

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2024

Public Authority: Companies House
Address: Crown Way
Cardiff
CF14 3UZ

Decision (including any steps ordered)

1. The complainant has requested all the recorded information from Companies House ("CH") about two decisions made by the Registrar to discontinue Strike Off Actions in relation to companies that failed to comply with their legal obligation to file their accounts on time. The complainant also asked for all the correspondence related to this case between CH and the companies and / or their representatives.
2. The Commissioner's decision is that CH was correct to rely on section 30(1)(b) of FOIA to withhold information.
3. The Commissioner does not require any steps as a result of this decision notice.

Request and response

4. On 1 July 2023, the complainant made the following request for information under FOIA for:

(...) 'all recorded information held by Companies House that relate to the two decisions by the Registrar on 19 January 2023, to discontinue Strike Off Actions against [name redacted] and [name redacted].

(...) 'all correspondence between those two companies and/or their authorised agents, and/or their Directors/Company Secretary, and Companies House and/or its authorised agents that relates to the overdue filing of those two companies' accounts. These were due to be placed on the public record on 1 October 2022 and 26 October 2022 respectively.'
5. CH responded on 24 July 2023. It refused to provide the requested information citing sections 30(1)(b) (Power to investigate offences and conduct proceedings), 41 (Information provided in confidence) and 40(2) (Personal data of third parties) of FOIA as the basis for doing so.
6. The complainant requested an internal review on 24 July 2023.
7. CH provided an internal review response on 11 August 2023 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 12 August 2023 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine whether CH was correct to rely on sections 30(1)(b), 41 and 40(2) to withhold the requested information.

Background information

10. All limited companies have a statutory obligation to file statements of their financial accounts annually. Failure to do so results in a criminal offence under section 451 of the Companies Act 2006 (CA2006), committed the following day after the accounts are due. Any officer guilty of an offence is liable to criminal record and financial penalty imposed by the Magistrates' Court.

11. If a company appears to be no longer in operation or defunct the Registrar of Companies (the Registrar) may take steps to remove it from the active register, a process referred to as 'compulsory strike off'. This action could result in companies being struck from the register and dissolved, unless a cause is shown not to do so.
12. If during compulsory strike off process representations are made by a company that it wishes to remain on the register, the strike off action will be halted. This process would be ceased on receipt of the outstanding documents or a 'promise to file' (PTF) the outstanding documents.
13. As failure to deliver statutory documents on time is a criminal offence, Companies House action would switch from the compulsory strike off process to considering prosecution action against the officers of the company once it is confirmed that the company wishes to remain on the register.

Reasons for decision

Section 30(1)(b) – Power to investigate offences and conduct proceedings

14. Section 30(1)(b) provides that information is exempt if it has been held at any time for the purposes of any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has the power to conduct.
15. The Commissioner considers that the phrase "at any time" means that information can be exempt under section 30(1)(b) if it relates to a specific ongoing, closed or abandoned investigation. It extends to information that has been obtained prior to an investigation commencing if it is subsequently used for this purpose.
16. Consideration of section 30(1)(b) is a two-stage process. Firstly, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test. This involves determining whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Is the exemption engaged?

17. The first step is to determine whether the requested information falls within the class specified in section 30(1)(b).

18. The Commissioner has issued guidance on section 30(1)(b) which clarifies that the exemption "... applies to investigations but the public authority only needs to have the power to conduct those investigations rather than a duty. Importantly, the public authority must also have the power to institute and conduct any criminal proceedings that result from its investigation."¹
19. Section 30(1)(b) is a class-based exemption. There is no requirement to demonstrate that a disclosure of the information might be harmful in order for section 30(1)(b) to be engaged.
20. CH explained that the Registrar has delegated authority from the Secretary of State to initiate proceedings for offences under section 451 of the CA2006.
21. It confirmed that: "(...)in terms of the law, it is the Secretary of State that pursues proceedings for offences under s451 in relation to non-compliance with requirements around filing accounts and reports with the Registrar. When such an offence is committed, the Secretary of State may apply to the courts to bring proceedings in respect of the offence. However, although the application is made in the name of the Secretary of State, he can delegate the practicalities of applying for such proceedings and representing him in those proceedings. This is carried out by Companies House, who act for the Registrar on such matters."
22. CH further explained that although "There is not a specific reference in legislation to the delegation of the Secretary of State's powers or duties, except on occasion where it is necessary (e.g.) because the delegation may be made to non-government bodies. However, the power of delegation from office holder to officials within his ministerial purview is a long-established principle of public law. The Secretary of State confers the power to bring proceedings on his behalf via a Delegation of Authority. This was reflected in a framework document between the parent department (which at that time was BESI) and which states that "The Registrar performs functions conferred on her through the Companies Act and other associated legislation. The Register can also perform functions on behalf of the Secretary of State in relation to the registration of companies *or other matters as the Secretary of State may from time to time direct.*"
23. In this case, CH initiated the compulsory strike off action against the companies in question, which was then ceased as a result of a PTF.

¹ [investigations-and-proceedings-foi-section-30.pdf \(ico.org.uk\)](https://ico.org.uk/investigations-and-proceedings-foi-section-30.pdf)

24. As explained in the background information, CH then commenced compliance action which ultimately may lead to consideration of prosecution against the officers of the companies.
25. CH further explained that the matter is ongoing and the information, including that which was requested by the complainant, gathered so far will form a basis for referral to the Prosecuting Solicitor's Office at Companies House if the documents required remain outstanding.
26. The Commissioner considered CH's argument and accepts that it has the necessary power vested in it by the Secretary of State through a delegated authority, to investigate possible criminal breaches and institute proceedings under section 451 of the CA2006.
27. The Commissioner also has had sight of the withheld information and accepts that it is held for the purpose of allowing CH to fulfil its obligations to take appropriate action to ensure compliance, including criminal investigations.
28. The Commissioner is therefore satisfied that the withheld information falls within the class described in section 30(1)(b), and therefore, the exemption is engaged.
29. Section 30(1)(b) is subject to a public interest test. This means that even though the exemption is engaged, the information may only be withheld if, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest test

30. When considering the public interest in maintaining exemptions the Commissioner considers that it is necessary to be clear what the specific exemptions are designed to protect.
31. The purpose of section 30 is to preserve the ability of the police and other applicable public authorities to carry out effective investigations. Key to the balance of the public interest in cases where this exemption is found to be engaged is whether the disclosure of the requested information could have a harmful impact on the ability of the authority to carry out effective investigations. Clearly, it is not in the public interest to jeopardise the ability of authorities to investigate crime effectively.

Public interest arguments in favour of disclosing the information

32. CH confirmed that the Registrar holds and make available the public register which is accessed by millions searchers with interests in

companies and their officers. It therefore recognises that there is a clear public interest in the register to be up to date to assist those searchers with their due diligence which in turns supports the UK economy.

Public interest arguments in favour of maintaining the exemption

33. CH argued that the proceedings are ongoing as the accounts for the companies remain outstanding and although there is the possibility where the companies may apply for voluntary dissolution, until such forms are lodged with CH, the officers will remain liable for the outstanding account and pursuit action will continue.
34. Further, although CH appreciates that the requested information may be of personal interest to the complainant, CH confirmed that there have not been any other requests in relation to these companies therefore concluding that there is no wider public interest in disclosing the withheld information.

The balance of the public interest arguments

35. The Commissioner considers that there is a public interest in openness and transparency and he recognises the importance of the public having confidence in public authorities that are tasked with upholding the law. He also accepts that confidence would be increased by allowing scrutiny of their performance and this may involve examining the investigations they carry out.
36. However, he also considered whether disclosure would be likely to harm the investigation, which would be counter to the public interest, and what weight to give to these competing public interest factors.
37. CH confirmed that the proceedings regarding companies which are subject to the requested information remain ongoing. It argued that, Regardless as to whether the criminal proceedings are initiated or not, the disclosure of the withheld information would be likely to cause a lasting reputational damage to the companies in question. CH further explain that such decisions are carefully considered in line with the Code of Crown Prosecutors in a safe space and not in the public arena.
38. Having considered the above arguments, the Commissioner's view is that the provision of the requested information at the time of the request would have provided information on, and potentially prejudiced, an ongoing investigation where there remains the possibility that a prosecution would ultimately occur against any offences its investigation uncovered.
39. Therefore the Commissioner is satisfied that the balance of the public interest test favours maintaining the exemption.

40. As the Commissioner has concluded that the information has been correctly withheld under sections 30(1)(b), he has not found it necessary to consider CH's application of sections 41 and 40(2) in this case.

Right of appeal

41. 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

42. 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.
43. 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
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF