

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 04 November 2009**

**Public Authority:** The Insolvency Service (an executive agency of the Department for Business, Innovation and Skills)  
**Address:** PO Box 203  
Area 3.6  
21 Bloomsbury Street  
London  
WC1B 3QW

### Summary

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The complainant made a request to the Insolvency Service, for information relating to disqualification of company directors during 2000-2005. The Insolvency Service refused the request on the grounds that compliance would exceed the cost limit as set out at section 12(1) of the Act. The complainant refined his request, but the Commissioner finds that the Insolvency Service correctly applied the cost limit, and to comply even with the refined request would exceed the cost limit. Therefore the Commissioner does not require the Insolvency Service to take any remedial steps. However the Commissioner finds that the Insolvency Service breached section 17(5) in failing to issue a refusal notice within the statutory time limit.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the Act). This Notice sets out his decision.

### Background

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2. The Commissioner notes that under the Act the Insolvency Service is not a public authority itself, but is actually an executive agency of the Department for Business, Innovation and Skills. Therefore, the public authority in this case is actually the Department, not the Insolvency Service. However, for the sake of clarity, this Decision Notice refers to the Insolvency Service as if it were the public authority.

## The Request

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3. The complainant wrote to the Insolvency Service on 19 July 2005 requesting the following information:
  - '1. Could you please provide in electronic form the following information, as the information is in electronic form the costs for production should not exceed £600.00; details of all actions in the last 5 years that have resulted in directors disqualifications, all information that was provided and available in the public domain (this includes copies of affidavits filed by the DTI, specifically those by Mark Bruce).
  2. I would also like a detailed list of all actions in hand, along with details of all the legal representatives for the DTI, specifically all cases being managed by Brindley, Twist Tafft and James.
  3. I would also like any information that is not deemed as confidential regarding all cases filed under 'S8. Disqualification following the investigation of companies'. 'S10. Disqualification for wrongful trading'."
4. On 30 September 2005 the complainant wrote to the Insolvency Service to complain that he had not received a response. The complainant pointed out that the Insolvency Service was in breach of the time limit for responding to a request under the Act.
5. On 4 October 2005 the Insolvency Service wrote to the complainant. It apologised for the delay and advised that it would respond shortly.
6. On 13 October 2005 the Insolvency Service advised the complainant that it was refusing his request because to comply with the request would exceed the cost limit set out at section 12 of the Act. The Insolvency Service explained that the requested information could not be produced from electronic data held by the authority, it could only be extracted from paper files held manually. The Insolvency Service further advised that it did not hold information relating to disqualifications obtained under sections 8 and 10 of the Company Directors Disqualification Act 1986. However the Insolvency Service did provide some general statistical information on this issue.
7. The Insolvency Service also sought to rely on other exemptions in relation to some of the withheld information. The Insolvency Service cited the exemption under section 21 (information already accessible to the applicant) in relation to some information which was available via Companies House. The Insolvency Service applied the exemption under section 40(2) to personal data relating to individual directors. In relation to information about current disqualification proceedings the Insolvency Service claimed reliance on section 31(1) (prejudice to certain investigations).
8. The complainant was dissatisfied with this response, and requested an internal review on 14 October 2005. In particular the complainant advised that

he was not asking for information which was privileged; he was requesting information which had been presented in court and was therefore in the public domain.

9. The complainant contacted the Insolvency Service on 23 November 2005 and 2 December 2005 to enquire as to the progress of the internal review.
10. On 2 December 2005 the complainant asked the Insolvency Service to provide information regarding making a complaint to the Commissioner. The complainant also asked the Insolvency Service to treat this letter as a complaint about the way it had handled his request.
11. On 22 December 2005 the complainant wrote to the Commissioner to complain about the Insolvency Service. In his letter the complainant detailed the number of requests which he had made and the failure by the Insolvency Service to provide a substantive response. The complainant specifically asked the Commissioner to consider the following points:
  - Both the representatives and the complainant personally had made requests for information which had not been answered.
  - A further email request had been made on the 14 October 2005 to which no response had been made.
  - A request was made by the representatives on the 14 December 2005 asking for information about the public authority's internal complaints procedure.
  - Numerous reminders had also been sent about the outstanding information. These had not been replied to.
12. On 16 January 2006 the Commissioner advised the complainant that he had now written to the Insolvency Service and reminded it of its obligations under the Act. On the same date the complainant wrote to the Insolvency Service repeating his request for an explanation as to the delay in responding to a number of requests for information made by the complainant, including the request made on 19 July 2005.
13. On 19 January 2006 the complainant wrote to the Commissioner and asked that the Commissioner make a decision in this case. Despite the complaint to the Commissioner, correspondence between the complainant and the Insolvency Service continued.

