

Freedom of Information Act 2000 (FOIA)

Decision Notice

Date: 23 June 2014

Public Authority: Department of Enterprise, Trade and Investment

Address: Netherleigh
Massey Avenue
Belfast
BT4 2JP

Decision (including any steps ordered)

1. The complainant requested information relating to legal action brought against his company. The Commissioner finds that, on the balance of probabilities, the Department does not hold any relevant information which it has not already provided to the complainant. The Commissioner does not require any steps to be taken by the public authority.

Request and response

2. By way of background the Commissioner understands that the complainant's company was the subject of legal action taken by the Crown Solicitor's Office (the CSO) on behalf of the Department in 2009. The legal action was in respect of a penalty applied under the Companies (Northern Ireland) Order 1986 as amended by the Companies (Northern Ireland) Order 1990. The penalty had been dealt with by the Companies Registry, then part of the Department. The functions of the Companies Registry were transferred from the Department to Companies House in October 2009. The complainant made a formal complaint about the legal action to the Department in August 2013.
3. On 16 October 2013 the complainant made the following request to the Department:

"I write on behalf of the company to formally request every single piece of information or communication you hold with regard to the company, whether physical or digital.

The company specifically requests all information related to the processing of county court legal action 09/089502 between 1) Department of Enterprise, Trade and Investment (including Companies Registry Northern Ireland which was your department's executive agency until 1st October 2009) and the Crown Solicitors Office and 2) Department of Enterprise, Trade and Investment and Companies Registry Northern Ireland."

4. The complainant contacted the Commissioner on 19 November 2013 and again on 22 November 2013 to complain that he had not yet received a response to his request. The Commissioner wrote to the Department on 25 November 2013 to remind it of its obligations under the FOIA.
5. The complainant wrote to the Commissioner on 27 November 2013 to advise that he had written to the Minister for Enterprise, Trade and Investment on 22 November. Later that day the Department had responded to the complainant, providing some information and advising that it had redacted staff names under section 40(2) of the FOIA. The Department advised that all relevant paper and electronic records held by DETI had been transferred to Companies House as a result of the commencement of the Companies Act 2006 in October 2009. Therefore the Department was of the view that it did not hold any further relevant information.
6. The complainant requested an internal review on 23 November 2013. He was concerned that the Department had not provided any information dated between 1 October 2009 and 26 August 2013, and he specified seven pieces of information that he believed were missing.
7. The Commissioner advised the complainant on 29 November 2013 that he would need to wait for the Department to complete the internal review before the Commissioner would accept the complaint for investigation.
8. The Department responded to the complainant on 19 December 2013. The Department accepted that it had not met the statutory deadline in its initial response, but reaffirmed its statement that it had provided all the information it held. The Department clarified that it had continued to undertake some functions until June 2010 but after this time the records management systems had been decommissioned. The Department explained that it therefore did not hold information dated between 1 October 2009 and 26 August 2013 as queried by the complainant.
9. On 13 January 2014 the complainant contacted the Commissioner again. He explained that the Department had completed its internal review, but he remained dissatisfied with the way his request for information had

been handled. The complainant alleged that the Department held further relevant information that had not been provided to him. The complainant explained that he had made an information request to the CSO and had received information that he would have expected the Department to have provided to him. The complainant did not raise any issue with the Department's redaction of staff names.

10. Before the complaint was allocated to a case officer the Department wrote to the complainant on 3 March 2014 to advise that it had located further information which it provided to him. The Department explained that it had discovered an external back-up drive from which it had extracted information relevant to the request. This information comprised correspondence between the Department and the CSO, dated February 2010 and documents relating to the legal action from 2009 and 2010.
11. Again the Department redacted staff names under section 40(2) of the FOIA. The Department confirmed that it had now provided (or legitimately withheld) all the information it held which fell within the scope of the complainant's request.

Scope of the case

12. On 4 March 2014 the complainant contacted the Commissioner to advise that he remained dissatisfied despite the Department's correspondence of 3 March 2014. The Commissioner determined that the scope of the case was to investigate whether the Department held any further information that was relevant to the complainant's request but that had not been provided to him or properly refused.

