

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 29 July 2008

**Public Authority:** Department for Business Enterprise and Regulatory Reform  
**Address:** 1 Victoria Street  
London  
SW1H 0ET

### Summary

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The complainant requested information relating to the destruction of his bankruptcy case file. The public authority provided some information but explained that the remaining information would have been held with the destroyed case file and was therefore not held. The Commissioner has investigated and finds that the majority of the information is not held. However the Commissioner did find that part of the information is held and should have been disclosed. The public authority has now disclosed this information to the complainant. The Commissioner finds that in failing to disclose this information within twenty working days from receipt of the request the public authority breached the requirements of section 10 and that in failing to provide the relevant information by completion of the internal review also breached section 1(1)(b) of the Act.

### 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.

### The Request

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2. The Commissioner notes that under the Act the Insolvency Service (IS) is not a public authority itself, but is actually an executive agency of the Department for Business Enterprise and Regulatory Reform (DBERR) which is responsible for the IS and therefore, the public authority in this case is actually the DBERR. However, for the sake of clarity, this decision notice refers to the IS as if it were the public authority.

3. The complainant has advised that on 18 October 2006 he made the following request for information to the IS:

*“In your letter you have stated that, ‘the service has a policy for the destruction of case files after a maximum period of seven years’*

*My enquiry is as follows:*

- *Who is the person that has decided what information is to be retained and what information is to be destroyed, in this particular case?*
- *Which policy has been used and by whom for the destruction of these case files?*
- *Which records have been destroyed?*

4. This request relates to previous correspondence between the complainant and the IS in relation to the complainant's bankruptcy case and the repossession of his property. In this correspondence the IS had informed the complainant that *“the Official Receiver's file has now been destroyed.”*

5. The IS responded on 21 November 2006 explaining that *“this office forwarded any documents relating to your interest in the property at xxx to the Protracted Realisations Unit (PRU) in Birmingham. Any remaining documents on the Official Receiver's case file were held in store and subsequently destroyed in line with Insolvency Service Policy”.*

6. The complainant wrote to IS again on 23 August 2007 providing a copy of the two previous letters and stating that:

*“You have not supplied the requested information or your reasons for not supplying the requested information. Would you therefore review those requests and supply the requested information along with an explanation detailing why you have not provided the previously requested information. Your response within the next seven working days would be within the prescribed response time.”*

7. The IS responded on 29 August 2007 providing the following answers to the complainant's request:

*“1. Who is the person that has decided what information is to be retained and what information is to be destroyed, in this particular case?”*

*This information is not available to me as the case file has been destroyed. However, I can state that, in line with Insolvency Service Policy, documentation relating to the property at xxx was copied to our Protracted Realisation Unit (PRU) in Birmingham to enable them to deal with that asset. In accordance with Insolvency Service Policy any further case papers were sent to store and eventually destroyed.*

*2. Which policy has been used and by whom for the destruction of these case files?*

*See above*

*3. Which records have been destroyed?*

*All records relating to the administration of your bankruptcy estate have been destroyed, with the exception of any documentation retained by PRU."*

## **The Investigation**

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### **Scope of the case**

8. On 30 August 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider that the response he was given was not suitable or informative enough. The complainant stated that he did not consider it possible that records had been destroyed without a record of which records have been destroyed and under which particular policy.
9. The information which, if held, would fall within the scope of the complainant's request is the Official Receiver's File (which would show which documents have been destroyed); the file / storage destruction sheet (which would show who made the decision and when) and the relevant document retention policy.

### **Chronology**

10. The Commissioner began his investigation by writing to the IS on 3 March 2008. The Commissioner asked the IS to provide further detail to explain why no information is held in relation to the information requested and for copies of any policy or evidence on the destruction of the Official Receiver's file.
11. The IS responded to the Commissioner on 11 April 2008. The IS provided further detail on the role of the Official Receiver, an explanation as to the destruction of the Official Receiver's file in this case, and therefore the information requested, and copies of policies in relation to document retention. The IS also pointed out that it had answered part of the complainant's information request in part 2 as it had explained that the policy used was the Insolvency Service's Policy.
12. The Commissioner wrote again on 13 May 2008 requesting more information.
13. The IS responded on 28 May 2008 providing further explanation to support its position that the requested information has been provided in part and the remainder is not held.

## Analysis

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### Procedural matters: Section 1 'General Right of Access'

