ico. Information Commissioner's Office

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **24 September 2018**

Public Authority: **The Disclosure and Barring Service**
Address: **Shannon Court**
10 Princess Parade
Liverpool
L3 1QY

Decision (including any steps ordered)

1. The complainant has requested information relating to whether the Disclosure and Barring Service complies with the Uniform Commercial Code. The Disclosure and Barring Service provided some information and explained that it did not hold any further information.

2. The Commissioner's decision is that the Disclosure and Barring Service is correct to state that it does not hold any further information. The Commissioner therefore considers that it has not breached section 1 (right to information) of the FOIA.

3. The Commissioner does not require the Disclosure and Barring Service to take any steps as a result of this decision.

Background

4. The Disclosure and Barring Service (DBS) was established in 2012 and carries out the functions previously undertaken by the Criminal Records Bureau and the Independent Safeguarding Authority. It helps to prevent unsuitable people from working with vulnerable groups, including children and safeguarding is at the heart of everything it does.

5. It is responsible for:

- processing requests for and issuing, DBS checks for England, Wales, the Channel Islands and the Isle of Man

- making considered decisions regarding whether an individual should be barred from engaging in regulated activity with children, adults or both, in England, Wales and Northern Ireland
- maintaining the children and adults' barred lists.

6. The Uniform Commercial Code (UCC) referred to in the request, is one of a number of uniform acts that have been put into law with the goal of harmonising the law of sales and other commercial transactions across the United States of America.

Request and response

7. On 30 May 2018 the complainant wrote to the DBS and requested information in the following terms:

   "1] Does Disclosure and Barring Service adhere to the Uniform Commercial Code (UCC) like other UK companies that i [sic]have spoken to?
   2] Who is your data protection officer by name please?
   3] Who is the man/woman [name required] responsible for administering Uniform Commercial Code of business?
   4] What guidelines do you as a corporate company follow regarding the Uniform Commercial Code?
   5] In what capacity as a corporate business are you insured against the Uniform Commercial Code?
   6] Does DBS follow the new GDPR EU ruling, if so i [sic] would like revoke my consent for any and all automated processing. I would also like you to provide you [sic] with the foundation facts if DBS believe i [sic] am incorrect. Any unauthorized sharing that may/do or could result in any form of injury/harm or loss will result in further action being taken to remedy any such injury/harm and/or loss....."

8. The DBS responded on 30 May 2018. It answered question 1 explaining that it follows UK Government and EU Commercial legislation and policy and therefore does not apply the UCC to its commercial practices. It also explained that the UCC is not EU or UK legislation. It also answered questions 2 and 6. With regard to question 6 it confirmed that it does comply with GDPR and answered the complainant's question regarding automated processing and provided him with links to information. Regarding questions 3, 4 and 5 the DBS explained that they were not applicable.

9. Following an internal review the DBS wrote to the complainant on 8 July 2018. It upheld its original decision. It also provided extra information in relation to question 1, explaining that as a government agency spending tax payers' money, it is required to follow EU and UK legislation and policies. The DBS also reiterated that it does not apply the UCC

legislation to its practices. It also explained that it therefore could not answer questions 3, 4 and 5.

Scope of the case

10. The complainant contacted the Commissioner on 17 June 2018 to complain about the way his request for information had been handled. He explained that he considered that it was becoming quite obvious that the DBS was not replying fully to FOI requests as his questions remained outstanding. The complainant also explained that he had asked the DBS for the name of the person handling his request but it had not provided him with it.

11. In addition, the complainant explained that as the DBS was a corporate company it was common knowledge that all corporate companies followed the guidelines of the Uniform Commercial Code as had corporate England's police. The complainant also asked what the difference was regarding the DBS. Additionally, the complainant also explained that he had spoken to qualified accountants in corporate companies and they abided by the UCC. For clarity, the Commissioner notes that it is not within her jurisdiction to consider whether the DBS should follow the UCC.

12. The Commissioner notes that the complainant has complained that he asked the DBS for the name of the person who handled his request to it and that the DBS did not provide it. However, as this does not form part of his original request to the DBS, the Commissioner will not consider it any further.

13. The Commissioner will consider whether the DBS holds any recorded information in relation to questions 3, 4 and 5.

Reasons for decision

Section 1 – information held/not held

14. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have the information communicated to him.

15. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner will consider the complainant’s evidence and arguments.

16. She will also consider the actions taken by the public authority to check whether the information is held and any reasons offered by it to explain why the information is not held.

17. The Commissioner is required to make a judgement on whether, on the balance of probabilities, the requested information is held or not.

18. The Commissioner asked the DBS what searches it had carried out. The DBS explained that upon receipt of the request its commercial team was contacted to determine if this was something the DBS was aware of or followed. Its commercial team confirmed that the UCC was United States of America legislation and therefore not something the DBS would follow.

19. The DBS also confirmed that it does not hold any information relating to the UCC and had explained this to the complainant. It also explained that upon receipt of the request for an internal review the reviewing officer had contacted its commercial team again. The commercial team reaffirmed the position and also consulted the DBS commercial lawyers to verify that the correct information had been given. The DBS' commercial lawyers confirmed that the UCC is US legislation for the sale of goods and that the DBS would hold no documents or guidelines and would have reason to follow the UCC.

20. The Commissioner also asked the DBS if its searches included electronic data, to explain whether the searches included information held locally on personal computers used by key officials (including laptop computers) and on networked resources and emails.

21. The DBS reiterated that the UCC is not followed by it and therefore no recorded information was held regarding this. It explained that its search involved initial research of the nature of the UCC and also consulting its commercial team to establish whether it was applicable to the DBS. It also confirmed that as the UCC did not apply to it, the DBS did not have any guidelines regarding it, no insurance against it and no person or persons responsible for administering it.

22. The Commissioner also asked if information was held would it be held as manual or electronic records. The DBS explained that if it had to follow the UCC then any guidelines would likely to be held electronically. It also confirmed that no recorded information relevant to the scope of the request had ever been deleted or destroyed. Furthermore, the DBS explained that it published its data retention policy on its website.

23. The Commissioner also asked the DBS whether there was a business purpose for which the requested information should be held and if so what that purpose be. The DBS confirmed that there was no business purpose for it to hold the requested information.

24. In addition, the Commissioner also asked whether there was any statutory requirements upon the DBS to retain the requested information. The DBS confirmed that there were no statutory requirements for it to hold the requested information.

25. Taking everything into account, the Commissioner does not consider that there is any evidence that show that the DBS holds any additional recorded information in relation to questions 3, 4 and 5 of the request.

26. The Commissioner is therefore satisfied that, on the balance of probabilities, the DBS does not hold any further recorded information in relation to this request. Accordingly, she does not consider that there is a breach of section 1 of the FOIA.

Right of appeal

27. 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@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.

29. 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 ……

Deborah Clark
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF