

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 November 2022

Public Authority: The Insolvency Service
(Executive Agency of the 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 seeking a breakdown of the defendants' legal costs in a respect of disqualification proceedings brought against them by the Insolvency Service. The Insolvency Service withheld the information on the basis of sections 32(1)(a) and (b) (court records) and section 43(2) (commercial interests) of FOIA.
2. The Commissioner's decision is that the withheld information is exempt from disclosure on the basis of section 32(1)(a) of FOIA.
3. No steps are required.

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.

Background

5. On 12 February 2021 the High Court delivered its verdict on a case brought by the Official Receiver under the Company Directors Disqualification Act 1986 against the charity Keeping Kids Company, more commonly known as Kids Company.
6. The Official Receiver sought to disqualify all of the directors who had been in office at or shortly before the date of the charity's collapse, together with its Chief Executive Officer, Ms Batmanghelidjh, arguing that she should be classed as a "de facto" director, and also disqualified.
7. The case was rejected. In her judgement Mrs Justice Falk found that a disqualification order was not warranted against any of the directors and that Ms Batmanghelidjh was not a de facto director. She added that had Ms Batmanghelidjh been a de facto director she would not have made a disqualification order against her. The Insolvency Service was ordered to pay the defendants' legal costs.

Request and response

8. The complainant submitted the following request to the Insolvency Service on 26 December 2021:

'How much did you spend on legal fees for the Kids Company litigation'
9. The Insolvency Service contacted him on 7 January 2022 and asked him to clarify the information he was seeking. He provided the following clarification on the same date:

'Can I see the full breakdown of
Defendants' legal costs pursuant to the Judgement of Mrs Justice Falk:
£8,249,890'
10. The Insolvency Service responded on 18 January 2022 and confirmed that it held information falling within the scope of the request but considered this to be exempt from disclosure on the basis of section 43(2) (commercial interests) of FOIA. This was on the basis that disclosure would be likely to prejudice the commercial interests of the parties' legal representatives.

11. The complainant contacted the Insolvency Service on 19 January 2022 and asked it to conduct an internal review.
12. The Insolvency Service informed him of the outcome of the review on 16 February 2022. It upheld the application of section 43(2).

Scope of the case

13. The complainant contacted the Commissioner on 16 February 2022 in order to complain about the Insolvency Service's decision to withhold the information falling within the scope of his request.
14. During the course of the Commissioner's investigation the Insolvency Service explained to both the Commissioner and complainant that it also considered all of the requested information to be exempt from disclosure on the basis of sections 32(1)(a) and (b) (court records) of FOIA.

Reasons for decision

Section 32 – court records

15. Sections 32(1)(a) and (b) state that:

'(1) Information held by a public authority is exempt information if it is held only by virtue of being contained in—

(a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,

(b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter'

16. Section 32(1) is a class based exemption. This means that any information falling within the category described is automatically exempt from disclosure, regardless of whether or not there is a likelihood of harm or prejudice if it is disclosed. Section 32 is an absolute exemption and therefore it is not subject to the public interest test.
17. The Insolvency Service explained that the requested information was contained in skeleton argument submissions. It argued that such information clearly fell within the scope of both sections 32(1)(a) and (b) of FOIA. Furthermore, the Insolvency Service noted that the

Commissioner's own guidance on this exemption used the examples of skeleton arguments and records of a defendant's submissions for costs as examples of documents 'likely' to fall within the scope of these limbs of the exemption.¹

18. The Commissioner has reviewed the withheld information. All of this information, as the Insolvency Service has indicated, is contained within documents filed with, or placed into the custody of the court in relation to the disqualification proceedings brought by the Insolvency Service. That is to say, skeleton argument submissions. The Commissioner is therefore satisfied that the withheld information falls within the scope of the exemption contained at section 32(1)(a) of FOIA.
19. Having considered the Insolvency Service's submissions, and in the absence of any evidence that it held the information for any other purpose, the Commissioner is also satisfied that the requested information is only held by virtue of being contained in a document filed with or placed in the custody of a court for the purpose of proceedings.
20. The withheld information is therefore exempt from disclosure on the basis of section 32(1)(a) of FOIA.

¹ <https://ico.org.uk/media/for-organisations/documents/2021/2619028/s32-court-inquiry-and-arbitration-records.pdf> pages 7-8

Right of appeal

21. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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
Senior Case Officer
Information Commissioner's Office
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Wilmslow
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