

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 January 2021

Public Authority: The Insolvency Service
(Department for Business, Energy and Industrial Strategy)

Address: Cannon House
18 Priory Queensway
Birmingham
B4 6FD

Decision (including any steps ordered)

1. The complainant submitted a request to the Insolvency Service about insolvencies in the utilities sector. The Insolvency Service asked the complainant to clarify this request, and once he did so, responded to the clarified request by disclosing some of the information sought and by explaining that it did not any further information in the scope of the request. The complainant questioned whether the Insolvency Service held further information falling within the scope of the request and also raised a number of concerns with the Commissioner about its handling of his request.
2. The Commissioner has concluded that on the balance of probabilities the Insolvency Service does not hold any further information falling within the scope of this request. However, the Commissioner has concluded that the Insolvency Service breached section 10(1) of FOIA by failing to respond to the complainant's clarified request within 20 working days.
3. The Commissioner does not require any steps to be taken.

Nomenclature

4. The Insolvency Service is not listed as a separate public authority in Schedule 1 of the FOIA because it is an executive agency of the Department for Business, Energy and Industrial Strategy (DBEIS). However, as it has its own FOI unit and as both the complainant and the Commissioner have corresponded with 'the Insolvency Service' during the course of the request and complaint, the Commissioner will refer to 'the Insolvency Service' for the purposes of this notice – although the public authority is, ultimately, DBEIS.

Request and response

5. The complainant submitted the following request to the Insolvency Service, via its online general enquiry form, on 5 December 2019:

'Please provide the following information:

1. The number and named list of commercial/corporate insolvency matters relating to the utilities sector (electricity and gas) since 1999, including those that are currently underway.

2. The list of insolvency practitioners, including their partner firm, and the total fees paid to them for each insolvency matter undertaken, including projected fees due for each matter currently underway, and the full total fees across all such insolvency matters.

Insolvency matters means all types of insolvency matters undertaken - including but not limited to CVAs, Administration, Voluntary and Compulsory Liquidation.'

6. The Insolvency Service's customer service team responded on 6 December 2019 and explained that it did not deal with information requests and advised the complainant to submit his request to the Insolvency Service's FOI email address.
7. The complainant submitted his request to this email address on 9 December 2019.
8. The Insolvency Service responded on 24 December 2019 and explained that it needed the complainant to clarify the nature of his request before it could respond to it. In particular it explained that it would be useful to know what the complainant meant by the term 'utilities industry'. The Insolvency Service explained that it did not have an industrial classification termed 'utilities industry' and although the complainant had provided electricity and gas as examples, it was not clear if he wanted the request to be limited solely to those sectors, or whether he

wished for other types of industry to be included. The Insolvency Service provided the complainant with a list of industrial classifications which it used and which may fit within the term 'utilities industry' and asked the complainant to confirm whether it wanted some or all of these classifications to be included in the request.

9. The complainant provided this clarification on 3 January 2020 in the following terms:

'I will be happy for you to limit my request to the supply of gas and electricity during the period specified, and does not need to include other utilities.'

I trust that you will treat the request positively in accordance with the Freedom of Information Act 2000, and not restrictively.

In addition, I have been a little surprised, given the requirements of all government departments to meet open government requirements how difficult it is to locate sectoral analysis on the Insolvency Service website. I would therefore like to ask 2 further questions:

1. What steps has the Insolvency Service taken to meet the UK Open Government National Action Plans since their inception (now 4th version 2019-2021), and 2. What expenditure has been spent, and is scheduled to be spent to meet the open government requirements 2000-2021.'

10. The Insolvency Service responded on 7 February 2020. In response to the first part of the complainant's original first question, the Insolvency Service provided the complainant with a spreadsheet containing the names of company insolvencies in the gas and electricity supply sector for 2000 onwards. It also explained that the number of insolvencies was available in the statistics which it had published online. The Insolvency Service explained that it did not hold the information sought by the second original request, ie the names of insolvency practitioners, but suggested that this may be held by Companies House. The Insolvency Service also explained that it did not hold any information falling within the scope of the additional two questions set out in the complainant's clarified request.
11. The complainant contacted the Insolvency Service on 8 March 2020 in order to ask for an internal review of this response. He questioned the Insolvency Service's position that it did not hold some of the information that he had sought and also asked it to clarify a number of issues about its handling of his request.

12. The Insolvency Service informed the complainant of the outcome of the internal review on 27 March 2020. The review addressed his queries regarding the handling of his request. The review also confirmed the Insolvency Service's position that it did not hold any further information falling within the scope of his request.

Scope of the case

13. The complainant contacted the Commissioner on 31 March 2020 to complain about the way his requests for information had been handled. The Commissioner subsequently clarified with the complainant that his grounds of complaint were as follows:
 1. He was dissatisfied that the Insolvency Service did not accept his communication of 5 December 2019 as a valid FOI request.
 2. He was dissatisfied that the Insolvency Service waited until 24 December 2019 before seeking clarification of his 9 December 2019 request.
 3. He was dissatisfied that the Insolvency Service failed to reply to his request of 3 January 2020 within 20 working days.
 4. Not all of the data for part 1 of that request, as described in his previous request of 9 December 2019, had been provided.
 5. He was unhappy that the Insolvency Service did not proactively publish its responses to FOI requests and a result of which he believed that the Insolvency Service was failing to comply with the obligations of the ICO's model publication scheme.
14. The scope of a decision notice issued under section 50 of FOIA is limited to considering whether a public authority has complied with the legislation in respect of its handling of a specific FOI request(s). Therefore, this notice only considers the complainant's first four grounds of complaint about the Insolvency Service's handling of his requests of 5 December 2019, 9 December 2019 and 3 January 2020. However, the Commissioner has considered the issues raised the fifth ground of complaint, which deal with matters broader than a specific FOI request, in the Other Matters section at the end of this notice.

Reasons for decision

Complaint 1

15. Section 8 of FOIA defines a request for information as one that meets the following criteria:

'(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.'

16. The complainant's communication of 5 December 2019 met all of these criteria and therefore the Insolvency Service should have accepted this as a valid request rather than requiring the complainant to re-submit his request to its specific FOI email address.¹

Complaint 2

17. The Commissioner appreciates that a public authority may receive an unclear or ambiguous request where it reasonably requires further information in order to identify and locate the requested information. This will trigger the public authority's duty under section 16 of FOIA to provide advice and assistance to the requester.
18. Section 10(1) of FOIA requires a public authority to respond to a request within 20 working days. In scenarios where a public needs clarification from the requester in order to identify and locate the information sought then it must also ask for this within 20 working days. The Commissioner's guidance on this topic, in line with the section 45 Code of Practice, explains that there should be no undue delay in a public authority requesting clarification.²
19. The Insolvency Service contacted the complainant on 24 December 2019 in order to seek clarification of his 9 December 2019 request. The Insolvency Service explained that it had sought clarification on the phrasing of the request, and specifically what was meant by 'utilities industry', because it did not hold data categorised under that term. Rather it used industrial classifications and provided a list of these to the complainant to help him clarify what classification and/or sub-classification would be relevant to his request.

¹ The Commissioner notes that the Insolvency Service's internal review explained that the response the complainant received from its general enquiry team did not follow the correct protocol to redirect such queries internally. The Commissioner also notes that the internal review explained that staff attending the enquiry line had been reminded to re-direct such requests internally.

² See paragraph 39 of the Commissioner's guidance 'Interpreting and clarifying requests' <https://ico.org.uk/media/for-organisations/documents/1162/interpreting-and-clarifying-a-request-foia-eir-guidance.pdf>

20. In the Commissioner's view, given the wording of the request of 9 December 2019, and taking into account how the Insolvency Service holds information on this topic, it was reasonable for it to ask the complainant to clarify his request of 9 December 2020. The Insolvency Service sought this clarification within 20 working days of the request and therefore complied with the requirements of the legislation. In fact the Insolvency Service sought this clarification within 11 working days of the request and given the circumstances of the request the Commissioner is satisfied that this does not represent any undue delay on the part of the Insolvency Service.