## **The Investigation**

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### **Scope of the case**

14. The Commissioner notes that the complainant is involved in a long-standing dispute with the Insolvency Service. However, the Commissioner's remit under section 50 of the Act is to decide whether a public authority has handled

a request for information in accordance with the Act. Therefore the Commissioner can only make a decision in relation to the complainant's request of 19 July 2005.

15. The Commissioner has previously considered a number of similar complaints submitted by the complainant in relation to the Insolvency Service. The Commissioner also notes that investigation of this particular complaint has been complicated somewhat by the continuing correspondence between the complainant and the public authority.
16. The Commissioner does not normally investigate complaints unless the complainant has exhausted the public authority's internal review procedure. However, in light of the substantial correspondence in this case, it was clear to the Commissioner that the Insolvency Service had considered its position many times, and had reached the same decision to refuse the request. Therefore the Commissioner accepted this as a valid complaint.

### **Chronology**

17. The Commissioner contacted the Insolvency Service on 9 May 2007 to advise it of the complaint. The Insolvency Service responded to the Commissioner on the same day. The Insolvency Service advised the Commissioner that the complainant was involved in litigation against the Insolvency Service, and the Insolvency Service was of the view that it had responded appropriately to the complainant's requests under the Act. The Insolvency Service drew the Commissioner's attention to the volume of correspondence submitted by the complainant, and advised that it was about to consider whether any further requests should be considered vexatious under section 14 of the Act.
18. The Commissioner wrote to the Insolvency Service again on 23 July 2007. The Commissioner requested an explanation of how the request of 19 July 2005 had been handled, as well as a more detailed explanation of the Insolvency Service's application of the cost limit under section 12 of the Act, and the exemptions under sections 31 and 40 of the Act. The Commissioner also asked the Insolvency Service to explain why it did not respond to the request of 19 July 2005 until 13 October 2005.
19. The Insolvency Service responded to the Commissioner on 2 August 2007. In relation to the time taken to respond to the request, the Insolvency Service advised that it could offer no explanation for the delay. The Insolvency Service provided a brief response to the Commissioner's enquiries in relation to the cost limit at section 12, and the exemptions at sections 31 and 40 of the Act.
20. Following a change in the Commissioner's staff, the Commissioner wrote to the Insolvency Service on 26 October 2007 to request clarification of a number of issues in relation to the Insolvency Service's reliance on section 12 and section 31.

21. The Insolvency Service responded to the Commissioner on 29 November 2007. The Insolvency Service advised the Commissioner of its view that it had already explained its position.
22. The Commissioner wrote to the Insolvency Service on 6 December and 21 December 2007 to clarify the additional information he required. The Insolvency Service responded to the Commissioner on 3 January 2008 but did not provide any new information in relation to the Commissioner's enquiries.
23. Following a further change in the Commissioner's staff, a case review was undertaken and the Commissioner contacted the complainant on 23 June 2008 to provide an update in relation to the complaint. The Commissioner noted that the complainant wished to challenge the Insolvency Service's reliance on section 12 and the exemption under section 31 of the Act. With this in mind the Commissioner asked the complainant whether he had considered whether his request might be revised or refined.
24. In addition, the Commissioner noted that, in relation to part 3 of the complainant's request (set out at paragraph 3 above) the Insolvency Service had advised that it did not hold information of the description specified. The Commissioner asked the complainant to clarify whether he disputed this part of the response.
25. The complainant responded to the Commissioner on 25 September 2008. The complainant advised that he would be content to refine his request to the following information:

