

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 19 October 2021

**Public Authority:** Companies House

**Address:** Crown Way

Cardiff

CF14 3UZ

#### **Decision (including any steps ordered)**

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1. The complainant has requested contact details and information on the handling of evidence of fraudulent trading at Companies House ("CH").
2. The Commissioner's decision is that, on the balance of probabilities, CH does not hold recorded information within the scope of the revised request. The Commissioner finds a procedural breach of section 1 FOIA as CH did not recognise the initial request as a valid request.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

#### **Background**

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4. CH provided the Commissioner with the following explanation of its function:

"CH is primarily a registry of corporate information. CH incorporates and dissolves limited companies, records the information companies are required by law to deliver to the Registrar of Companies ("registrar") and makes that information available to the public in accordance with Section 1085 of the Companies Act 2006. The registrar is a creature of statute and she can only act in ways which are laid down by relevant legislation. The registrar does not have investigatory powers and she cannot act beyond her given powers or in a way which is not clearly defined in that legislation."

5. CH further explained:

"The Breaches Team at CH deal with complaints from the public about alleged breaches of the Companies Act. As the registrar has no powers of investigation, the team may only be able to initiate written contact with a company in an attempt to resolve the issue but has no power in law to do anything else. For many offences, the team will direct the customer to an alternative source for assistance, such as the Insolvency Service or Action Fraud."

## Request and response

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6. On 19 July 2020, the complainant wrote to CH and requested information in the following terms:

"Further to my letter dated 15 July 2020 sent by email requesting clarification on jurisdiction issues regarding allegations of fraud, I am making formal requests for information under the Freedom Of Information Act. The questions are as follows:

1. What are the contact details for the part of Companies House responsible for dealing with evidence of fraudulent trading as specified by section 993 of the Companies Act?
  2. What form of evidence is required to support allegations of fraudulent trading?
  3. What are the contact details for the part of Companies House responsible for dealing with evidence of suspected breaches of a director's responsibilities as specified by section 170 of the Companies Act?
  4. What is the purpose of the "Breaches Team" in Companies House?"
7. CH responded on 27 July 2020 advising the complainant that this was not a valid FOIA request. It stated:

"You are asking for general information about processes and procedures rather than for recorded information."

The response provided a link<sup>1</sup> to CH's general enquiry team.

8. On the same day the complainant requested an internal review advising:
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<sup>1</sup> [enquiries@companieshouse.gov.uk](mailto:enquiries@companieshouse.gov.uk)

"The reason I am raising a request under the FOIA is the enquiries team were unable to help so it is a complete waste of time referring me back to them. As you can see I have had a lot of experience of making requests for information under the FOIA so I am well versed in the escalation process."

9. CH responded on 28 July 2020 upholding its initial response that the request was not for recorded information.

10. On 28 July 2020 the complainant made a revised request, as follows:

"One alternative to my original requests for information is to supply me with a copy of the Companies House internal process which defines what the Breaches Team should do when they receive a request about suspected fraudulent behaviour or deliberately incomplete applications to register companies."

11. On 25 August 2020 CH responded, advising that the information requested was not held:

"There is no formal written process for the Breaches team to follow in the event someone complains of suspected fraud."

12. On the same day the complainant requested an internal review. The internal review provided, which was undated, upheld the initial response that information was not held.

## **Scope of the case**

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13. The complainant contacted the Commissioner on 24 August 2020 to complain about the way his initial request for information had been deemed not to be a valid request and the response he received to his revised request. The complainant provided the Commissioner with a "Position Statement" which set out in great detail the history, dating back to 2016, of his concerns regarding corporate governance issues about a particular property management company and the actions taken in this regard. On 21 September 2020 the complainant provided copies of the required paperwork to progress his complaint for investigation.

14. The Commissioner considers the scope of her investigation is to determine whether CH was entitled to conclude that the request of 19 July 2020 was not a valid request and to determine whether it was entitled to conclude that it did not hold information within the scope of the revised request of 28 July 2020.

## **Reasons for decision**

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## **Section 1(1): General right of access to information**

15. Section 1(1) FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information specified in the request and, if so, to have that information communicated to him.

16. Section 8(1) FOIA states:

“In this Act any reference to a “request for information” is a reference to such a request which-

(a) Is in writing,

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

(c) Describes the information requested.”

