

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 February 2024

Public Authority: Companies House

Address: Crown Way
Cardiff
CF14 3UZ

Decision (including any steps ordered)

1. The complainant requested information about the lawful basis for personal data sharing between Companies House ("CH") and HMRC in relation to beneficial owners of UK property. CH responded by stating that it does not hold the information that the complainant asked for.
2. The Commissioner's decision is that, on the balance of probabilities, CH does not hold the information falling within the scope of the request, and has therefore complied with section 1(1)(a) of FOIA.
3. The Commissioner does not require CH to take further steps in relation to this case.

Request and response

4. On 24 April 2023, the complainant contacted CH requesting the following information:

"I am interested in having sight of the recorded information held detailing the lawful basis for the sharing of any personal data contained within that data, in accordance with Article 6 of UK GDPR.

I am not interested in the identities of any employees but I would like to see the wording of the request for data from HMRC together with the wording of any response from Companies House and any record of the decision making by Companies House detailing the lawful basis.

For the record I am not interested in having sight of the data that was disclosed although an explanation of what data constitutes personal data may be useful.”

5. CH responded on 23 May 2023. It stated that the requested information was not held. It further explained that the personal data relating to beneficial owners of UK property is shared with HMRC under section 23 of the Economic Crime (Transparency and Enforcement) Act 2022 (“ECTE”).
6. On 25 May 2023 the complainant asked for an internal review as he questioned the lack of any recorded information he requested. He expressed a wish to understand what searches were conducted and asked specifically whether CH held any data sharing agreement or other document explaining what personal data is shared, when and why.
7. CH responded on 19 June 2023 providing further explanation on the data sharing mechanism under section 23 of the ECTE. It also reiterated that the internal review is still open to the complainant, should he wish it.
8. The complainant responded to CH on 22 June 2023 confirming his request for internal review.
9. Following an internal review CH wrote to the complainant on 17 July 2023 where it maintained its original position, providing further explanation on the purpose and the application of section 23 of the ECTE as the basis for sharing data about trusts with HMRC.

Scope of the case

10. The complainant initially contacted the Commissioner on 14 August 2023 and, following some further clarification, his complaint was accepted on 29 August 2023. He complained about the way his request for information had been handled. Specifically he expressed a lack of certainty about CH not holding the information he requested and whether appropriate searches were conducted to determine this.
11. The Commissioner considers that the scope of his investigation is to decide whether, on the balance of probabilities, CH holds recorded

information within scope of the complainant's request and whether it has complied with section 1(1) of FOIA.

Reasons for decision

Section 1 – Information held / not held

12. Section 1 of the FOI 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."
13. The public authority is not obliged to create or acquire information in order to satisfy a request.
14. The Commissioner's role when determining whether a public authority has or has not complied with section 1(1) of FOIA, is limited to determining whether it is more likely than not that the public authority has provided all the recorded information it holds. The Commissioner is not required to challenge the accuracy or the adequacy of the recorded information a public authority does (or, in some cases, does not) hold. This is because the terms of FOIA only relate to the provision of information as it is recorded, regardless of its accuracy or validity.
15. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

16. In his request for an internal review, the complainant challenged the lack of recorded information and asked what searches were conducted to determine that no information within the scope of the request was held.
17. He argued that: "If HMRC are receiving personal data from Companies House there should be a record of what is being shared, when and what the lawful basis is for doing so. If this is regular sharing it may be in a

data sharing agreement but if it is one off sharing it should be documented and sharing should be fair and lawful.”

Companies House' position

18. CH responded to the complainant that the information he had requested was not held. It explained that the mechanism for sharing the personal information in relation to the beneficial owners of UK property between CH and HMRC is based on section 23 of ECTE and provided a link to that legislation.

19. In its response CH also provided further advice in explaining that:

“The need to provide HMRC with a snapshot of the trust data was always a known requirement under section 23 of the <https://www.legislation.gov.uk/ukpga/202...> We had regular meetings with HMRC, as a key stakeholder and delivery partner, during the development and implementation of the Register of Overseas Entities and discussed the practical arrangements for sharing that information securely.

The data includes information required by Schedule 1 Part 5 of the Act and this includes names, dates of birth and nationality.

We continue to work with HMRC for ongoing data sharing arrangements which will include a written agreement on the operational arrangements.”

20. In its internal review, CH further confirmed that in terms of searches conducted to locate the relevant information, it held discussions with relevant colleagues about the data sharing mechanism. However, no other searches were conducted as it was confirmed the personal data is shared en-mass rather than on an individual requests from HMRC and this is based on section 23 of the ECTE.

The Commissioner's view and reasoning

21. The Commissioner has considered the evidence available to him, including information provided by the complainant and further communication with CH, and is satisfied that, on the balance of probability, the information requested is not held, even though no specific searches were conducted.

22. As is the Commissioner's understanding, CH relies on section 23 of the ECTE, as the lawful basis for processing the information described in this request, including personal data when sharing information with HMRC.

23. CH explicitly stated that, apart from discussions with the relevant colleagues to explain data sharing mechanism, no data were searched.
24. In its response to the complainant, CH also confirmed what type of information it shares with HRMC and explained that it is in ongoing communication with HRMC about data sharing arrangements, but there appeared to be no recorded information at the time of its response relating to the specific information sought by this request, such as a data sharing agreement.
25. In response to the Commissioner's enquiries, CH provided a detailed analysis and interpretation of the ECTE arguing that the act, in particular section 23 provides explicit powers for the sharing of the data concerned with HMRC.
26. CH further acknowledged that it is aware of the requirement of an appropriate written policy under Schedule 1 of the Data Protection Act 2018 ("DPA 2018"), when relying on a substantial public interest conditions as specified in Part 2 of that schedule to process special category data, but contended that, although it may be useful to have a written policy describing Registrar's interpretation and exercise of her powers, the sharing of personal data in question, under section 23 of ECTE is not special category data and there is no equivalent requirement to have such written document in place.
27. The Commissioner has carefully considered information available to him in relation to this case and accepts that CH had not conducted any particular searches to locate the requested information.
28. Nevertheless, he is persuaded by CH's reasoning and finds that CH's sole reliance on section 23 of ECTE, supported by its detailed analysis and interpretation, as the lawful basis for sharing information with HRMC is sufficient to reasonably conclude that such searches were not necessary, as there was no relevant information to be found.
29. Consequently, based on the evidence provided to him, the Commissioner is satisfied that, on the balance of probabilities, CH did not hold recorded information falling within the scope of the request and therefore is satisfied that CH has complied with the requirements of section 1(1) of FOIA in this case.

Right of appeal

30. 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

31. 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.
32. 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
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