*"Details of all the cases in which Brindley, Twist Tafft and James were involved in prosecution proceedings during the time period previously indicated"*.
26. In effect, this removed parts 2 and 3 of the complainant's request, and meant that the sole issue for consideration was the Insolvency Service's reliance on the cost limit to refuse the first part of the request.
27. The Commissioner wrote to the Insolvency Service on 20 October 2008 to advise it of the complainant's decision to refine his request. The Commissioner explained to the Insolvency Service that he would now require full details in relation to its reliance on the cost limit under section 12 of the Act. The Commissioner observed that the Insolvency Service had stated in its refusal notice of 13 October 2005 that

*"This is a very widely framed application for information and we estimate that it will take us more than 24 hours to locate, retrieve and extract this. The information you have requested cannot be produced from electronic data held by the Insolvency Service. The detail you require can only be extracted by the manual interrogation of paper case files extracted from storage and event hat exercise might not produce all of the required information"*.

28. In its letter to the Commissioner dated 2 August 2007 the Insolvency Service had increased this estimate to “*many thousands of man hours*”, although it had not explained how it reached this estimate. Therefore the Commissioner asked the Insolvency Service to explain how it had estimated that the cost limit would be exceeded, and to clarify exactly what information was held electronically.
29. The Commissioner also reminded the Insolvency Service of its obligations under section 16 of the Act. This section requires public authorities to provide advice and assistance to requesters. The Commissioner expressed the view that the Insolvency Service did not appear to have offered the complainant advice or assistance in relation to his request.
30. The Insolvency Service responded to the Commissioner on 6 November 2008. The Insolvency Service advised that it had not undertaken a detailed estimate in relation to section 12, as “the amount of data is not known”. The Insolvency Service also advised that it did not know what information was available electronically, as there was no centralised database.
31. In relation to the duty to provide advice and assistance the Insolvency Service reminded the Commissioner that, although unable to provide the requested information, it had provided a list of cases where Brindley, Twist Tafft and James had acted as “agent solicitor investigator”. The Insolvency Service did not answer the Commissioner’s enquiries further, but asked the Commissioner to explain his views on the section 12 cost limit.
32. The Commissioner was disappointed with this response, and spoke to a more senior member of staff within the Insolvency Service. The Commissioner wrote to this member of staff on 12 March 2009 to clarify the additional information he required. At this stage the Commissioner reminded the Insolvency Service of his formal information gathering powers under section 51 of the Act. The Commissioner advised that, if he did not receive an adequate response, he would consider serving an Information Notice which would compel the Insolvency Service to respond.
33. The Insolvency Service advised the Commissioner that it would respond to his letter of 12 March 2009. On 7 April 2009 the Insolvency Service asked the Commissioner to respond to its enquiry of 6 November 2008 (in relation to the Commissioner’s views on the section 12 cost limit). On 8 April 2009 the Commissioner wrote to the Insolvency Service to clarify why he required further information.
34. The Commissioner did not receive a substantive response to his letter of 12 March 2009. Therefore the Commissioner contacted the Insolvency Service again on 23 June 2009. The Commissioner advised the Insolvency Service that, in the absence of a response to his enquiries, the Commissioner would make a decision based on the information provided to date.
35. The Insolvency Service provided a final submission to the Commissioner on 10 July 2009.

## Analysis

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### Section 12: cost limit

36. The Insolvency Service claimed that compliance with the request would exceed the “cost limit” as set out at section 12 of the Act. Section 12 provides that an authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit (£600 for central government, £450 for all other authorities).
37. Section 12 of the Act should be considered with the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken in:
- (a) determining whether it holds the information,
  - (b) locating the information, or a document which may contain the information,
  - (c) retrieving the information, or a document which may contain the information, and
  - (d) extracting the information from a document containing it.
38. Paragraph 4(4) of the Regulations states that the authority should calculate the cost of complying with a request by multiplying the time estimated by £25 per person per hour. If the authority considers that complying with the request would therefore cost more than the appropriate limit, it is not obliged to comply with the request. In the case of the Insolvency Service, the £600 limit applies, which, at £25 per hour, equates to 24 hours.
39. The Insolvency Service advised the Commissioner that, in the five years leading to the complainant's request there had been 7,509 disqualifications or undertakings given by directors in the face of disqualification proceedings. It stated that some of the files may have been destroyed, although the Commissioner notes that presumably that figure would not be high as its Destruction Policy gives a retention period of 7 years for disqualification files. The Service also stated that each disqualification typically generates up to 4 or more files, and so it estimated that there were likely to be between 7,500 and 30,000 paper case files in total.
40. The Insolvency Service argued that, in order to answer the request, it would need to locate and examine each file in order to ascertain whether Brindley, Twist Tafft and James had been involved. The files are stored at sites across London and the UK, and files are generally retrieved by an offsite storage contractor who then delivers the files to the Service. It was estimated that once delivered, it would take about 10 minutes for the Service's staff to search each file for the requested information. The Commissioner accepts that, even at the lower end of the scale, locating, retrieving and examining 7500 files would clearly far exceed the 24 hours allowed by the cost limit.

