

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

### **Decision notice**

**Date:** 4 May 2022

**Public Authority:** 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)**

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1. The complainant has requested various documents relating to specific winding up proceedings. The Insolvency Service stated that it did not hold the documents for the purposes of FOIA.
2. The Commissioner's decision is that the information in question is held by the Official Receiver in their statutory role and is therefore not held either by, or on behalf of, the Insolvency Service for the purposes of FOIA.
3. The Commissioner does not require further steps.

### **Request and response**

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4. On 1 April 2021, the complainant wrote to a particular staff member of the Insolvency Service and requested information in the following terms:

"I believe you hold the following information that you are able to disclose, under the Freedom of Information Act 2000 and or the GDPR 2018 or voluntarily without having us to trouble the EAT under Rule 31 of the ET Rules 2013.

1. the full accounts for 2015 that the abbreviated accounts came from
2. the annual return for 2015 that must be filed with the charity

- commission;
3. the accountants report that was filed with the charity commission that verified the turnover
  4. the confirmation from companies' house that a director did not have to sign the abbreviated accountants
  5. who were the creditors of the Legal Action (the company) in 2014/2015 and 2015/2016?
  6. the proof of debt of each creditor
  7. who were the debtors of the Legal Action (the company) in 2014/2015 and 2015/2016?
  8. the proof of credit of each debtor
  9. the signed report of William Giles Limited accountants that the company was insolvent
  10. the signed report of RSM Restructuring Advisory LLP , that the company could not be restructured
  11. a copy of the minutes of the meeting of the board on 22 December 2015
  12. a copy of the minutes of the meeting of the board that the decision to wind up the company
  13. the notice that the Interim Managers [names redacted] of Veale Wasbrough Vizards (VWV) gave each creditor, that the company was to be put into liquidation
  14. the reply from each creditor to that notice
  15. the official receivers Report that would have been sent to the Creditors and Contributories 12 months after the winding up order 27 June 2016
  16. emails between the charity commission (CC) and VWV in 2014,2015, and 2016
  17. emails between the Insolvency Service and CC and VWV 18. the note made by counsel at the hearing on 9 June 2016"
5. When the Insolvency Service failed to respond to the request, the complainant complained to the Commissioner – at which point it was discovered that the Insolvency Service had no record of receiving the request. The complainant then resubmitted his request via the Insolvency Service's main FOI inbox on 26 August 2021.
  6. The Insolvency Service responded to the re-submitted request on 10 September 2021. It stated that it did not hold any information within the scope of the request for the purposes of FOIA as the information would be held by the Official Receiver. Official Receivers have a separate statutory role and are not covered by FOIA in respect of the information that has been acquired whilst carrying out their statutory functions.
  7. Following an internal review the Insolvency Service wrote to the complainant on 22 October 2022. It upheld its original position.

## Scope of the case

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8. The complainant initially contacted the Commissioner on 4 June 2021 to complain about the way his request for information had been handled. At that point the request had not been responded to. Following the Commissioner's intervention, the request was resubmitted. The complainant then contacted the Commissioner again on 4 November 2021, once the Insolvency Service had completed its internal review, to ask for a formal decision.
9. On 10 March 2022, the Commissioner wrote to the complainant to set out his preliminary view of the complaint. He noted that information held by the Official Receiver exercising their statutory functions would not fall within the scope of FOIA and therefore it appeared that the Insolvency Service would not hold the requested information. The complainant did not accept this view.
10. The Commissioner considers that the scope of his investigation is to determine whether the Insolvency Service holds any information within the scope of the request for the purposes of FOIA.
11. As the Insolvency Service had set out its position clearly in both its response and its internal review, the Commissioner considered that it would not be proportionate to seek a further submission – although he did ask if there was anything further it wished to add to its previous responses. The Insolvency Service responded to say that it had nothing further to add.

## Nomenclature

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12. 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.

## Reasons for decision

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13. Section 1(1) of the 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."

14. Section 3(2) of FOIA states that:

"For the purposes of this Act, information is held by a public authority if—

- (a) it is held by the authority, otherwise than on behalf of another person, or
- (b) it is held by another person on behalf of the authority."

