

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 January 2015

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

Decision (including any steps ordered)

1. The complainant has requested information about the details of an individual who had registered a dispute against the complainant's company and information as to the nature of that dispute. Companies House refused to disclose the information relying on the exemptions at section 40(2) and section 41(1).
2. The Commissioner's decision is that the exemption at section 40(2) is engaged and he has not gone on to consider the exemption at section 41(1).
3. The Commissioner does not require Companies House to take any further steps.

Request and response

4. 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.
5. On 12 September 2014 the complainant wrote to Companies House, identifying herself as a director of a named company. She stated that

the company was not protected by the Companies House PROOF scheme and therefore she presumed a dispute had been notified to Companies House. She requested information in the following terms:

"I wish to make a freedom of information request that the nature of the dispute and the person making the notification is provided to me."

6. Companies House responded on 3 October 2014. It refused to disclose the requested information citing exemptions at section 40 and 41 of the FOIA.
7. Following an internal review Companies House wrote to the complainant on 30 October 2014. It upheld its original position.

Background

8. Companies House is a registry of company information, holding records of over two and a half million companies with details of all the officers and shareholders associated with the companies.
9. Companies House has explained that it inevitably experiences incidents of harm to companies whereby hijackers or fraudsters attempt to change the details on the register for financial gain.
10. In an attempt to combat this fraud the PROOF scheme was introduced. This prevents individuals from filling in certain forms in a paper format. Companies who register for the scheme register for the webfiling service which will allow them to submit documents electronically. This process is controlled by the use of an authentication code allocated to a company; the company then controls who has access to the code. Although intended to combat hijacking and fraud, Companies House has found that it has also become a means for disputing directors/officers to try to control what information is put in the public domain.
11. Upon receipt of a complaint disputing information that is held on the public record, Companies House advises that they cannot get involved

and that the complainant should approach the company or seek legal advice.
12. In the event that Companies House is notified of a dispute within a company which may have a bearing on its filing history and the company is registered in the PROOF scheme, it has no alternative but to remove the company from the scheme. By removing the company from the scheme, Companies House cannot be seen as partisan and it

ensures that no one party can control what information is placed in the public domain.

13. Companies House ensures that the complainant has had some official connection to the company in the past, and both company and complainant are advised that the company has been removed from the PROOF scheme and that they should seek legal advice with regard to a resolution to the dispute.

Scope of the case

14. The complainant contacted the Commissioner on 4 November 2014 to complain about the way her request for information had been handled.
15. The Commissioner considers the scope of the investigation was to determine whether Companies House had correctly engaged the exemptions at section 40 and 41. In the event that section 40 was engaged the Commissioner would not go on to consider the exemption at section 41.

Reasons for decision

Section 40(2) – Third party personal data

16. Section 40(2) provides that:

"Any information to which a request for information relates is also exempt information if–

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition below is satisfied."*

Section 40(3) provides that:

"The first condition is–

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene–*
 - (i) any of the data protection principles..."*

Is the withheld information personal data?

17. Personal data is defined by section 1 of the Data Protection Act 1998 (DPA) as:

"...data which relate to a living individual who can be identified–

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual..."

18. In order for the exemption to apply, the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance the Commissioner notes that the complainant has requested the name of the individual who has registered a complaint about her company and the nature of their dispute. The Commissioner is satisfied that the withheld information constitutes personal data.

Would disclosure breach the data protection principles?

19. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
20. The Commissioner's considerations have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.
21. When considering whether the disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject.
22. Companies House has submitted that it accepts notifications in good faith and that once it has verified that the person reporting the dispute is connected to, or has had some previous connection with the company, it removes the company from the PROOF scheme. It is accepted that in many cases both parties are aware of the individuals concerned and the nature of the dispute but Companies House acknowledges that there will

be occasions when that is not the case. Accordingly, it treats requests for information regarding PROOF disputes slightly differently to other complaints. In these cases Companies House offers to approach the third party to ascertain if they are content for their details to be released.

23. Given the specific nature of a request for information relating to a complaint which has meant removal from the PROOF scheme, Companies House will not approach the third party without the consent of the requester. To do so would inevitably disclose the identity of the person making the request for information.
24. In this case the individual making the request for information has not given Companies House consent to approach the third party. She has confirmed to the Commissioner that she has not given her consent because it will alert the third party to the fact that she is aware and pursuing the matter.
25. The Commissioner notes too that the complainant has advised his office that she believes she knows who has made the assertion of a dispute as he has done so before, and that this is already the subject of a High Court Proceeding.
26. Companies House asserts that it does not consider it fair to disclose the third party personal data. The individual making the complaint to Companies House contacted them voluntarily; they would have no reasonable expectation that their details or the nature of their complaint would be disclosed to a third party or the indeed the public at large under, which is what a disclosure under the FOIA constitutes. Companies House argues therefore that section 40(2) is engaged and that the complainant's identity and nature of complaint should not be disclosed under FOIA.
27. The Commissioner accepts the position as set out by Companies House that in order to ensure that it does not become embroiled in such disputes and remains impartial, it accepts complaints at face value and removes companies from the PROOF Scheme. It does so having checked that the complainant is connected to or has been connected to the company about which the complaint is made.
28. Given that Companies House is a registration of company information, it would be impossible for it to determine what the consequences of disclosure would be in each case where a dispute meant that a company was removed from the PROOF scheme. Indeed, in many cases it is notified that there is a dispute but is not provided with any further

details. Companies House handles all disputes of this nature in the same way.

29. In the case of such disputes there is an avenue of redress via the legal system and it is not for Companies House to involve itself or arbitrate in any way. In order to maintain this position, Companies House will not approach a third party for consent to disclose their details unless the requester is prepared to have their details disclosed to that third party. This stance maintains the level playing field that Companies House seeks to achieve.
30. The Commissioner accepts as reasonable that anyone making a complaint to a public authority does so in the expectation that neither their details nor the details of their complaint will be made public in such a way as to identify them. Revealing this could potentially dissuade people from making complaints.
31. The Commissioner understands and accepts that there will always be some legitimate public interest in disclosure of any information held by public authorities. This is because disclosure of information helps promote transparency and accountability amongst public authorities.
32. However, in these particular circumstances, the Commissioner believes that Companies House addresses the question of accountability by having in place a system whereby impartiality is maintained by a blanket approach to complaints which lead to removal from the PROOF scheme. He also accepts that in this case there is no wider public interest in disclosing the complainant's identity or their complaint details under the FOIA. Such a disclosure could undermine the confidence that individuals have in referring a complaint to Companies House.
33. The Commissioner concludes therefore that disclosure of the complainant's identity or nature of the complaint would not be fair under the first principle of the DPA and that accordingly Companies House has correctly engaged the exemption at section 40(2). In these circumstances, the Commissioner does not consider it appropriate or necessary to go on to consider the exemption at section 41(1).

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: 0300 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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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