

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 October 2010

Public Authority: Insolvency Service
Address: 21 Bloomsbury Street
London
WC1B 3QW

Summary

The complainant submitted a request to the Insolvency Service for a copy of the most recent Individual Insolvency Register (IIR). The IIR is a public register listing all formal individual insolvencies in England and Wales. The Insolvency Service maintains three versions of the IIR: a hard copy version, a free to access online version which can be searched using simple criteria, and a subscription electronic version which can be searched using multiple criteria. In submitting her request the complainant specified a preference to be provided with the IIR in the format of the electronic version which is searchable using multiple criteria. The Insolvency Service refused to fulfil this request on the basis of the exemptions contained at sections 21(1) and 43(2) of the Act. The Commissioner has concluded that the Insolvency Service was entitled to rely on section 21(1) to refuse this request.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The Insolvency Service maintains the Individual Insolvency Register (IIR) which is a public register listing all formal individual insolvencies in England and Wales.
3. The Insolvency Service's website contains an electronic format of the IIR which can be searched, without the payment of a fee, using an individual's name (or part of); trading name; for whole of England and Wales; or by the individual offices of Insolvency Service or Court. This can be accessed at <http://www.insolvency.gov.uk/eiir/> (and is referred to from here on as the 'basic format'.)
4. The Insolvency Service also runs a subscription service which provides subscribers with access to the data contained in the IIR via an XML based data file. The subscription service allows the IIR to be searched by reference to multiple criteria. (This version of the IIR is referred to from here on as the 'enhanced format'.)
5. The register itself is also available for inspection at local Official Receivers' offices.

The Request

6. On 21 October 2009 the complainant submitted the following request to the Insolvency Service:

'I am writing to make a Freedom of Information Act request for a copy of the most recent Individual Insolvency Register (EIR). I would like this provided to me in the electronic format in which the Insolvency Service collects and stores the information (e.g. SQL database), and please provide me with the version of the register available on the date you complete this request (i.e. that day's/the most recent register).

If this information is too large to receive over the internet, please post a CD to: [name and address of complainant].

As this is a database that already exists and which contains publicly available information, I imagine this request should not cost so much to action as to fall outside the boundaries of the Act. However, as I understand that under the Act you are required to advise and assist requesters, if you need any

clarification of this request, please contact me by phone on either of the numbers below, or at this email address.'

7. The Insolvency Service responded on 23 October 2009 and confirmed that it held the information requested. However, it also informed the complainant that it believed that the information was exempt from disclosure on the basis of section 21(1) of the Act. This exemption provides that information is exempt if it is reasonably accessible to the applicant by other means. In this case the Insolvency Service explained that the information requested was available by means of a subscription service which would enable the complainant to download the database at a cost of £1,300. The Insolvency Service noted that section 21(1) could still apply even if the method by which the information was accessible was via payment of a fee.
8. The complainant contacted the Insolvency Service on 3 November 2009 and asked for an internal review to be conducted. In submitting this review the complainant argued that the payment of an annual subscription fee of £1,300 meant that the information was not reasonably accessible because such a level of fee was prohibitively expensive.
9. The Insolvency Service informed the complainant of the outcome of the internal review on 26 November 2009. This review upheld the application of section 21(1) of the Act. In doing so the review drew the complainant's attention to section 21(2)(b) which stated that information is considered to be reasonably accessible if it is information which a person is obliged to communicate under any statute. The Insolvency Service explained that the Secretary of State (of its sponsoring government department) was required under part 6A of the Insolvency Rules 1986, as amended, SI 1986/1925, to provide a publically accessible version of the IIR. The Insolvency Service also argued that the information was exempt from disclosure on the basis of section 43(2) of the Act because disclosure of the information would be likely to affect the commercial interests of the Secretary of State as the Insolvency Service would be unable to meet the costs of fulfilling requests such as this. Furthermore, the commercial interests of the subscribers to the annual service would be prejudiced because they would be placed in the position of paying for something that could be obtained by others free of charge.