Reasons for decision

13. The Commissioner's published guidance states that when considering whether information is held, the Commissioner uses the civil standard of proof, i.e. whether it is likely or unlikely on the balance of probabilities.¹ In assessing such cases the Commissioner will consider the extent and quality of the authority's search for the requested information, any other

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http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Practical_application/determining_whether_information_is_held_foi_eir.ashx

explanations provided, and the complainant's reasons for believing that the information is held.

14. The Department's letter of 22 November 2013 advised the complainant that, following the commencement of the Companies Act 2006 on 1 October 2009:

"All paper and electronic records previously held by DETI were transferred to Companies House."

15. The Department thus concluded that it did not hold any information dating from before 1 October 2009. The Department's letter of 19 December 2013 further advised the complainant that:

"I am aware that a small team of DETI staff continued to collect outstanding late filing penalty payments until June 2010 after which the records management systems they had been using were decommissioned."

16. Similarly the Department was satisfied that it did not hold any information dated after June 2010, with the exception of information generated by the complaint made by the complainant to the Department in August 2013 as indicated at paragraph 2 above. This was the Department's position until the discovery of the information referred to at paragraph 10 above.
17. The Commissioner asked the Department how it had searched for the requested information at the time of the request, and how it had satisfied itself that no further information was held. The Department has provided the Commissioner with full copies of internal correspondence demonstrating how it conducted physical and electronic searches for the requested information both in response to the request, and when conducting the internal review.
18. Having inspected the correspondence the Commissioner is satisfied that departmental staff conducted a thorough search, involving all relevant business areas and staff. The Commissioner notes that the Department asked staff to search personal drives, including those of staff who no longer worked in the Department. The Department also conducted a search of its electronic records management system for information associated with the complainant's company. This search did not identify any information which had not already been provided to the complainant.
19. The Commissioner notes that the Department was initially unable to account for any documentation dated between October 2009 and June 2010 – when departmental staff were still carrying out functions relating to late filing penalty payments. The internal correspondence provided to

the Commissioner by the Department demonstrates that this was recognised as a matter of concern by the Department's Senior Information Risk Owner (SIRO). Consequently the SIRO requested that the Department review its records management practices, and it was this review which led to the identification of the external drive referred to at paragraph 10 above.

20. The complainant referred the Commissioner to his information request to the CSO, who had provided several documents that were not disclosed by the Department. The complainant provided the Commissioner with the seven examples he had provided to the Department on 23 November 2013 as indicated at paragraph 6 above. The complainant accepted that one of these documents had subsequently been provided to him by the Department. Having considered these seven documents the Commissioner notes that the six "outstanding" documents comprise correspondence and notes generated by the CSO, and a civil bill relating to the complainant's company. In taking the legal action the CSO would have generated relevant information. However, given that the CSO was acting for the Department the Commissioner considers it reasonable that the CSO would not have needed to provide the Department copies of all the information generated in relation to the legal action. Therefore the Commissioner does not consider that the documents provided by the complainant indicate that the Department, rather than the CSO, held further information. In any event the Commissioner notes that the Department suggested to the complainant that the CSO may hold relevant information and that he may wish to contact the CSO on that basis.
21. In light of the above the Commissioner is of the view that the Department conducted an adequate search of physical and electronic records for the requested information. The Commissioner has seen no evidence to suggest that the Department sought to conceal any relevant information, and in fact the internal correspondence suggests that departmental staff were thorough in their attempts to locate the requested information. On the balance of probabilities the Commissioner is satisfied that the Department has identified and located all the information it holds which is relevant to the request. The Commissioner therefore finds that the Department does not hold any further information which is relevant to the request. The Commissioner has also considered whether, if he were to uphold the complaint, he could specify any steps that the Department could be required to take. However, given that the Department has provided detailed evidence of the thorough searches conducted the Commissioner is of the view that there is nothing more he can oblige the Department to do in relation to the complainant's request.

Reference: FS50529058

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
LEICESTER
LE1 8DJ

Tel: 0300 1234504
Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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 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.

Signed

Alexander Ganotis
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