

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 June 2024

Public Authority: The Insolvency Service
(Executive Agency of the Department for
Business and Trade)

Address: Cannon House
18 The Priory Queensway
Birmingham
B4 6FD

Decision (including any steps ordered)

1. The complainant has requested, from the Insolvency Service (IS), a copy of a certain director conduct report. IS refused to disclose the requested report, on the basis of section 40(2) of FOIA (the exemption for personal information).
2. The Commissioner's decision is that IS was correct to refuse to disclose the report, on the basis of section 40(2).
3. The Commissioner doesn't require any further steps.

Request and response

4. On 7 January 2024, the complainant wrote to IS and requested a copy of the director conduct report submitted by a named individual.
5. IS responded on 16 January 2024. It stated that the requested information is exempt from disclosure under section 40(2) of FOIA.
6. Following an internal review, IS wrote to the complainant on 19 February 2024. It upheld its original application of section 40(2).

Scope of the case

7. The complainant contacted the Commissioner on 11 March 2024 to complain about the way their request for information had been handled.
8. They disagreed with IS's refusal to disclose the requested information.
9. They consider the insolvency practitioner "is guilty of conniving to cover up fraud by the director".
10. The Commissioner considers that the scope of this case is to decide whether IS was correct to rely on section 40(2) and refuse disclosure of the requested information.
11. The Commissioner hasn't contacted IS for any submissions, and hasn't seen the withheld information itself. He considers that he's able to make his decision without those things.

Reasons for decision

12. Section 40(2) of FOIA, with section 40(3A)(a), provides that information is exempt if it's personal data and if its disclosure would contravene any of the data protection principles.
13. Personal data is information that relates to an identified or identifiable individual ('data subject').
14. In this instance the request was for a copy of a certain director conduct report. The Commissioner considers that such information will be personal data because it will identify the director in question by name and it will be about them. He also considers that it will be the personal data of the author of the report (the insolvency practitioner), to the extent that it identifies them and it's **their** report and findings. Indeed, the complainant's focus seems to be the conduct of the insolvency practitioner and what they included in the report: the complainant explained to IS that they wanted the report to see whether all of the concerns they had reported were included in the report submitted to IS.
15. At this point the Commissioner highlights a previous decision notice¹ regarding a request for the same type of report, submitted to the same

¹ https://ico.org.uk/media/action-weve-taken/decision-notice/2010/543536/FS_50288984.pdf

public authority and involving the same exemption. In that case too, the Commissioner found that the requested information was personal data.

16. Article 5(1)(a) of the UK GDPR states that personal data shall be “processed lawfully ... in relation to the data subject”.
17. To determine whether disclosure of personal data in response to an information request under FOIA is lawful, a public authority should consider whether there is a lawful basis for processing in Article 6(1) of the UK GDPR.
18. The Commissioner considers that the lawful basis most likely to be relevant in relation to a request for information under FOIA is Article 6(1)(f), ‘legitimate interests’.
19. In applying Article 6(1)(f), the test is whether there’s a legitimate interest in disclosure of the information; whether disclosure is necessary to meet the legitimate interest in question; and whether the legitimate interest overrides the interests, fundamental rights and freedoms of the data subject(s).

Complainant’s position

20. The complainant considers that the insolvency practitioner is guilty of covering up fraud by the director.
21. They’ve told the Commissioner that, in their view, it’s “in the public interest for me to uncover whether or not concerns I passed to the Insolvency Practitioner were included in the [director conduct report]”.
22. The complainant is unhappy that IS didn’t pursue a disqualification order in respect of the director.

IS’s position

23. IS accepts that there are legitimate interests in disclosure of the requested information, for reasons including transparency and the complainant’s expressed concerns regarding the insolvency practitioner.
24. However, IS explained at internal review stage:

“Given the nature of the information contained in the [director conduct report] ... disclosure would not be necessary for your purpose ... disclosure is not necessary to satisfy the legitimate interest ...”.
25. IS concluded that, because the necessity test (see paragraph 19 above) isn’t satisfied, disclosure wouldn’t comply with data protection law.

26. The Commissioner also notes that in subsequent correspondence with the complainant, IS further explained that a director conduct report provides only high-level information, and that "This report does not provide any specific detail on any potential conduct issues". Apparently IS showed the complainant a blank director conduct report form, to give a sense of the level of detail included.

Commissioner's position

27. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes as well as case-specific interests.
28. In this instance, the Commissioner considers that the legitimate interest test (the first part of the three-part test) is met. Disclosure of the requested information would demonstrate accountability and transparency on IS's part; furthermore, the complainant has expressed a legitimate interest in obtaining the report in light of the concerns they have stated.
29. The next step is the necessity test. This involves judging whether there are alternative ways to meet the identified legitimate interests.
30. IS has noted that where enforcement action is deemed appropriate, it is taken, and publicised.
31. Regarding the complainant's concerns about the insolvency practitioner, the Commissioner notes that there's a process in place for pursuing concerns about insolvency practitioners; and the complainant's supporting information shows that they're aware of that process.
32. The complainant's comments (including those they made to IS in their internal review request) haven't persuaded the Commissioner that disclosure of the report is necessary; whilst IS's comments (highlighted in paragraphs 24 and 26 above), and the existence of a process for complaints about insolvency practitioners, indicate to the Commissioner that disclosure isn't necessary.
33. Therefore, the Commissioner finds that there's no lawful basis for disclosure of the requested information. Its disclosure would contravene Article 5(1)(a) of the UK GDPR.
34. Consequently, he finds that IS was correct to cite section 40(2) of FOIA.
35. The Commissioner highlights the previous decision notice referenced in paragraph 15 above, where the Commissioner made the same finding in similar circumstances.

Right of appeal

36. 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

37. 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.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Daniel Kennedy
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