

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 May 2023

Public Authority: The Insolvency Service
(Executive Agency of the Department for
Business, Energy and Industrial Strategy)

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

Decision (including any steps ordered)

1. The complainant requested from the Insolvency Service, information regarding HR1 forms pertaining to redundancies at the UKHSA Rosalind Franklin Laboratory and conducted by Medacs. The Insolvency Service relied on section 43(3) (commercial interests) of FOIA to neither confirm or deny whether it held the information requested.
2. The Commissioner's decision is that the Insolvency Service was entitled to rely on section 43(3) of FOIA to neither confirm or deny whether information was held. Therefore, the Commissioner does not require the Insolvency Service to take any steps as a result of this decision.

Request and response

3. On 7 March 2023, the complainant wrote to the Insolvency Service and requested information in the following terms:

"Medacs Global Group (a.k.a. Medacs Healthcare or Medacs) have engaged in two rounds of redundancies of staff assigned to the UKHSA Rosalind Franklin Laboratory in Leamington Spa. The first was conducted in January and then the second in February.

My request under the act is to confirm whether:

- A) The Redundancy Payments service received an HR1 form for the January round of 629 redundancies conducted by Medacs
 - B) The Redundancy Payments service received an HR1 form for the February round of 62 or 63 redundancies at RFL conducted by Medacs
 - C) The Redundancy Payments Service received two HR1 forms for the February round of redundancies conducted by Medacs, with 53 at the main RFL site and 9 or 10 redundancies seconded to another organisation in Cambridge.
 - D) The Redundancy Payments Service contained an HR1 form in January covering both the January and February rounds of redundancies at RFL (totalling 691 or 692) conducted by Medacs Global.
 - E) Any other combination of HR1 forms pertaining to redundancies at RFL filed by Medacs. Please confirm whether you hold the information requested."
4. On 20 March 2023 the Insolvency Service responded. It said it could neither confirm or deny whether the Insolvency Service holds the requested information and cited section 43(3) (commercial interests) of FOIA.
 5. On the same day the complainant asked the Insolvency Service for an internal review.
 6. On 6 April 2023 the Insolvency Service provided its review response and maintained its original position to refuse the request under the exemption cited.

Reasons for decision

7. This reasoning covers whether the Insolvency Service is entitled to rely on section 43(3) of FOIA to refuse the request for information.

Section 43 – Commercial interests

8. Section 43(3) of FOIA states that a public authority is not obliged to confirm or deny whether information is held if to do so would, or would be likely to, prejudice the commercial interests of a third party, including the public authority.

9. The Insolvency Service stated that in this case, the commercial interest is that of Medacs Global Group. It explained that the interest in question is the ability of the company to continue to trade and recover from any financial difficulty it may have been (or be) in.
10. The Insolvency Service stated the commercial interest that would be likely to be prejudiced is that of Medacs Global Group. It said to confirm or deny any information is held would indicate whether an HR1 form had been submitted or not. Also, to confirm that a form had been received would be likely to reduce confidence in Medacs, which would affect the likelihood that the company is rescued from any financial difficulty it may be in. The Insolvency Service further explained that if any submission was to be made public, companies may be less likely to submit accurate HR1 forms. This, it said, could lead to the over or under reporting of proposed redundancies which could further harm the commercial viability of companies.
11. The Insolvency Service considers that although no prejudice to the commercial interest would occur directly through denying that an HR1 form had been received, doing so would imply that a form had been received in instances where a neither confirm nor deny response is made. It said, as such, the only way to protect companies that have complied with their obligations, is to neither confirm or deny in all cases.
12. The complainant disputes the Insolvency Service's refusal to confirm or deny it holds the information requested (HR1 forms pertaining to redundancies carried out by Medacs Global). He is of the view that they should hold this information if they have been duly notified. The complainant said that if the information exists, then it confirms the company acted legally in this regard. He argued that "if they do not exist, it reveals lawbreaking." The complainant does not believe that this is a "proper" refusal within the bounds of the law.
13. The complainant cited a previous FOI response (same request) where the Insolvency Service did respond and denied information was held in support of his request for a review. He believes it is in the public interest to disclose this information "as it pertains to whether staff employed solely for work at a government agency were made redundant in an illegal manner."
14. The Insolvency Service responded to the complainant's argument and informed him that each FOI request is considered on a case-by-case basis. It stated that responses to requests for similar information can be different, and explained the reasons for that specific case (the company in question published information into the public domain regarding redundancies). Therefore, confirming or denying the requested

information was held would not have caused any additional harm to their commercial interests.

15. The Insolvency Service said conversely, the company which the complainant's request is about, have not made any public announcements. In view of this, any confirmation or denial by the agency would be likely to cause the identified prejudice. The Insolvency Service informed the complainant that under FOI confirmation/denial would be to the world at large.

Public interest test

16. The Commissioner has considered whether, in all the circumstances of the case, the public interest in neither confirming or denying whether information is held outweighs the public interest in confirming or denying whether it is held.

Public interest arguments in favour of confirming or denying whether any information is held

17. The Insolvency Service recognises that this would increase public understanding of how the agency exercised their powers. Also, it would help to increase openness and transparency regarding whether HR1 forms are being submitted on time.

Public interest argument in favour of neither confirming or denying whether information is held

18. The Insolvency Service said it would reduce confidence in the company in question, which could lead to financial or reputational damage and further redundancy. It also considers that there is the general public interest (as reflected in the statutory objectives of insolvency) in rescuing struggling companies and returning them to financial viability.

Balance of the public interest test

19. The Commissioner accepts that confirming or denying whether any information is held by the Insolvency Service, would to some extent help to increase openness and transparency. The public would be better informed about HR1 forms and if they are being submitted on time, and have an understanding of how the agency exercised its powers.
20. However, given the level of likelihood that commercial harm would occur should the Insolvency Service confirm or deny whether information is held, and considering its arguments, the Commissioner finds the balance of public interest favours neither confirming or denying whether the information is held.

Conclusion

21. The Commissioner's conclusion is that the public interest favours maintaining the exclusion from the duty to confirm or deny whether the information is held. Therefore, he does not require the Insolvency Service to take any further action.

Right of appeal

22. 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@justice.gov.uk.

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

23. 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.
24. 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

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