Complaint 3

21. As explained above, section 10(1) of FOIA requires a public authority to respond to a request within 20 working days. In relation to the complainant's request of 3 January 2020 the Insolvency Service was therefore under an obligation to respond to the request by 31 January 2020. By issuing its response on 7 February 2020 the Insolvency Service breached section 10(1) of FOIA.

Complaint 4

22. In cases such as this where there is some dispute as to whether information falling within the scope of the request is held, the Commissioner, following the lead of a number of Information Tribunal decisions, applies the civil standard of the balance of probabilities.
23. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
24. In applying this test the Commissioner will consider the scope, quality, thoroughness and results of the searches, and/or other explanations offered as to why the information is not held.
25. In relation to this point of complaint, the relevant part of the complainant's request sought:
- 'The number and named list of commercial/corporate insolvency matters relating to the utilities sector (electricity and gas) since 1999, including those that are currently underway.'*
26. In response to this part of the request the Insolvency Service provided the complainant with a spreadsheet. On examining this spreadsheet the Commissioner was satisfied that it contained all of the information sought by this part of the request. That is to say it provided the names of companies within the electricity and gas sector placed into insolvency for the period question. (By providing the names of these companies

individual companies the Insolvency Service had also, by default, disclosed the number of such companies placed into insolvency). The only exception to this was the data for the year 1999 as the spreadsheet covered the period 2000 to 2019 but the request sought data from 1999 onwards.

27. The Commissioner therefore sought clarification from the Insolvency Service as to the whether it held the data for 1999.
28. In response the Insolvency Service explained that it did not hold the data for 1999. By way of clarification, it explained that prior to around 2014, it would get the aggregate number of the different type of insolvencies from Companies House. In 2014, the Insolvency Service received a data dump of all specific companies entering insolvencies from 2000 (ie the data which was disclosed to the complainant) but this did not cover 1999.
29. In light of the above explanation the Commissioner is satisfied that, on the balance of probabilities, the Insolvency Service does not hold any further information falling within the scope of the relevant request beyond that already provided to the complainant. This is on the basis that the information that was provided to the complainant by the Insolvency Service for the period prior to 2014 was based on a data dump from Companies House. However, this data dump did not include the data for the year 1999 and thus the Insolvency Service did not hold the data for that year and could not disclose it to the complainant.

Other matters

30. In relation to the complainant's concern that the Insolvency Service was not publishing its responses to FOI requests online, at the start of her consideration of this complaint the Commissioner noted that the internal review indicated that the Insolvency Service was intending to start publishing these responses again at some point in the future. The Commissioner therefore asked the Insolvency Service to clarify when it intended to do this. In reply, the Insolvency Service explained that it had now re-started publishing these responses and directed the Commissioner to the relevant website.³

3

<https://www.gov.uk/government/publications/insolvency-service-foi-responses-october-to-december-2020>

31. In terms of the complainant's concerns that the Insolvency Service was failing to comply with the obligations of the model publication scheme, the model scheme does not include a specific requirement for public authorities to publish FOI disclosure logs. Rather the model scheme simply identifies seven broad classes of information under which public authorities should publish information. (The model scheme is necessarily broad as it is intended to be adopted by all public authorities).
32. However, the Commissioner has also published guidance, referred to as definition documents, which sets out the types of information she expects certain public authorities to publish. The most relevant definition document for the Insolvency Service is the one for government departments as it is an executive agency of DBEIS. This definition document explains that *'If a department produces a disclosure log indicating the information provided in response to requests, it should be readily available. Disclosure logs are recommended as good practice.'*⁴ Whilst the definition document is only guidance, the Commissioner would strongly encourage the Insolvency Service to ensure that its disclosure log is kept regularly updated in order to follow the recommendations set out in the relevant definition document.

⁴ https://ico.org.uk/media/for-organisations/documents/1246/definition_document_for_government_departments.pdf

Right of appeal

33. 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

34. 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.
35. 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

Jonathan Slee
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