

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 October 2022

Public Authority: Bank of England
Address: Threadneedle Street
London EC2R 8AH

Decision (including any steps ordered)

1. The complainant has requested annual reports on activities of Bank of England Nominees Ltd ("BOEN"). The Bank of England ("BoE") argued that it did not hold this information for the purposes of FOIA. It upheld this at internal review.
2. The Commissioner's decision is that the requested information, where held, is not held by BoE for the purposes of FOIA.
3. No steps are required.

Request and response

4. On 19 October 2020, the complainant wrote to BoE and requested information in the following terms:
5. "Bank of England Nominees Ltd was a subsidiary company of the Bank of England. It was incorporated in 1977 and dissolved three years ago. We understand its role as being to hold shares for heads of state. On 21 April 1977, in response to a question about companies exempted from transparency requirements under the Companies Bill 1976, then-trade minister Stanley Clinton-Davis told parliament: 'Bank of England

Nominees Ltd. has also undertaken to make a report annually to the Secretary of State for Trade of the identity of those for whom it holds securities, and, provided that it holds securities for two or more people, the total value of the securities held. The contents of such reports are to be confidential to the Secretary of State.'

1) Please can you provide us with a list of all the years for which such annual reports on the activities of Bank of England Nominees were submitted to the government.

2) Please can you provide us with copies of all such annual reports on the activities of Bank of England Nominees Ltd held by the Bank of England. We understand from correspondence with the Bank of England Archive that while such material is held by the Bank of England, it is not presently open to the public."

6. For ease of future reference, the Commissioner will refer to these as Request 1 and Request 2.

7. On 12 November 2020, BoE responded. It argued that FOIA was not applicable to "information which the Bank of England (the 'Bank') holds for the purpose 'of its functions with respect to...(c) the provision of private banking services and related services' (see section 7 and the Bank of England entry in Schedule 1, Part VI FoI Act). Insofar as the Bank holds information within the scope of your request, it would be covered by this exclusion."

8. The complainant requested an internal review on 13 November 2020. He stressed that the provision of nominee shareholder services does not involve banking or bank accounts therefore, in his view, BoE's position was flawed. He also asked BoE to explain how its arguments applied to both Request 1 and Request 2.

9. BoE sent him the outcome of its internal review on 7 December 2020. It upheld its original position and stated:

"The private banking exclusion recognises that the FoI Act might otherwise require disclosure of information relating to the Bank's relationship with its current and former customers and counterparties, which fall outside of its public functions. Consequently, information held by the Bank in relation to any banking and related services it provided to BOEN, including the information which is contained in the annual reports submitted to parliament, is covered by the private banking exclusion and as such the information you have requested falls outside the scope of the FoI Act altogether".

Scope of the case

10. The complainant contacted the Commissioner on 26 January 2021 to complain about the way his request for information had been handled.
11. The Commissioner has considered whether the information described in Request 1 and Request 2, where held by BoE, is held for the purposes of FOIA. If the Commissioner finds that FOIA does apply to the requests, he would require BoE to comply with its duties under section 1 of the FOIA. If the Commissioner finds that FOIA does not apply to the request, he would issue a decision notice which finds that the requested information is not held for the purposes of the FOIA, regardless of whether it is physically held by BoE or not.

Reasons for decision

Background

12. BoE providing the following information as background:

"BOEN [Bank of England Nominees Ltd] was incorporated in 1977 as a wholly owned subsidiary of the Bank. As noted in the House of Commons on 21 April 1977, the then Secretary of State granted BOEN an exemption under Section 27(9) of the Companies Act 1976 from the requirement to disclose certain information about the beneficiaries on whose behalf it held securities. This exemption was carried over into succeeding legislation and is now contained in section 796 of the Companies Act 2006. This Companies Act exemption was potentially available to any entity and not just Bank of England companies.

As part of the process for receiving an exemption from the Secretary of State, BOEN gave an undertaking that it would hold securities as nominee only on behalf of Heads of State and their immediate family, Governments, official bodies controlled or closely related to Governments, and international organisations formed by Governments or official bodies. BOEN would also seek the following assurances from any such persons: (a) the fact that the person was the beneficial owner of the securities to be held by BOEN; (b) that the beneficial owner would not use their interest in any securities held by BOEN to influence the affairs of the company in which shares were held except as shareholders in general meetings of that company; (c) that the beneficial owner was aware of their overriding obligation under applicable law to disclose their interest to the company in which shares were held if they exceed the relevant threshold of that company's share capital.