17. The Commissioner asked CH why it had determined that the initial request was not a valid request for the purposes of FOIA. It explained that questions 1 and 3 of the request concerned contact details for teams that do not exist at CH (the section 933 Fraud team and section 170 Fraud team). This is because the registrar does not have any powers in respect of the investigation of such offences. In respect of question 2 CH explained that the registrar does not have powers or the remit to investigate fraudulent trading. Regarding question 4, CH considered that this was a request for advice rather than specific recorded information.

18. CH concluded that the questions therefore constituted a request for general information regarding processes and procedures and not for recorded information. CH determined that the request did not constitute a valid request under FOIA.

19. The complainant commented to the Commissioner:

“One issue that links all of the ICO cases is the continuing confusion about when is a question a valid request for information under section 8 FOIA.”

20. The Commissioner provides guidance on recognising a valid request including whether questions comprise a valid request<sup>2</sup>. As explained

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<sup>2</sup><https://ico.org.uk/for-organisations/guide-to-freedom-of-information/receiving-a-request/#2>

there, provided the elements set out above in paragraph 15 are present almost anything in writing which asks for information will count as a request under the FOIA. A request in the form of a question will be valid under Section 8(1)(c), provided it describes distinguishing characteristics of the information required and that information is recorded information. If the requested recorded information is not held by the public authority the request is nevertheless still a valid request. The public authority should explain to the requester its reasons for not holding the information. The FOIA contains other provisions to deal with requests which are too broad, unclear or unreasonable.

21. The FOIA concerns recorded information held by public authorities; public authorities are not required to create information in order to respond to a request. However, if a request is made in the form of a question and recorded information is held and can be used to answer the question, then there is a duty to respond.
  22. In this case the Commissioner considers that the initial request was valid. The complainant specifically explained in the request of 19 July 2020 that he was making an FOI request following earlier correspondence. Although the FOIA *requires* public authorities to provide recorded information, this does not prevent them providing answers or explanations (i.e. when advising that recorded information is not held), as a matter of normal customer service.
  23. The Commissioner's Guidance advises:

"...if you have information in your records that answers the question you should provide it in response to the request. You are not required to answer a question if you do not already have the relevant information in recorded form."

Consequently, public authorities are required to advise requesters when no recorded information is held which would answer their questions.
  24. However, the Commissioner understands that CH has corresponded at length with the complainant, providing a number of responses explaining that it does not have powers to investigate the matters he has raised and advising him to contact Action Fraud. As such CH had already provided explanations relevant to the request.
  25. Notwithstanding this, CH could have responded to the questions advising that the information is not held, if that is the case. With respect
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to the fourth question, if such a team exists and no recorded information is held, CH could have assisted the complainant by providing an explanation of the role of the Breaches Team as a matter of customer service.

26. CH advised the Commissioner that the complainant had escalated a complaint about the Breaches Team through the many stages of CH's internal complaint procedure which concluded with a report from the Independent Adjudicators. The complainant provided the Commissioner with a copy of the Independent Adjudicator's report concerning his complaints. The Commissioner notes the Adjudicator's comment:

"I further find that Companies House has at all times responded timeously to Mr Loxton and the content of their replies has been unfailingly courteous, factual and pertinent."

27. In its submissions to the Commissioner CH acknowledged that having reviewed the request it considered that it could have improved its handling by responding formally to each of the questions. CH suggested that the complainant may then have been assured that his request had been fully considered despite it being "unsuccessful".
28. The Commissioner has concluded that the initial request was a valid request for information and CH breached section 1 FOIA by not treating it as such. The Commissioner does not require CH to respond to the initial request following its response to the revised request. She will proceed to consider CH' response to the revised request.
29. In cases where there is a dispute regarding the information held by a public authority, the Commissioner will rely on the civil standard of proof, i.e. on the balance of probabilities. Accordingly her investigation will consider the public authority's reasons for stating that it does not hold the information in question, as well as the extent and reasonableness of any search conducted. The Commissioner will also consider any arguments put forward by the complainant as to why the information is held (as opposed to why it ought to be held). Finally, the Commissioner will consider whether there are any further steps she could require the public authority to take if the complaint were upheld.
30. To assist with this determination the Commissioner asks the public authority to explain any necessary searches undertaken to ascertain whether any information is held which could provide a response to the request.
31. In response to the revised request as set out above in paragraph 10, CH explained to the Commissioner that it had advised the complainant that it did not hold any document which sets out how to handle concerns raised by a customer about alleged fraud.