The Investigation

Scope of the case

10. The complainant contacted the Commissioner on 1 December 2009 in order to complain about the Insolvency Service's handling of her request. The complainant provided a number of reasons why she believed that section 21 had been incorrectly relied upon; the Commissioner has set out these arguments in detail in the 'Analysis' section below.

Chronology

11. The Commissioner contacted the Insolvency Service on 24 December 2009 and asked to be provided with a copy of the information falling within the scope of this request along with submissions to support its reliance on the two exemptions cited.
12. On 25 January 2010 the Insolvency Service contacted the Commissioner and explained that it was in the process of preparing submissions which supported its reliance on sections 21 and 43 and these would be sent shortly. However, the Insolvency Service explained that it did not intend to provide the Commissioner with the 'information' requested by the complainant because to do so would be impractical and unnecessary given that the application of the exemptions was not dependent on the content of the information but rather the alternate availability of that information to the complainant.
13. The Insolvency Service wrote to the Commissioner again on 5 February 2010 and provided detailed submissions to support its reliance on the exemptions cited in the internal review.
14. The Commissioner contacted the Insolvency Service again on 11 May 2010 and asked for clarification on a number of further points.
15. The Insolvency Service provided the Commissioner with this clarification on 28 May 2010.

Analysis

Exemptions

16. The Commissioner has initially considered the application of section 21(1) rather than section 43(2) to the requested information.

Section 21 – information reasonably accessible by other means

17. Section 21 states that:

‘(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.’

The Insolvency Service's position

18. In submissions to the Commissioner the Insolvency Service explained that it believed that it was entitled to rely on section 21(1) because of the effect of section 21(2)(a) on the following basis:
19. Firstly, the information requested by the complainant could be accessed via the free online, basic format of the IIR. This was because the complainant could use this online version to construct the

information she had requested. For example, the online version could be searched using a single letter search term which would list all entries beginning with the letter used and each entry could be selected in order to view the relevant data for that entry. The Insolvency Service noted that the online version of the IIR was part of its publication scheme under data class 6) Lists and registers, information category 'Public registers and information held as public records'.

20. Secondly, the Insolvency Service explained that if the complainant did not wish to undertake such research and analysis of the online version of the IIR, then she had the option to pay the subscription fee and thus be provided with access to the information via the downloadable XML format. The Insolvency Service noted that section 21(2)(a) specifically stated that information could still be considered reasonably accessible even if such access required the payment of a fee.
21. In contrast to the position set out in its letter of 26 November 2009 which contained the outcome of the internal review, in submissions to the Commissioner the Insolvency Service explained that it was no longer seeking to rely on section 21(1) because of the effect of section 21(2)(b). This was because although the Insolvency Service was required by statute to provide a copy of the IIR for inspection, it did not consider there to be a statutory requirement on it to communicate this information. (For the purposes of section 21(2)(b) 'communication' of the information cannot be via inspection; rather 'communication' means provision of copies of the information.)

The complainant's position

22. In respect of section 21 the complainant argued that a fee of £1,300 cannot be described as one that it is reasonable but rather is one that is prohibitively expensive. Furthermore the complainant noted that her request was simply for a single copy of the raw data contained in the IIR on a particular day; she did not require an annual subscription. The complainant also suggested that the cost of providing her with the information requested would be negligible. Finally the complainant noted that there was a public interest in disclosure of information which would allow for an analysis of the data contained in the IIR.

The Commissioner's position

23. The Commissioner recognises that at the centre of this case is the fact that the complainant does not simply wish to be provided with a copy of the IIR under the Act but in fact wishes to be provided with a copy of the IIR via the 'enhanced format'.