As noted in the Complainant's original request, BOEN also undertook to make a report annually to the then Secretary of State for Trade of the identity of those for whom it held securities, and, provided that it held securities for two or more people, the total value of the securities held. It is to be noted (as the Complainant's request acknowledges) that such reports were confidential to the Secretary of State.

BOEN ceased to provide nominee services to customers in 2010, and as a result the Bank also ceased providing any substantive private banking and related services to BOEN and its customers. Subsequently the Companies Act exemption referred to above that BOEN held was withdrawn, and BOEN itself was finally dissolved on 27 July 2017."

Section 3(1) – information held by a public authority

13. Section 3(1) states "In this Act 'public authority' means—

(a) subject to section 4(4), any body which, any other person who, or the holder of any office which—

(i) is listed in Schedule 1

14. Section 7(1) of FOIA states:

"Where a public authority is listed in Schedule 1 only in relation to information of a specified description, nothing in Parts I to V of this Act applies to any other information held by the authority".

15. Schedule 1, Part IV of FOIA says that BoE is a public authority:

"in respect of information held for purposes other than those of its functions with respect to—

(a) monetary policy,

(b) financial operations intended to support financial institutions for the purposes of maintaining stability, and

(c) the provision of private banking services and related services.¹"

The complainant's view

¹ <https://www.legislation.gov.uk/ukpga/2000/36/schedule/1>

16. The complainant set out the following points:

"1) The purpose of Bank of England Nominees Ltd as declared to Parliament in 1977 was the holding of securities as a nominee, as can be seen in Hansard². The title of the debate is "Shareholdings (Disclosure)". There is no discussion about the provision of banking services. The word "banking" does not appear.

2) In the same speech to the House, the Secretary of State promised that Bank of England Nominees will submit reports on its activities as a nominee shareholder to the British government (the same reports that we have requested) on an annual basis.

To my mind this is further evidence that the company's activities were never considered to constitute private banking or intended to be so considered. What foreign head of state or government would want a bank account with an institution that handed over details of their private finances to the British government on an annual basis?

Furthermore, were BOEN's activities to constitute private banking information, then disclosing details of them to the British government on an annual basis (without any statutory basis for doing so) would almost certainly constitute an actionable breach of confidence by the Bank.

Taken together this is further evidence that the nominee services work of BOEN is not "private banking" activity, and was never considered as such by either the British government or the third parties for whom BOEN held shares.

3) I suppose it is conceivably possible that included in the annual reports of BOEN that we have requested, the Bank could have for some unknown reason included additional information, unrelated to BOEN's nominee shareholder activities, that genuinely did constitute "private banking" data.

This seems unlikely, because BOEN would not have required any information about a third party's bank accounts in order to act as their nominee shareholder, so there would be no reason for them to hold such information. However were this to have happened, I would entirely accept that the Bank of England ought redact these passages from the

² [Shareholdings \(Disclosure\) \(Hansard, 21 April 1977\) \(parliament.uk\)](#). The complainant's link had broken but the Commissioner has located the Hansard record

annual reports, and disclose the remainder of the documents in response to our FOI request.”

BoE's view

17. The Commissioner asked BoE a series of questions regarding its stated position. He also asked it to address the points raised by the complainant as set out above.
18. BoE is firmly of the view that the requested information is excluded from FOIA. It drew attention to section 7(1) of FOIA which is set out above.
19. It referred to BoE's entry in Part VI of Schedule 1 of FOIA (also set out above). It said, this has the effect of excluding information held by the Bank in respect of some of its functions from FOIA. As noted above, this includes information held by the Bank with respect to: “the provision of private banking services and related services”.
20. It said “BOEN was established by the Bank to provide nominee services for the categories of customers set out [see Background section above]. Such nominee services involved the provision of banking and related services as they enabled BOEN's customers to hold, purchase, transfer and sell securities through BOEN, as an alternative to holding shares in their own name.”
21. In respect of Request 1 (a list of all the years for which such annual reports on the activities of Bank of England Nominees were submitted to the government), it said “given that the reason why any such reports themselves are held by the Bank is because of its functions with respect to the provision of private banking and related services, it is a logical extension that any other information about BOEN and its customers including information about the years in which these reports were submitted is also held for these purposes. Such information is therefore also excluded information and Parts I to V of the FoI Act do not apply.”
22. In respect of Request 2 (copies of all such annual reports on the activities of Bank of England Nominees Ltd held by the Bank of England), it said: “BOEN agreed to submit these reports on a confidential basis and as part of the arrangements for maintaining the exemption from the requirement to disclose information about the beneficiaries on whose behalf BOEN held securities. To the extent that the Bank holds any such reports and other information relating to BOEN and its customers, such information is held because of its functions with respect to private banking and related services that it provided to BOEN and its customers as described above. Such information is therefore excluded information and Parts I to V of the FoI Act do not apply.”