32. CH explained that the Breaches Team would have been the team to hold the requested information and it advised that no recorded information is held. CH also made additional enquiries with other teams who confirmed that a written process is not held. CH added that as the registrar's powers are so limited:

"...it would not be efficient to keep policies and procedures for the offences that we have no jurisdiction for handling."

33. CH also advised that no information had been deleted or destroyed as no information had been held at any time.

34. The Commissioner asked CH to explain its records management policy regarding the retention and deletion of records of the type requested in this case.

35. CH explained that it has a dedicated Records Manager who is responsible for reviewing retention periods for CH's corporate information. As such if such a policy existed then it would be permanently retained and would only be deleted when superseded. A previous version would be retained, using 'version control' as part of the ongoing policy.

36. CH confirmed that there is no business or operational need for the requested information to exist and no statutory requirements upon CH to retain such information.

### **The Commissioner's conclusion**

37. The Commissioner is aware of the complainant's dissatisfaction in his correspondence with CH regarding numerous matters including the requests in this case. She notes that CH has responded to the complainant and provided explanations, suggested other bodies which could assist him and provided links to other areas of CH which may assist. In particular, with regard to the initial request comprising questions, the complainant was referred to the Enquiries Team for general information.

38. The Commissioner notes the complainant's particular trait of preparing numerous, lengthy "Position Statements" which he has provided to the Commissioner. Unfortunately the statements cover a vast amount of background and detail which is not required in the determination of his FOIA section 50 complaint. However, the statements do demonstrate the complainant's opinions. She notes his comments in "Position Statement 12 April 2021":

"I am not suggesting that ICO22<sup>3</sup> exceeds her competence and authority, I am suggesting that it may take several separate investigations by ICO personnel to present a balanced case for consideration by the Commissioner of all of the issues I have identified. My complaint regarding Companies House needs to be understood in the context of my ongoing dispute with the Financial Ombudsman Service (FOS) and the Financial Conduct Authority (FCA)".

39. The Commissioner considers individual FOIA complaints on a case-by-case basis; she does not conflate investigations regarding different public authorities. Her decision notice in this case relates only to the specific requests from the complainant to CH on 19 and 28 July 2020.
40. She is satisfied that based on CH's explanation of its role and duties it is not required or necessary for it to hold the requested information. She notes that CH has explained its reasoning why this is the situation more than once to the complainant who refuses to accept the explanations. She understands that the complainant has many issues which he wishes to pursue and considers that he is obstructed in resolving these issues.
41. In his specific complaint to the Commissioner the complainant wrote that CH could resolve his complaint to the Commissioner as follows:
  - "1. Companies House must send a letter to the directors of company [redacted] to require that the error of omission article 4.1a of the articles of association of company [redacted] is corrected which is my specific concern or serious purpose.
  2. Companies House must clarify the boundaries of jurisdiction between Companies House and the Financial Ombudsman Service regarding dealing with evidence of alleged fraudulent activity or suspicious financial transactions, which may not reach the threshold required by criminal law, involving organisations registered by Companies House."
42. The Commissioner explained to the complainant that his complaint to her could not provide the resolution he set out above. She added that the Commissioner does not punish public authorities or compensate requesters. She is only able to take regulatory action in respect of the legislation she regulates. The Commissioner cannot investigate matters that may lie behind the request; her focus is whether a public authority has complied with the FOIA.

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<sup>3</sup> This is the complainant's nomenclature used to refer to the Commissioner's case officer assigned to this case.



43. The Commissioner accepts CH's reasons for submitting that there is no business reason to hold the requested information. The complainant has not put forward reasons why he considers that the information requested is held as opposed to why it ought to be held and has focussed on other matters.
44. By way of example, the complainant commented, in his "Position Statement" of 1 September 2020, on the questions he posed in the initial request:

*"1. What are the contact details for the part of Companies House responsible for dealing with evidence of fraudulent trading as specified by section 993 of the Companies Act?"*

I do not accept the statements made by both Case Managers [in the Breaches Team] in 2020 that they are unable to take any action so I consider it is only a matter of convention and convenience to Companies House to avoid complex issues.

*4. What is the purpose of the "Breaches Team" in Companies House?"*

The simple answer appears to be that the Breaches Team do not fulfil a useful function that could not be performed by a general enquiries team supported by an adequate decision support system which may be described as an artificial intelligence system."

45. The Commissioner is satisfied that in this case, on the balance of probabilities, CH does not hold recorded information to respond to the complainant's revised request.

## Right of appeal

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46. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

47. 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.
48. 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 .....**

**Susan Hughes**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**