14. Section 1 provides that any person making a request for information to a public authority is entitled to (a) be informed in writing whether it holds the information and (b) if that is the case to have that information communicated to him.
15. The IS service stated that the information requested in part 1, 2 in part, and 3 of the request is not held as it would have been held within the Official Receiver's case file which has been destroyed. It has explained that this is in line with the Insolvency Service's document retention policy answering, in part, the second information request.
16. The IS explained that information contained within an Official Receiver's files relates largely to information created by the Official Receiver acting in his capacity as statutory office holder. An Official Receiver has two distinct roles; to collect and realise the assets comprised in a bankruptcy estate and distribute funds to creditors, and to investigate the causes of failure and the conduct of the bankrupt. When a case has been identified as being 'completed' then a file storage/ destruction sheet is started to commence the process of storing, and eventually destroying the case file. This process can only be commenced for cases where all assets, with the exception of those which cannot be readily realised, e.g. properties and interests in a pension, have been realised, and there are no ongoing investigation matters. The case is then marked on a computer database as closed.
17. The file storage / destruction sheet is a detailed list of checks designed to ensure that all administrative actions have been completed. It is completed by the case officer with day to day conduct of the administration and checked by an office manager. Before sending for storage the files are checked by an Assistant Official Receiver, who signs the storage / destruction sheet on behalf of the Official Receiver. The file is given a bar code and sent to an off site storage for retention for the appropriate period.
18. In the case of the complainant, the Assistant Official Receiver confirmed no further investigation was required on 18 March 1994. All administrative functions were completed and the case was closed on 2 December 1994. At the time that the Official Receiver's file on the complainant was sent for off site storage the file retention policy of the IS was 20 years from the date of the closing of the case. Technical Notice T7/98 changed the file retention period from 20 years to 10 and on 30 June 2000 a Management Notice M14/2000 was issued informing Official Receivers and managers that the destruction period had now changed from 10 years to 7.
19. In 1994 Pickfords provided off site storage facilities for Official Receivers and the local office procedure for recoding storage / destruction details was in paper format. The IS explained that a fire at the Nottingham Official Receiver's office in

February 1998 destroyed these storage records and because of this no evidence exists as to the precise date of the destruction of the complainant's file. It is also the case that in February 2001 the storage contractor was changed to Graphic Data and it would have been during that changeover period that the file may have been identified as due for destruction under the, then, existing destruction policy of 7 years.

20. The IS explained that it is the responsibility of the Official Receiver's staff to periodically (normally monthly) identify records that are due for destruction and to liaise with the storage contractor to carry out this process. On the basis of the policies set out above the bankruptcy file pertaining to the complainant would have been destroyed following the eighth anniversary of the bankruptcy order, which was 19 January 2002. The IS conclude that the file was destroyed in February 2002. The IS also pointed out that the complainant made no contact with the IS until February 2003 at which point the file had been destroyed and no longer existed.
21. The Commissioner accepts that the information requested in parts 1, 3 and the second part of part 2 is not held. The information requested in part 1 asks for who has decided what information is to be retained and what information is to be destroyed in his case and question 3 reiterates this by asking which records have been destroyed. The latter part of question 2 also asks who used the policy to destroy the file. It is clear from the explanation that the details as to who destroyed the file, what was destroyed and when would have been held either on the Official Receiver's file itself which has been destroyed or on the storage / destruction sheet which at the time of its creation was only held in paper form and was subsequently destroyed in a fire.

### **Section 10 'Time for Compliance with request'**

22. Section 10 provides that a public authority must comply with section 1(1) of the Act promptly and no later than the twentieth working day following the date of receipt.
23. The first part of the request in part 2 asks 'which policy has been used'. The IS explained to the complainant that the policy used was the Insolvency Services policy at the time of the destruction. However the IS also claimed that this policy itself is also not held. The guidance on document retention and destruction are contained within the Service's Technical Manual and Case Help Manual available via its website at [www.insolvency.gov.uk](http://www.insolvency.gov.uk). Chapter 10 of this manual sets out the current policy on file retention and destruction but it is unable to provide copies of the manual prior to this as the IS has periodically revised this policy.
24. The Commissioner notes that the IS response to the complainant did not make any specific reference to the policy documents in force at the time, however as discussed in paragraph 17 there were two specific notices which were issued during the period in which the file was destroyed, which fall within the definition of the policy used for the destruction of the files: Technical Notice T7/98 and Management Notice M14/2000. During the course of the investigation the IS acknowledged that the names of these policies should have been disclosed to the

complainant in response to this part of his request. The IS have now disclosed to the complainant the names of the Technical Notice and Management Notice as requested and copies of these notices.

25. The Commissioner finds that the IS failed to disclose the information requested within twenty working days from the date of receipt of the request in breach of section 10(1).
26. In light of the Information Tribunal Decision in *King v Department for Work and Pensions* [EA/2007/0085] the Commissioner now determines whether there have been procedural breaches at the time of completion of the internal review and if there has been no review, then at 20 working days from the date of the request. In failing to supply this information by completion of the internal review the public authority also breached section 1(1) (b).

## The Decision

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27. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
  - i. By informing the complainant that the information requested in parts 1, the latter part of 2 and 3 were not held the Insolvency Service complied with the requirements of part 1(1) (a) of the Act.
28. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
  - i. By failing to provide the information requested in the first part of the second request within twenty working days the Insolvency Service breached the requirements of section 10(1) and by failing to provide relevant information by the completion of the internal review also breached section 1(1)(b) of the Act.

## Steps Required

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29. The Commissioner requires no steps to be taken.

## Right of Appeal

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30. 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 29<sup>th</sup> day of July 2008**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

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

## Legal Annex

### **General Right of Access**

**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.”

**Section 1(2)** provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

**Section 1(3)** provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

**Section 1(4)** provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

**Section 1(5)** provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

**Section 1(6)** provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”



## **Time for Compliance**

**Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

**Section 10(2)** provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

**Section 10(3)** provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

**Section 10(4)** provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

**Section 10(5)** provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

**Section 10(6)** provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or
- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”