

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2023

Public Authority: Companies House
Address: Crown Way
Cardiff
CF14 3UZ

Decision (including any steps ordered)

1. The complainant has requested information about the payment of Late Filing Penalties ("LFP") for a specific business. Companies House - an executive agency of the Department for Business and Trade and subject to FOIA - provided some information within scope of the request, however refused to provide the remainder citing section 40(2) as a basis for doing so.
2. The Commissioner's decision is that Companies House is entitled to rely on section 40(2) to withhold the requested information.
3. The Commissioner does not require further steps.

Request and response

4. On 9 February 2023, the complainant wrote to Companies House and requested information in the following terms:

"By way of background I set out below the key events which have led me to write this letter.

25th July 2022 [NAME REDACTED] is adjudged bankrupt and accordingly resigns as a director of [BUSINESS NAME REDACTED]

16th August 2022 [NAMES REDACTED] of [BUSINESS NAME REDACTED] Tunbridge Wells are appointed joint trustees in bankruptcy

6th September 2022 [NAME REDACTED] and I are appointed directors of [BUSINESS NAME REDACTED]

[NAME REDACTED] and I have been trying to get hold of the reins of [BUSINESS NAME REDACTED]. Unfortunately, we have not been helped in our task by [PREVIOUS DIRECTOR NAME REDACTED], who has refused all requests for information and documentation.

Which brings me to the purpose of this letter.

The (new) directors are keen to ensure that the accounts filed with Companies House show a true and fair view and comply with the law. We are, accordingly, commencing a review of what is known and what is not known. Accounts in the recent past have, I suspect, been flawed.

I am aware that various penalties have in the past been levied on [BUSINESS NAME REDACTED] for the late filing of its accounts. I should be most grateful if you could let me know who paid those fines, how they were paid, and how much was paid."

5. Companies House responded on 2 March 2023. It provided the complainant with some information within scope of the request in the form of a table containing the dates to which each LFP applied, the amount of each penalty and the method of payment. Companies House refused to provide the identity of the payee, with reliance on section 40(2) to exempt the information.
6. Following an internal review Companies House wrote to the complainant on 28 March 2023. It stated that it was upholding its position.

Scope of the case

7. The complainant contacted the Commissioner on 29 March 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine whether Companies House is entitled to rely on section 40(2) to refuse to provide the identity of the payee.

Reasons for decision

Section 40 personal information

9. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
10. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
11. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
12. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

13. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
15. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

16. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
17. Having spoken with Companies House directly, the Commissioner is satisfied that the withheld information ("the payee") is the name of a natural person. He is satisfied that the withheld information relates to them as an individual and therefore that the withheld information is personal data.
18. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
19. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."

20. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.

Legitimate interest

21. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
22. The Commissioner recognises that the complainant has a legitimate interest in the information in order to establish details about a business that they are now the co-director of.

Is disclosure necessary?

23. Necessary is defined as meaning more than desirable but less than indispensable or absolutely necessary. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
24. The complainant has stated that the previous director of the business had been uncooperative and refused to provide the requested information when asked. The Commissioner understands that the next step available to the complainant is therefore to approach Companies House to obtain the requested information, and considers that disclosure of the information is necessary in order to meet the complainant's legitimate interest in knowing who paid the LFP.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

25. It is necessary to balance the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects. In doing so, it is necessary to consider the impact of disclosure.
26. In the Commissioner's view, a key issue when considering the balancing test is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the individuals, taking into account whether or not they have consented to its disclosure.
27. Should the identity of the payee be disclosed, it would reveal information about the financial and, potentially, business circumstances of that person. The Commissioner considers that the payee would have a reasonable expectation that this information would not be released into the public domain.
28. The Commissioner also considers that this is a primarily private matter and of little wider significance or interest to the public, therefore disclosure of the information under FOIA mechanism is not proportionate.
29. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of FOIA to withhold the identity of the payee.

Right of appeal

30. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

31. 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.
32. 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
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