

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 September 2019

Public Authority: Pension Protection Fund
Address: 12 Dingwall Road
Croydon
London
CR0 2NA

Decision (including any steps ordered)

1. The complainant has requested information relating to a category of employers known as Special Category Employers ("SCEs"). The Pension Protection Fund ("the PPF") consider the requested information to be "restricted information" which is prohibited from disclosure under section 197 of the Pensions Act 2004¹.
2. The Commissioner's decision is that the PPF has correctly applied section 44(1)(a) of the FOIA on the basis that some of the requested information is prohibited from disclosure under section 197 of the Pensions Act 2004.
3. The Commissioner does not require the PPF to take any further steps.

¹ <https://www.legislation.gov.uk/ukpga/2004/35/part/2/chapter/5/crossheading/disclosure-of-information>

Request and response

4. On 6 November 2018, the complainant wrote to the PPF and requested information in the following terms:

"The Pension Protection Fund (PPF) has deemed that a certain category of employers known as Special Category Employers (SCE) are to be eligible for entry into the PPF if they were to become insolvent.

SCEs are by their nature created by the state in various forms. As the Managing Director of a privately owned Company that sponsors a final salary pension scheme I think it is reasonable to know the nature of these state created entities that are deemed to potentially be able to require PPF support. My questions are these.

What is the Name and Company Number of the all the SCEs?

What is the funding state of their schemes?"

5. The PPF responded on 4 December 2018. It stated that it considered the requested information to be "restricted information" (as defined in the Pensions Act 2004) that is prohibited from disclosure under section 197 of the Pensions Act 2004.
6. It went on to explain that section 197 of the Pensions Act 2004 prohibits the disclosure of restricted information to any person, except where disclosure is made to facilitate the PPF's functions, or those of certain other supervisory authorities.
7. Following an internal review the PPF wrote to the complainant on 4 January 2019. It acknowledged that an employer's categorisation as an SCE may not be restricted information in itself as it is not information obtained by the Board of the PPF.
8. However, it went on to explain that revealing an employer's SCE status would reveal certain restricted information obtained by the PPF in the performance of its functions. The PPF therefore stated that it upheld its original position.

Scope of the case

9. The complainant contacted the Commissioner on 20 January 2019 to complain about the way his request for information had been handled. He disputes the application of section 44(1)(a) in response to his request.

10. Referring to SCEs he told the Commissioner:

"These are entities effectively created by the state or state owned organisations which have pension funds that are guaranteed by the PPF which is entirely funded by private sector contributions. It seems to me that this is unreasonable - debts created by the public sector should be shouldered by them."

11. To be clear, the Commissioner considers the scope of her investigation to be to determine whether the PPF has correctly applied section 44(1)(a) of the FOIA in response to the request.

Reasons for decision

12. Section 44(1) of the FOIA states that:

"Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

(a) is prohibited by or under any enactment,

(b) is incompatible with any Community obligation, or

(c) would constitute or be punishable as a contempt of court".

13. Section 44 is an absolute exemption, there is no requirement to consider the public interest test. In response to the request the PPF confirmed that it held information within the scope of the request. It does not consider that confirming whether information is held within the scope of the request discloses exempt information.

14. Section 197 of the Pensions Act 2004 prevents the disclosure of "restricted information" by the Board. It defines restricted information as:

"any information obtained by the Board [PPF] in the exercise of its functions which relates to the business or other affairs of any person, except for information—

(a) which at the time of the disclosure is or has already been made available to the public from other sources, or

(b) which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it."

14. With regard to the disclosure of restricted information section 197 states:

"(1) Restricted information must not be disclosed-

(a) by the Board [PPF], or

(b) by any person who receives the information directly or indirectly from the Board [PPF]."

15. In their submissions to the Commissioner, the PPF confirmed that it considered the requested information to be information obtained by the Board of the PPF in the exercise of its functions.