The Commissioner's conclusion

23. The Commissioner notes the definition of BoE in the list of public authorities in Schedule 1, Part IV of FOIA (as set out above). In the Commissioner's view, this is unequivocal.
24. This means that BoE has no obligation to comply with part I to V of the Act where information is held for a) monetary policy, (b) financial operations intended to support financial institutions for the purposes of maintaining stability, and (c) the provision of private banking services and related services. The Commissioner calls this situation a 'derogation'.
25. It is more commonly seen in respect of the BBC which has a derogation from its duties as a public authority under FOIA in respect of information held for the purposes of journalism, art or literature.
26. The House of Lords in *Sugar v BBC* [2009] UKHL 9 confirmed that the Commissioner has the jurisdiction to issue a decision notice to confirm whether or not the information in that case (which was requested from the BBC) is caught by the derogation applicable to the BBC. The Commissioner is satisfied that he also has jurisdiction to do so in this case. The Commissioner's analysis will now focus on the derogation in this case.
27. In order to establish whether the information is held for a derogated purpose, the Supreme Court (in *Sugar (Deceased) v British Broadcasting Corporation and another* [2012] UKSC 4)³ indicated, in that case, that there should be a sufficiently direct link between at least one of the purposes for which the BBC holds the information (ignoring any negligible purposes) and the fulfilment of one of the derogated purposes. This is the test that the Commissioner will apply with respect to information that has been requested from BoE.
28. The Commissioner notes the complainant's arguments that BOEN did not provide "banking services". As such, the complainant appears to argue that there is not a link between the requested information and the derogated purposes.

³ <https://www.supremecourt.uk/cases/docs/uksc-2010-0145-judgment.pdf>

29. However, "related services", in the Commissioner's view, includes the provision of a nominee service such as the one described by BoE in this case.
30. A nominee service allows private individuals to hold, purchase, transfer and sell shares through a nominee company such as BOEN, as an alternative to holding shares in their own name. The Commissioner has identified examples where other banks provide nominee services as part of their portfolio.⁴
31. The Commissioner is satisfied that the provision of nominee services falls within the definition of "related services" such that it is caught by the derogation described for the Bank of England in FOIA Schedule Part IV. The Commissioner recognises that the complainant seeks to make enquiries about the operation of such services in the public interest. However, if the information is not held by BoE for the purposes of the FOIA, the complainant is unable to use FOIA to access that information. BoE is not a private company such as the ones referred to in Note 4 but its private banking services and related services are explicitly excluded from FOIA. The Commissioner is satisfied that the provision of nominee services via BOEN falls within the definition of "related services"; related, that is, to private banking.
32. The Commissioner is therefore satisfied that the information described in both Request 1 and Request 2, where it is held by BoE, is not held for purposes other than those of its functions with respect to the provision of private banking services and related services. It is only held for the provision of private banking services and related services.
33. The Commissioner is also satisfied that BoE having ceased providing any substantive private banking and related services to BOEN and its customers – and BOEN's subsequent dissolution - does not affect this conclusion. It follows that the information falls outside the definition of information held for the purposes of FOIA under section 3(1).

⁴ <https://www.expats.hsb.com/content/dam/hsbc/mbos/docs/wealth-investments/freedom-plus/freedom-brochure.pdf> ; <https://www.santander.co.uk/about-santander/shareholders>

Right of appeal

34. 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

35. 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.
36. 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

Alexander Ganotis
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