

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 27 February 2014

**Public Authority:** Companies House

**Address:** Crown Way

Cardiff

CF14 3UZ

### **Decision (including any steps ordered)**

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1. The complainant requested information about delays relating to complaints passed to the Independent Adjudicator ('IA'). Companies House originally stated that it did not hold the information and subsequently provided a table showing the date received, the date passed to the IA, and the number of working days taken to refer the complaints to the IA. At the time of its internal review, Companies House acknowledged that the original table of statistics was inaccurate and provided a revised table. The complainant considered that the information provided was inaccurate or incomplete. He also alleged that Companies House had altered the information requested prior to disclosure. The Commissioner's decision is that Companies House has complied with its obligations under section 1 and disclosed the information it holds relevant to the request. He does not require any steps to be taken.

### **Request and response**

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2. The Commissioner notes that under the FOIA Companies House is not a public authority itself, but is actually an executive agency of the Department for Business, Innovation and Skills which is responsible for Companies House. Therefore, the public authority in this case is actually the Department for Business, Innovation and Skills and not Companies House. However, for the sake of clarity, this decision notice refers to Companies House as if it were the public authority.

3. On 19 March 2013, the complainant wrote to Companies House and requested information in the following terms:

"Please advise, in the last 3 years:-

- How many 'complaint references' to the Independent Adjudicators have been delayed for a period of more than 4 weeks.
- How many 'complaint references' to the Independent Adjudicators have been delayed for a period of more than 3 months.
- How many 'complaint references' to the Independent Adjudicators have been delayed for a period of more than 6 months".

4. Companies House initially responded on 26 March 2013 stating that it had assumed that the request referred to statistics relating to 'complaints' escalated to the IA only. Companies House stated that it did not hold statistics of the nature requested. However, it confirmed that whenever it receives a request for a complaint to be escalated to the IA the case is forwarded as soon as possible.
5. On 19 April 2013 the complainant wrote to Companies House and requested an internal review of its handling of the request. In relation to the comment about complaints being forwarded to the IA as soon as possible, he stated that "I am advised that this is untrue which is why the FOI request was asserted in the first instance".
6. Companies House issued a further response on 25 April 2013 stating that it had made further enquiries with the relevant section and, as a result, it had compiled a table showing the date of receipt of complaint, the date it was passed to the IA and the period of time between receipt and referral for the last 3 years and the early part of 2013. Companies House stated that the information within the table only referred to complaints passed to the IA and did not refer to appeals sent to the IA as part of the Late Filing Penalty appeals process. Companies House asked the complainant whether, in light of the information provided, he still wished to pursue his internal review request.
7. The complainant wrote to Companies House on 26 April 2013 confirming that he still wished to pursue his internal review request. He added that "...there are at least 2 outstanding which tends to suggest that your records are incomplete or incorrect".
8. Companies House provided the outcome of its internal review on 17 May 2013. It confirmed that it had carried out further enquiries to verify whether the information provided was incomplete or incorrect. It identified that the original table of information was incorrect and provided a revised table of information, reflecting the three amendments identified during the review.

## Scope of the case

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9. The complainant contacted the Commissioner on 2 July 2013 to complain about the way his request for information had been handled.
10. In his complaint to the Commissioner, the complainant suggested that the information provided by Companies House was incorrect as it did not include 2 formal requests he had made to have 2 complaints referred to the IA in November 2012. He also suggested that Companies House had "purposely and intentionally provided false information".
11. The Commissioner considers this complaint to relate to whether Companies House has complied with its obligations under section 1 of the FOIA. The Commissioner has also considered whether Companies House has committed an offence under section 77 of the FOIA in the 'Other Matters' section of this notice.

## Reasons for decision

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### Section 1 – general right of access

12. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
13. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will consider the actions taken by the authority to check whether the information is held and he will consider any other reasons offered by the public authority to explain why the information is not held. He will also consider any reason why it is inherently likely or unlikely that information is not held. For clarity, the Commissioner is not expected to prove categorically whether the information is held; he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.
14. In this case the complainant considers that the information which has been provided to him is either inaccurate or incomplete. He has referred to two complaints which he has submitted to Companies House which do not appear to be reflected in the information that has been disclosed in relation to his request.

15. By way of background information, Companies House confirmed that it publishes its complaint procedures on its website and the procedures cover all aspects of its service including:
  - the registration and provision of information,
  - its products and sales,
  - advice in company and legislative issues,
  - general support of customers
  
16. Companies House advised that complaints cover numerous topics and staff always try to resolve issues with the customer directly. However, if this is not possible, then the matter is escalated to the Complaints Manager. If the customer is still unhappy the case is then referred to the Director of Customer Delivery. If the customer still remains dissatisfied with the response it is at this point that they can ask for a referral to the IA. Companies House acknowledges that its complaints escalation process can be a fairly lengthy process, particularly in cases where it is difficult to obtain relevant information from the customer concerned.
  