15. In cases where a dispute arises over the extent of the recorded information that was held by a public authority at the time of a request, the Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the authority to check that the information is not held and any other reasons offered by the public authority to explain why the information is not held. Finally, he will consider any reason why it is inherently likely or unlikely that information is not held.

16. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of the balance of probabilities.

## The Insolvency Service's position

17. The Insolvency Service explained that it did not hold any information within the scope of the request for the purposes of FOIA because any information that was held would be held by the Official Receiver exercising their statutory functions. The Official Receiver has a separate statutory role and is also an officer of the court. Any information they hold in that role is not held either by or on behalf of the Insolvency Service.

18. The Insolvency Service's website explains the role of the Official Receiver thus:

"Official receivers are appointed, removed and act under the general direction of the Secretary of State for BEIS. On appointment the official receiver becomes a statutory office holder but is also a civil servant employed by The [Insolvency] Service.

"The official receiver's duties as a statutory office holder are largely set out in the Insolvency Act 1986. They may have additional functions conferred on them by the Secretary of State. On an operational level the official receiver complies with any directions, instructions and guidance issued by The Insolvency Service.

"The official receiver's primary function is to administer and investigate the affairs of companies and partnerships wound up by the court and of bankrupts. They will act as liquidator of a company or trustee of a bankrupt's estate if an insolvency practitioner is not appointed and as liquidator/trustee ex officio if there is a vacancy in that office. The official receiver remains under a duty to investigate when an insolvency practitioner has been appointed as liquidator or trustee."<sup>1</sup>

19. When explaining why it was not providing the requested information, the Insolvency Service explained to the complainant that:

"The information you have requested is held by the Official Receiver, who (in respect of the requested information) holds the information for the purposes of exercising their statutory functions pursuant to the Insolvency Act 1986. For the purposes of this information, the Official Receiver is not acting as either Civil Servant or on behalf of the Secretary of State and is therefore not subject to the Freedom of Information Act 2000. Official Receivers are officers of the court, and not public authorities as defined by the Act nor are they one of the listed public authorities in schedule 1 of the Act."

20. In its internal review, the Insolvency Service expanded on this point by saying that:

"In this case, the request was received and initially handled by the Insolvency Service. As part of my internal review I contacted the

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<sup>1</sup> <https://www.gov.uk/guidance/technical-guidance-for-official-receivers/1-the-official-receiver>

Insolvent Investigations North team and Official Receiver. It is apparent that the information requested related to the liquidation of a company, for which the Official Receiver had been appointed under the Insolvency Act 1986. The information, if held, is therefore held by the Official receiver and not the Insolvency service...

“When Official Receivers are performing these statutory duties they do not fall within any of the limbs of the definition at section 3 of the FoI Act.”

### **The Commissioner's view**

21. Having considered the nature of the information requested, the Commissioner agrees that it is information the Official Receiver would hold in their statutory role.
22. Even though particular information may be physically present in the offices of, or on the servers of, a public authority, the public authority may not necessarily hold that information for the purposes of FOIA.
23. To the extent that the Insolvency Service “held” any information because it was physically present, it would hold that information on behalf of the Official Receiver and not in its own right.
24. An Official Receiver is both a civil servant acting at the direction of the Secretary of State for Business, Energy and Industrial Strategy and an officer of the court exercising statutory functions. When the Official Receiver is exercising their statutory functions, they are acting separately from the Insolvency Service (which exercises powers on behalf of the Secretary of State) and therefore the information they hold will not be covered by FOIA.
25. The Commissioner considers that information requested by the complainant all relates to documents that would either have been created or acquired in the process of insolvency proceedings before a court. Therefore to the extent that any of this information is held by the Official Receiver, it would be held in their role as an officer of the court, pursuing the statutory functions of the Official Receiver. As such the information would fall outside the scope of the FOIA as it would not be held either by or on behalf of the Insolvency Service.
26. As the Insolvency Service does not hold the requested information for the purposes of the FOIA it was not obliged to communicate this information to the complainant.

## Right of appeal

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27. 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)

28. 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.
29. 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 .....**

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