16. In their submissions to the Commissioner, the PPF explain that SCE status is a status granted by the PPF itself and is therefore not information that the PPF has obtained in the exercise of its functions.

17. However, according to the PPF, disclosing the name and company number of all organisations categorised as SCEs at the time of the request would reveal restricted information provided to the Board to decide an organisation's SCE status:

"the information individual SCE provide to us about their structure on which we base our decision to categorise them as SCE falls within our statutory confidentiality obligation under section 197 of the Pensions Act 2004 (the "2004 Act"), with criminal sanctions for breach."

18. With regard to the second part of the complainant's request, the PPF identified a number of measures that relate to the "funding state" of the schemes in question.

19. In their interpretation of this part of the request, the PPF note that the complainant is referring to schemes as opposed to individual employers. However, it noted that if the complainant was seeking funding information in relation to each SCE, this is information that is not held:

"To the extent that requestor is seeking funding information that is referable to each SCE, this is not information that we hold. We would have to perform a specific actuarial calculation in order to create this information, which is outside the requirements of the FOIA"

20. The PPF went on to explain that it had interpreted this part of the complainant's request as referring to the total funding information of the schemes in question, without reference to individual SCE employers. The PPF stated that they considered this to be restricted information exempt under section 44(1)(a) of the FOIA.

21. In light of the above, the Commissioner asked the PPF to clarify this part of the request with the complainant. The PPF wrote to the complainant

on 24 July 2019 and asked him to clarify what information they were seeking in relation to the second part of his request.

22. The complainant responded on 31 July 2019. From their correspondence the Commissioner was not able to establish what the complainant was requesting in relation to the second part of their request.
23. The Commissioner contacted the complainant on 2 August 2019 and again on 8 August 2019 in order to clarify the information they are seeking in relation to the second part of their request. The Commissioner did not receive any further response from the complainant to her correspondence.
24. Therefore, in the absence of the clarification that the Commissioner requires from the complainant with respect to the scope of the second part of his request, the Commissioner has concluded that the second part of the complainant's request relates to the total funding information of the schemes in question. The PPF considers that it does not hold funding information that is referable to each SCE.
25. With regard to this information, the PPF explain that this is funding information provided to them by The Pensions Regulator and is restricted information obtained by the Board in the exercise of its functions.
26. In their submissions to the Commissioner the PPF considered whether they are able to provide the funding state information to the complainant in the form of an anonymised list or summary. The PPF concluded that they were able to provide this information to the complainant and disclosed this to him at their discretion. Given that, the Commissioner has not considered the application of the exemption at section 44(1)(a) to the information held by the PPF within the scope of the second part of the request – ie the total funding information of the schemes in question.
27. Over the course of the case, the PPF identified additional information that they went on to disclose to the complainant. This is covered in the 'Other matters' part of this Decision Notice.
28. In relation to the name and company numbers of the SCEs at the time of the request, the Commissioner considers the PPF to have provided ample evidence to show that disclosing the information would reveal restricted information provided to the PPF in the exercise of its functions.
29. The Commissioner is satisfied that the information is "restricted information" prohibited from disclosure under the Pensions Act 2004. The Commissioner therefore considers that the PPF is entitled to rely on

section 44(1)(a) of the FOIA in relation to the name and company number of all the SCEs.

Other matters

30. Over the course of the Commissioner's investigations, the PPF identified some information that they considered could be disclosed to the complainant under section 197 of the Pensions Act 2004.
31. For clarity, Section 197(3) permits the disclosure of restricted information where consent is provided by the person whom the information relates to.
32. Section 197(4) of the Pensions Act 2004 prohibits the disclosure of restricted information obtained by the PPF other than that which has already been made available to the public, or that which can be provided in the form of a summary so as not to identify any particular person.
33. The FOIA itself does not provide a basis for disclosure. Any information identified by the PPF that it is permitted to disclose under the Pensions Act 2004 is released at their discretion.

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 1234504
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

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