17. Companies House confirmed that the role of the IA is to arbitrate between Companies House and its customer. The IA also deals with appeals against Late Filing Penalties ('LFP') imposed on limited companies. This type of correspondence forms the majority of referrals to the IA and the number of complaints referred are minimal by comparison. The IA cannot deal with matters relating to any of the following:
  - Questions about company law.
  - The exercise of discretion by the Secretary of State.
  - Complaints being considered by the Parliamentary and Health Services Ombudsman.
  - Any case involved criminal proceedings.
  - Complaints more than six months old.
  
18. Companies House advised that the Senior Case Unit ('SCU') is the department responsible for escalating cases that have been through its complaints process and resulted in a request for referral to the IA. The SCU maintains a log, in the form of a spreadsheet of all cases referred to the IA containing the following information:
  - The company name and number the correspondence refers to.
  - The date the complaint was received.
  - The case reference number.
  - The date the complaint was received and logged in the spreadsheet by SCU.
  - The owner of the case.
  - The 'hold' placed on the case.

- The date the acknowledgement was sent.
  - The initials of the IA allocated the case.
  - The date the case was passed to the IA.
  - The receipt date of the IA's draft response.
  - The date the draft was returned to the IA by SCU.
  - The date the final response was received by SCU from the IA.
  - The post adjudication date (LFP cases only).
  - Referral to the Registrar (LFP cases only).
  - Notes to the case (if required).
19. Complaint referrals are highlighted within the SUC spreadsheet in colour in order to easily distinguish them from LFP cases. Companies House advised that, as all complaints which are passed to the SCU have already been through its complaints procedure, the cases are referred to the IA without any further review. On receipt of a complaint, the spreadsheet is updated with the date the case is received within SCU and is passed to one of four managers for action. Each manager is responsible for updating the spreadsheet, as and when appropriate, for cases which are allocated to them. Companies House confirmed that there is no formal process or policy for recording of these statistics. The maintenance of the SCU spreadsheet is a manual operation and is simply used as a log of cases that have been referred to the IA and as an aid to track their progress.
20. In terms of its handling of the request in this particular case, Companies House confirmed that in its initial response to the request, it advised that the requested information was not held as the SCU spreadsheet does not specifically record statistics on delays in referring complaints to the IA. On receipt of the internal review request, Companies House determined that it was possible to extract the information requested from data contained within the SCU spreadsheet, and to calculate the number of working days it had taken to refer each complaint to the IA.
21. The complainant confirmed he still wished to continue with his internal review request, after the table of information was disclosed. This was, because he considered the information to be "incomplete or inaccurate". He referred to "at least two outstanding" complaints which had not been included within the table. Companies House undertook a further review of the SCU spreadsheet and identified three errors which had been made when the data had been extracted, as detailed below:
- One complaint had been recorded as being received in 2013 instead of 2012.
  - One complaint received in January 2013 had been omitted from the results.
  - One complaint had been incorrectly recorded as being referred to the IA a day earlier than it had actually been referred.

A revised table of information was provided to the complainant on 17 May 2013.

22. Throughout his correspondence, the complainant has asserted that the statistics provided in response to his request are inaccurate or incomplete due to the fact that he himself has made two complaints that do not appear to have been included within the statistics. Companies House advised the Commissioner that the complainant has not, in fact, made the formal complaints to which he has alluded. Companies House has been in correspondence with the complainant, and his associate, on several occasions in order to clarify exactly what his complaints relate to but have not received the detail required in order to progress the issues through its formal complaints procedure. As a result, his complaints have not been forwarded to the IA and are not, therefore, included within the statistics provided in response to the request.
23. Companies House acknowledged to the Commissioner that there were errors in its initial handling of this request. However, its position is that the errors in the original table of information provided were a result of human error in extracting the relevant data from the original source in order to respond to the request. The errors were identified at the internal review stage and an apology was given to the complainant. Companies House confirmed that no additional information falling within the scope of the request is held.
24. After considering the background information about its complaint process and the explanations provided by Companies House about its handling of the request, the Commissioner is satisfied that it has provided all of the information it holds within the scope of the complainant's request and has therefore complied with its obligations under section 1 of the FOIA.

## **Other matters**

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### **Section 77**

25. As indicated in paragraph 9 above, the complainant suggested to the Commissioner that Companies House had "purposely and intentionally provided false information", ie that the information disclosed had been altered in order to respond to the request.
26. Section 77 of the FOIA states that a criminal offence is committed if any person alters, defaces, blocks, erases, destroys or conceals any information with the intention of preventing the applicant from receiving any of the information he is entitled to receive. In order to secure a

conviction in criminal proceedings, each element of an offence must be proven to the criminal standard, that being 'beyond reasonable doubt', as opposed to the lesser civil standard of 'balance of probabilities'. If this standard of proof is not met, any prosecution will fail. In order to uphold a section 77 offence the Commissioner has to prove that there was a clear intention to prevent disclosure on the part of the public authority.

27. The Commissioner has considered the circumstances of this case, but is not satisfied that there is any evidence to suggest that Companies House has deliberately altered the information in order to prevent its disclosure. Therefore the Commissioner has not undertaken a criminal investigation in this case.

## Right of appeal

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28. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. 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.
30. 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 .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**