

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 August 2016

Public Authority: Government Legal Department
Address: 1 Kemble Street
London
WC2B 4TS

Decision (including any steps ordered)

1. The complainant has requested information about the Bulkeley Estate. The Commissioner's decision is that, on the balance of probabilities, the Government Legal Department does not hold the requested information.
2. The Commissioner does not require the public authority to take any steps.

Request and response

3. On 9 February 2016 the complainant wrote to the Government Legal Department and requested information in the following terms:

"1. Personal Bill of Parliament circa 1822-23 (PPIDI525) which states that Thomas Evans is the rightful heir to the 7th Viscount Bulkeley's Estate and furthermore states that the 7th Viscount had a stillborn child named the 8th Viscount.

2. The names and contact information for the current Trustees of the Bulkeley Estate.

3. DNA test results, including the haplogroup of John Evans. Snr, late of Bwlan, Aberfraw Parish, Anglesey, North Wales. who died in 1753 and who was the younger brother of the said Thomas Evans of the Tre'rgo Estate."

4. The Government Legal Department responded on 16 February 2016 stating that it did not hold the requested information.

5. On 23 March 2016 the complainant requested an internal review of the decision. It is the complainant's position that he did not receive a review response.
6. It is the position of the Government Legal Department that it responded to the review by re-issuing its original response assuming that this had not been received. This was sent on 1 April 2016.
7. The Government Legal Department's position remains that the information requested is not held.

Background

8. Bona vacantia is ownerless property that has passed by law to the Crown. It arises mainly from two sources: the assets of dissolved companies; and the estates of individuals who die without a valid will and without entitled kin.
9. When an individual dies intestate and without blood relatives entitled under the Administration of Estates Act 1925, their estate passes to the Crown as bona vacantia under section 46(1)(vi) of that Act. The Government Legal Department passes monies raised through bona vacantia to the Consolidated Fund held by HM Treasury, less its operating costs.
10. Whilst the Government Legal Department administers bona vacantia estates after taking reasonable steps to trace those better entitled, there can be no absolute guarantee that any such kin will be found immediately. It may be that such kin in fact come forward much later to claim the estate after it has been administered. If the Government Legal Department accepts such claim it will pay the value of the estate to the claimant, together with interest in certain cases.
11. The Government Legal Department will pay the value of the estate to the first kin claimant who can prove (on balance) their entitlement. Once a claim has been admitted the Government Legal Department has no further legal standing to deal with the estate, as the claimant will have a prior claim to the estate. Any future claims received by the Government Legal Department will therefore be referred on to the successful kin claimant.
12. Claims can only be accepted by the Division within the period of 12 years of the date that the administration of the estate was completed and interest will be paid on the money held. Claims are statute barred after that date. However, the Division will, on a discretionary basis,

admit claims in the period up to 30 years from the date of death, although if the claim is submitted more than 12 years from completion of administration no interest will be paid on the money held.

13. The effect of this policy is that the Bona Vacantia Division will never need to retain a file for more than 30 years from the date of completion of administration of the estate, and this is reflected in the Division's record retention policy.

Scope of the case

14. The complainant contacted the Commissioner by letter dated 31 March 2016 to complain about the way his request for information had been handled. His complaint was detailed and related to a variety of matters concerning the Bulkeley Estate and his dealings with the Government Legal Department.
15. The Commissioner considers the scope of the request was to consider whether the Government Legal Department was correct to state that it did not hold the requested information

Reasons for decision

16. Section 1(1) of FOIA states 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".

17. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes may be held, the ICO, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
18. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
19. The Government Legal Department set out that it conducted a search of its electronic case management system using appropriate search terms

which it has set out to the Commissioner. It asserts that this search would have revealed relevant files. The dates of birth and death of each estate is recorded and this search did not produce results with dates consistent with those provided by the complainant.

20. This search also included a search of the database for the Government Legal Department's off site storage facility.
21. Given that estate files are stored and filed according to the surname of the deceased, it is the Government Legal Department's position that this search would have identified recorded information falling within the scope of the request.
22. The submission to the Commissioner confirmed that no information within the scope of the request would be held electronically other than on the electronic case system.
23. With regard to whether the information requested would be held manually or electronically, the Government Legal Department has set out that the persons detailed in the request appear to have died in the 18th or early 19th century. The electronic case management system was introduced in 1997 and details were added of estates being dealt with at the time of introduction. Were the estate in question being dealt with at that time then it would have been added to the electronic case system.
24. The Government Legal Department has set out to the Commissioner that the Bona Vacantia Division has undertaken a successful project to add to its electronic records, and its unclaimed estates list, details of all estates available to be claimed where administration was completed prior to 1997.
25. In its submission to the Commissioner, the Government Legal Department has confirmed that paper records of estates dealt with by its office are retained for a maximum period of 30 years and are then destroyed. Therefore, had either estate, referred to by the complainant, been administered and remained available to be claimed, relevant records would have been located. This is of course reliant on those estates having been administered as bona vacantia at some point in the last 30 years. The Government Legal Department has set out that this is highly unlikely given that the relevant individuals appear to have died at least 200 years ago.
26. With regard to the deletion or destruction of any information falling within the scope of the request, the Government Legal Department has set out that it has no knowledge of ever having held or destroyed information within the scope of the request. It notes too that the estates date from at least 200 years ago and therefore it cannot confirm

whether the Department, established in 1876 as the Treasury Solicitor's Department, ever held relevant information. Whilst this is helpful background for the complainant, the Commissioner notes that under FOIA, a public authority is only obliged to consider information held at the time of the request.

27. The Government Legal Department has submitted to the Commissioner that there is no business need for it to hold the requested information nor is there any statutory requirement to do so.
28. The Commissioner considers that the Government Legal Department has provided a comprehensive submission regarding this request and that the balance of probability is tipped heavily in favour of its position that no information within the scope of the request is held.

Other matters

29. The complainant had asked the Commissioner to consider issues surrounding lack of response or untimely responses. Having considered these, it is the Commissioner's position that the Government Legal Department could have made it clearer in its letter of 1 April that the response was issued as a result of the complainant's letter dated 23 March 2016 and that its position was unchanged. However, he notes that the original response complied with the statutory time frame. The response to the internal review request was issued in accordance with the Commissioner's guidance.

Right of appeal

30. 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

31. 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.

32. 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

Pamela Clements
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