41. In light of the above, the Commissioner is satisfied that the Insolvency Service would exceed the cost limit if it tried to comply with the complainant's request by examining paper files. However, the complainant has argued to the Commissioner that the relevant information is also held electronically, and therefore the above cost estimate is irrelevant.
42. The Insolvency Service has advised the Commissioner that, in the period 2000 to 2005 it did not hold the requested information in an electronic format. The Insolvency Service explained that, although it did maintain a central electronic database, this database was searchable by case name only, not by case type. Therefore the Insolvency Service remains of the view that it could not satisfy the complainant's request using electronic records.
43. The Commissioner is minded to accept the Insolvency Service's arguments in relation to both manual and electronic data. Although the complainant clearly believes that the Insolvency Service should be able to comply with his request, the Commissioner is mindful of the number of cases and volume of information held. In the absence of an easily-searchable electronic system the Commissioner accepts that to comply with the request would exceed the cost limit as set out in section 12.

### **Duty to provide advice and assistance**

44. The Commissioner is mindful of the Code of Practice issued by the Secretary of State under section 45 of the Act (the 'Code'). Paragraph 14 of the Code recommends that, where a public authority estimates that compliance with a request would exceed the cost limit, the authority should also consider whether it could provide the complainant with advice and assistance in order to bring his request within the cost limit.
45. The Commissioner notes that relations between the complainant and the Insolvency Service had largely broken down by the time of the complaint to the Commissioner. However the Commissioner is satisfied that the Insolvency Service did provide the complainant with a list of the cases undertaken on the Secretary of State's behalf by Brindley, Twist Tafft and James, in March 2006. Whilst this may not have fully answered the complainant's request, the Commissioner is of the view that it is difficult to see how the Insolvency Service could have provided further assistance to the complainant. Given the number of files, and the way the information was held, the Commissioner does not see how the Insolvency Service could have advised the complainant to refine or revise his request to bring it under the cost limit.

### **Procedural matters**

#### **Section 17(5): refusal notice and time for compliance**

46. Where a public authority refuses a request for information in reliance on section 12 of the Act it is required under section 17(5) to provide the applicant with a 'refusal notice' stating this. This notice must be served within the



statutory time for compliance, which is twenty working days following the date the request is received. The Insolvency Service did not respond to the request of 19 July 2005 until 13 October 2005, which is well outside this time limit. Therefore the Commissioner finds that the Insolvency Service failed to comply with section 17(5) of the Act.

## **The Decision**

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47. The Commissioner's decision is that the Insolvency Service correctly applied the cost limit under section 12(1) of the Act.
48. However, the Commissioner has also decided that the Insolvency Service breached section 17(5) of the Act in that it failed to issue a refusal notice within the statutory timescale.

## **Steps Required**

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49. The Commissioner does not require any steps to be taken.

## Right of Appeal

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50. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester LE1 6ZX

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 4th day of November 2009**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex: Relevant statutory obligations

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1. **Section 1(1)** provides 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.

2. **Section 12(1)** provides that:

Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

3. **Section 16(1)** provides that:

It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

4. **Section 17(5)** provides that:

A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

5. **Regulation 4 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004** provides that -

(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request-

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act, and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

(a) determining whether it holds the information,

(b) locating the information, or a document which may contain the information,

(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.