

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 3 February 2011

**Public Authority:** The Supreme Court  
**Address:** Parliament Square  
London  
SW1P 3BD

#### Summary

---

The complainant requested information about the interpretation of section 271(3) of the 1986 Insolvency Act which the Supreme Court stated was not held by them. The Commissioner finds that the Supreme Court did not hold the information and does not require any further steps to be taken.

#### 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.

#### The Request

---

2. On 4 March 2010 the complainant wrote to the Supreme Court to request information relating to the interpretation of section 271(3) of the Insolvency Act 1986. In particular he asked for:

*"....any information on any cases where a solvent person was declared bankrupt, contrary to this section of the Act? Did they get their bankruptcy order annulled?"*

3. On 24 March 2010 the Supreme Court responded to the request stating that it did not hold the requested information. The Supreme Court explained that it did hold court records, but that these would be unlikely to contain the requested information as they related only to the individual cases that had been heard by the Supreme Court. In any

event court records were generally exempt from release under section 32 of the Act. The Supreme Court also confirmed that it did not hold the requested information in its administrative files. The Supreme Court suggested a number of other sources where the complainant might be able to find the information.

4. There was an exchange of correspondence between the complainant and the Supreme Court and on 26 March 2010 the complainant requested an internal review of the Supreme Court's handling of his request.
5. The Supreme Court completed an internal review on 6 May 2010. The Supreme Court referred to an email from the complainant dated 28 April 2010 in which he said that he was seeking an interpretation of how the courts should be applying section 271(3), '*which need not necessarily be solely derived from any decided case*'. As such the Supreme Court determined that the request was not for recorded information but for legal advice on the application of the statutory provision in question. The Supreme Court maintained its original view that the requested information was not held, although it again explained why this was the case and suggested other avenues and resources for the complainant to try.

## The Investigation

---

### Scope of the case

6. On 10 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
7. The Commissioner asked the complainant to clarify the scope of his request as it appeared that he was seeking an interpretation of how section 271(3) of the Insolvency Act 1986 should operate. The Commissioner also asked the complainant whether he had any reason to believe that the Supreme Court did in fact hold the information he requested.
8. The Commissioner exchanged correspondence with the complainant, but was unable to obtain clarification of the request. Therefore the Commissioner has taken the request to be for recorded information relating to the interpretation of section 271(3) of the Insolvency Act 1986, as indicated in the complainant's email to the Commissioner of 29 September 2010.
9. The scope of the Commissioner's investigation is thus to determine whether the Supreme Court holds information relevant to the description above.

## Chronology

10. The Commissioner contacted the Supreme Court on 5 November 2010 to request further information about its handling of the request. The Supreme Court responded on 10 November 2010.

## Analysis

---

### Substantive Procedural Matters

#### Section 1: information not held

11. 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.”

12. As discussed at paragraph 8 above, the Commissioner understands that the complainant is seeking an interpretation of section 271(3) of the Insolvency Act 1986. The complainant argued to the Commissioner that:

*“It is illogical and irrational... for the so called Supreme Court to not hold relevant information to explain how the right to **“not be arbitrarily deprived of ones property”** has been upheld by the Insolvency Act.”*

13. However, the Commissioner is mindful that the Act does not require public authorities to create information in response to a request. The Act provides a qualified right of access to recorded information only. Therefore the Commissioner can only consider whether or not the Supreme Court actually holds the requested information, he can not comment on whether it ought to create or hold it.

14. The complainant argued that the requested information should be available. He argued:

*“...that under the FOI Act the State needs to make it easier to access information on what judgements are made by every court and why. They can only do that by ensuring that cases can be*

*traced by subject matter, e.g section 271(3) of Insolvency Act or just Insolvency Act for all cases."*

15. The Supreme Court has provided a detailed explanation to the Commissioner as to why it does not hold the requested information. The Supreme Court explained that its role is to give judgment on those cases which come before it. It does not provide a general law information service for the public or give advice or interpretation of the law except for those cases it hears. The Commissioner accepts that this is a reasonable explanation, given the function of the Supreme Court.
16. The Supreme Court also stated to the Commissioner that it carried out searches of its administrative records for relevant information. The Commissioner is satisfied that the Supreme Court has demonstrated its consideration of whether relevant information might be held in any of its records.
17. The Commissioner notes that the Supreme Court did attempt to assist the complainant by suggesting other sources of information. It is of course up to the complainant to pursue other avenues to obtain the information he requires.
18. The Commissioner understands that there is a difference between recorded information and information created to respond to a question. He notes in this case that the requested information was for legal advice on the application of the stated statutory provision. The Commissioner notes the complainant's desire and belief that the requested information should be held by the Supreme Court, however just because a person believes certain types of information should be held does not necessarily mean that the information can be created by the public authority. The Commissioner is mindful of the decision of the Information Tribunal (now known as First-tier Tribunal) (Information Rights) in *Day v the ICO and Department for Work and Pensions (DWP)* (EA/2006/0069):

*".....The Act only extends to requests for recorded information. It does not require public authorities to answer questions generally, only if they already hold the answers in recorded form. The Act does not extend to requests for information about policies or their implementation, or the merits or demerits of any proposal or action – unless of course, the answer to any such request is already held in recorded form...."*

19. Accordingly the Commissioner is satisfied that the Supreme Court does not hold the requested information. Therefore the Commissioner finds that the Supreme Court complied with section 1(1)(a) of the Act.

## **The Decision**

---

20. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.
21. The Commissioner requires no steps to be taken.

## 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  
Arnhem House  
31, Waterloo Way  
LEICESTER  
LE1 8DJ  
Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk)  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

**Dated the 3<sup>rd</sup> day of February 2011**

**Signed .....**

**Gerrard Tracey  
Principal Policy Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

---

### Freedom of Information Act 2000

#### 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."