24. The Commissioner is conscious that section 11 of the Act allows applicants to express a preference for a means of communication by which they would prefer to have the requested information provided to them. Under section 11 of the Act a public authority must comply with such preference unless it is not reasonably practicable to do so.
25. However, the Commissioner is also conscious that in previous cases although requests would appear to express a preference for a means of communication, e.g. an electronic version rather than a hard copy, section 11 is not in fact a relevant consideration because the information contained in one format is different to the information contained in another format. Therefore provision of the information in a format which contained 'less' information would not completely fulfil the request.
26. For example, in decision notice [FS50176916](#), the applicant requested an economic model and specifically noted that it was seeking 'full access to [an] electronic model, including all relevant source files used to populate the model'. The requestor further stipulated that: 'Please provide this in an electronic auditable format along with supporting explanation and commentary that will enable our client to understand how and where in the model this data has been applied, such data provided should obviously tally to that which is used in the model. Our client wishes to receive from [the public authority] an electronic copy of the model that can "run", including such links to source data files'.
27. Although the public authority provided an electronic version of a spreadsheet, the requestor argued that this was not a workable model, i.e. it was not able to input its own data and run the model in an executable form. The Commissioner decided that the executable model contained calculations which had been applied to the data which had been fed into the model and as these calculations were part of the model they fell within the scope of the complainant's request. Therefore, subject to the application of the exemptions, the public authority was obliged to provide the complete model with all the underlying calculations and information. Provision simply of the electronic version of the spreadsheet did not, in the Commissioner's opinion, provide all of the information falling within the scope of that particular request.
28. What is apparent from this example is that for all similar cases before there is any consideration as to whether an applicant has expressed a preferred means of communication, and thus whether a public authority has to take into account the effect of section 11, it is vital to determine what information was actually requested. That is to say, does the request simply ask for certain information, with a preference

- for a particular format? Or is there extra information contained in the particular format of the information that has been requested and does this extra information fall within the scope of the request? The answer to such a question will depend upon on the objective wording of the request.
29. In the Commissioner's opinion in this case it is reasonable to conclude that on an objective reading of this request, the complainant has simply asked for 'a copy of the most recent Individual Insolvency Register', albeit that she has specified a preference to have that communicated to her via the enhanced version. In the circumstances of this case the Commissioner does not believe that the request is sufficiently broad to encompass any further information which is contained in the enhanced electronic model, e.g. any coding contained in the XML database. In other words the Commissioner would draw a distinction between this request and the one in FS50176916 in which that requestor explicitly asked to be provided not just with the 'model' but also the 'source code' that made it function. In this case the complainant has not explicitly asked for the additional data that may be included in the XML database which comprises the enhanced format of the IIR.
 30. As the complainant has therefore only requested a copy of the latest version of the IIR, the Commissioner believes that the request - although obviously not the preference - could be fulfilled by provision of the hard copy register, the basic format register or the enhanced format register. This is because all three versions of the register contain exactly the same information; it is just that each of the formats are organised in a different way and can be searched using different criteria.
 31. This of course leads back to the complainant's preference to have the IIR provided to her in the enhanced format. However the Commissioner's position is that a public authority does not need to take into account any section 11 preference if the information requested is exempt from disclosure on the basis of any of the exemptions contained in Part II of the Act. The rationale behind this approach being that if information is exempt from disclosure under the Act, then it would be illogical to begin by determining whether provision of such information in a particular format is in fact reasonably practicable.
 32. Therefore before determining whether the Insolvency Service needed to take into account the complainant's section 11 preference to have the IIR provided in the enhanced format, the Commissioner has to determine whether the IIR is exempt from disclosure on the basis of

section 21(1) of the Act. As the Commissioner has concluded above that the information in all three versions of the register is the same information, he only needs to conclude that one of the versions of the IIR is reasonably accessible to the complainant in order for section 21(1) to apply.

33. The Commissioner notes that in its submissions to him, the Insolvency Service confirmed that it was not seeking to rely on section 21(1) because of the effect of section 21(2)(b). Rather, as stated at paragraph 18 above it was seeking to rely on section 21(2)(a). However, for the reasons that will become clear below, the Commissioner has set out in the following paragraphs whether he agrees with this position.
34. The effect of section 21(2)(b) is that requested information is automatically considered to be exempt from disclosure by virtue of section 21(1) if the public authority is required by statute to 'communicate' the requested information. Section 21(2)(b) specifically notes that the statutory right of access has to be one which provides the applicant with a copy of the information, not simply the right of access to inspect the information.
35. The Commissioner understands that Part 6A of the Insolvency Rules 1986 (IR86) provides that the Secretary of State (of the Insolvency Service's home government department) must create and maintain a register of matters relating to bankruptcies, Debt Relief Orders, Individual Voluntary Agreements and Bankruptcy Restrictions Orders (r.6A(1) & (2)) and that it shall be 'referred to as...the individual insolvency register'.
36. IR.6A(4) provides that the registers are open to public inspection between 9am and 5pm on any business day.
37. IR.12.15 further provides that where there is a right of inspection, there is a right to take a copy on payment of the appropriate fee (r.12.15(b)). In accordance with r.13.11 the appropriate fee is 15p per A4 or A5 sheet and 30p per A3 sheet.
38. Therefore the Commissioner agrees with the Insolvency Service that section 21(2)(b) cannot apply to this request because although the relevant statutory provisions provide the right to take copies of the IIR, this is only after an applicant has first inspected the IIR. As noted above, for the purposes of section 21(2)(b) 'communication' of the information cannot be via inspection.

39. Section 21(3) states that information is considered to be reasonably accessible and thus exempt from disclosure on the basis of section 21(1) if it is included in a public authority's publication scheme **and** is not exempt from disclosure by virtue of section 21(2)(b).
40. The Commissioner has already set out above why he believes that section 21(2)(b) does not apply in this case.
41. As noted above, the Insolvency Service has stated that the basic format of the IIR is part of its publication scheme under data class 6) Lists and registers, information category 'Public registers and information held as public records'. The Commissioner has examined the Insolvency Service's publication scheme – which is available to view online - and can confirm that the basic format is included in this scheme.¹ (In fact the scheme includes a website link to the part of the Insolvency Service's website containing the basic format of the IIR.)
42. Therefore the Commissioner is satisfied that the IIR is exempt from disclosure under section 21(1) of the Act by virtue of section 21(3). The fact that it may take the complainant some time to extract the requested information from the basic format of the IIR does not prevent this conclusion. How easy or difficult it is to extract the requested information from the means of access listed in the publication scheme does not affect prevent the requested information, in terms of the application of section 21, being described as 'reasonably accessible'.
43. For the reasons set out above, as the Commissioner has concluded that the requested information – i.e. the IIR - is exempt from disclosure on the basis of one of the exemptions contained in Part II of the Act there is no requirement for the Insolvency Service to have to take into account the effect of section 11 and thus the complainant's preference to be provided with the enhanced version of the IIR.
44. In light of this conclusion, i.e. the fact the requested information is reasonably accessible via the basic format of the IIR and the three versions of the register contain the same information, the Commissioner does not need to make any determination as to whether the subscription fee charged by the Insolvency Service is one that is reasonable in nature in order to determine whether section 21(1) can be correctly relied upon. Furthermore, although the complainant argued that there was a public interest in ensuring that the enhanced format of the IIR was widely (and freely) available, as section 21 is an

¹ The publication scheme can be viewed here <http://www.insolvency.gov.uk/foi08/home.htm>

absolute exemption there is no need for the Commissioner to consider the public interest test set out at section 2 of the Act.

Section 43 – commercial interests

45. As the Commissioner has concluded that the requested information is exempt from disclosure on the basis of section 21(1) he has not gone on to consider whether the information is also exempt from disclosure on the basis of section 43(2).

The Decision

46. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

47. The Commissioner requires no steps to be taken.

Right of Appeal

48. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 25th day of October 2010

Signed

**Alexander Ganotis
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Freedom of Information Act 2000

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Effect of Exemptions

Section 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

Means by which communication can be made

Section 11(1) provides that –

“Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public shall so far as is reasonably practicable give effect to that preference."

Section 11(2) provides that –

"In determining for the purposes of this section whether it is reasonably practicable to communicate information by a particular means, the public authority may have regard to all the circumstances, including the cost of doing so"

Section 11(3) provides that –

"Where a public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination

Section 11(4) provides that –

"Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances."

Information Accessible by other Means

Section 21(1) provides that –

"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."

Section 21(2) provides that –

"For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment."

Section 21(3) provides that –

"For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme."

Commercial interests

Section 43(2) provides that –

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."