- their general expectation of privacy including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - any particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, i.e. damage or distress, would the individual suffer if the information was disclosed? In consideration of this factor, the Commissioner may take into account;
 - Whether information of the nature requested is already in the public domain;
 - If so, the source of such a disclosure, and even if the information has previously been in the public domain, does the passage of time mean that disclosure now could still cause damage or distress.
24. Furthermore, notwithstanding the data subjects' reasonable expectations or any damage or distress caused by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure into the public domain.
25. In considering 'legitimate interests', in order to establish if there is a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sake, as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach.
26. Companies House explained that it considered the personal data was likely to relate to the individual's private life rather than a public role. Companies House explained that it considered the data subject would have a strong expectation that this information would not be shared and, in particular, would not be disclosed to the public at large via an FOI request. Companies House also explained that there may be security implications when disclosing an email address.

27. Regarding the reasonable expectation of the data subject, Companies House explained that documents filed via the Companies House electronic filing service appear on the public register but the associated filing details do not. Authentication of the documents delivered in this way is via the authentication code and this information does not appear in the public domain.
28. Companies House also set out that section 1087(1)(i) of the Companies Act 2006 provides that email addresses must not be made available for public inspection by the Registrar.
29. Section 1087(1) states:

"the following material must not be made available by the Registrar for public inspection –

...

Any email address, identification code or password deriving from a document delivered for the purpose of authorising or facilitating electronic filing procedures or providing information by telephone."
30. Companies House explained that it considered the data subject would have a legitimate expectation that their email address would not be made publicly available. It set out that, in this case, disclosure would be contrary to the Companies Act.
31. Companies House explained that any searcher of documents electronically filed will be aware that the details of the presenter of that document is not shown on the form or linked publicly in any way to the transaction.
32. Companies House confirmed that it had considered the legitimate interest in disclosure of the requested information and balanced it against the rights and freedoms of the data subject in question. Companies House acknowledged that there may be a legitimate private interest in disclosure, however, it confirmed that it did not consider this interest extends to a public interest in disclosure under the FOIA. Companies House explained that it considers that any legitimate interest in disclosure is strongly outweighed by the impact on the data subject's rights and freedoms.
33. Companies House explained that it considered that there is an implicit expectation that anyone using the Companies House electronic filing system may rely on their information not being disclosed into the public domain and that it will be kept confidential. Companies House set out that the electronic filing system requires an authentication code and

password to be entered to allow access to the system and it considers that this provides an explicit expectation that the system is secure.

34. Companies House explained that as a provider of an online service, it would be extremely poor practice, and often dangerous, to release an individual's email address into the public domain. Companies House explained that disclosure could put the data subject at risk of hacking or identity fraud, in addition to being an invasion into their privacy.
35. The Commissioner has considered the withheld information and the submission provided by Companies House, as well as her own guidance regarding the FOIA and DPA.
36. The Commissioner appreciates that the complainant has legitimate and important reasons for requesting the information, however, disclosure under the FOIA is to the world at large and not to an individual. The Commissioner must, therefore, consider whether disclosure of the requested personal data into the public domain is in keeping with the DPA.
37. In the specific circumstances of this case, the Commissioner considers that disclosure of the requested information would breach the first data protection principle as it would be unfair and may be unlawful.
38. The information requested was clearly imparted in circumstances in which the data subject would reasonably expect their personal data to remain confidential. Whilst the Commissioner acknowledges that the complainant is concerned that fraud has occurred, she does not have sufficient evidence to justify overriding the data subject's right to privacy. The Commissioner does not have the power to investigate whether fraud occurred and she cannot, therefore, comment on whether any wrongdoing has occurred.
39. As set out by Companies House, section 1087 of the Companies Act prohibits certain information from being made available for public inspection.
40. Section 1087(1)(i) specifies that any email address derived from a document delivered for the purpose of authorising or facilitating electronic filing procedures must not be made available for public inspection.
41. The Commissioner considers that it is likely that disclosure under the FOIA would be a breach of section 1087 of the Companies Act 2006 and would, therefore, be unlawful. This, in turn, would mean that disclosure of the information would breach the first data protection principle of the DPA.

42. For the reasons set out above, the Commissioner considers that Companies House is correct to withhold the information under section 40(2) of the FOIA. She has not gone on to consider section 41 as this would not affect the conclusion of this case.

Right of appeal

43. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

44. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jonathan Slee
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF