

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 25 August 2011

Public Authority: Ministry of Justice
Address: 102 Petty France
London
SW1H 9AJ

Summary

The complainant requested information from the Ministry of Justice (MoJ) relating to bulk supply clients of the Registry Trust Limited (RTL). RTL purchase data from the MoJ and sell this on to its supply clients. The MoJ stated that it does not hold the requested information. The Commissioner accepts that, on the balance of probabilities, the MoJ was correct to state that it does not hold the requested information. However it was not until during the course of the Commissioner's investigation that the MoJ confirmed that the full scope of the information requested by the complainant was not held.

The Commissioner's Role

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

2. The complainant made the following request on 13 August 2010:

'In a letter I received on 5 August 2010,[1] the Ministry of Justice stated that:

"There are 11 bulk supply (periodic supply) clients currently receiving data from varying sections of the [Registry of Judgments, Orders and Fines]"

But that:

"The value of supply per customer is commercially sensitive and confidential to Registry Trust."

Under the FOI Act, please may I be sent the list of names of these 11 bulk supply clients, and the sections of the Register which they access?

Please may I also receive a copy of any detailed determination relating to whether or not the Register is subject to "The Re-use of Public Sector Information Regulations 2005"?'

3. On 14 September 2010, the MoJ responded to the complainant's request. It stated that it could not provide the requested information as the list of bulk supply clients was third party personal data under section 40(2) of the Act. The complainant requested an internal review of this refusal on 14 September 2010, in which he pointed out that the names of the bulk supply clients referred to in his request cannot be exempted under section 40(2) of the Act as this section relates to 'living individuals'. This cannot be extended to include legal persons.
4. The MoJ provided its internal review decision on 11 October 2010. Its decision varied from that of the original refusal notice. It stated that the requested information was not held by the MoJ. It had performed electronic and paper searches for the information and these had not returned any relevant information. It explained that the Registry Trust Limited (RTL) holds this information in its own right and provided the complainant with RTL's address to contact it for the information.

The Investigation

Scope of the case

5. On 23 November 2010, the complainant contacted the Commissioner to complain about the way his request for information had been handled. He disagreed with the MoJ's decision that the information is not held by it. He explained that the contract between the MoJ and RTL (to operate the Register of Judgments, Orders and Fines for England and Wales) stipulates that the requested information be provided to the MoJ

annually. He considered that the MoJ should therefore hold the requested information¹.

6. The complainant was also dissatisfied that the MoJ had not responded to the second part of his request, relating to a detailed determination as to whether or not RTL are subject to 'The Re-use of Public Sector Information Regulations 2005'.

Chronology

7. The Commissioner contacted the MoJ on 25 January 2011 to outline the scope of his investigation: whether or not the MoJ were correct to state that they do not hold the requested information. The Commissioner therefore asked further questions regarding this. He also requested that the MoJ respond to the second part of the complainant's request.
8. The Commissioner also contacted the complainant on 25 January 2011 to outline the scope of his investigation. This scope was accepted by the complainant on the same day.
9. The MoJ provided its response to the Commissioner's initial questions on 9 March 2011. On 11 March 2011 it also issued its response to the second part of the complainant's request. It explained that it does not hold the requested information. However, it was able to confirm outside the scope of the Act, from advice sought as a result of this request through its Policy department, that RTL is not subject to 'The Re-use of Public Sector Information Regulations 2005'.
10. The Commissioner contacted the MoJ on 15 June 2011 to ask further questions of it regarding the relationship between the MoJ and RTL. The MoJ responded to this on 20 June 2011 providing further explanation. It is on the basis of this response and its earlier response of 9 March 2011 that the Commissioner has made his decision.
11. Given that the MoJ responded to the second part of the complainant's request during the course of the Commissioner's investigation the Commissioner has not considered its response as part of his analysis, other than in relation to the time it took the MoJ to respond.

Findings of fact

12. The MoJ has confirmed the nature of the relationship between itself and RTL:

¹ Information can be held on behalf of a public authority by another person: see legal annex for section 3(2)(b) of the Act.

'...RTL is not owned or controlled by the MoJ. It is an independent body. The relationship between MoJ and RTL is that RTL purchase information from the MoJ for a fee. RTL was created in 1985 to aid the Lord Chancellor in maintaining a register and safeguarding the information for the finance industry in general and not MoJ.

The RTL is a not for profit company limited by guarantee with independent directors and members who act more as trustees – there are no MoJ directors or members and RTL is neither owned by or controlled by the MoJ nor has been at any time. The RTL are not a charity but a third sector not for profit organisation. I can confirm that they do not receive any form of subsidy payments from the MoJ, or receive any charitable donation. The RTL has not sought nor has it received public money by way of support. RTL is unique / special only in so far as it pays the MoJ fees for the data it purchases.

Under the contract MoJ currently has with RTL they operate the fines service Fred Online, by collating information purchased from MoJ onto a searchable register. What is meant by the statement that it operates the register on MoJ behalf is simply that they perform searches of the register for relevant information for MoJ when requested. MoJ pay them for the performance of any such search of the register, less any revenues RTL has been able to generate for themselves by selling the information to its other clients.'

13. The Commissioner therefore accepts that RTL is an independent body which does not act on behalf of the MoJ. It purchases data from the MoJ and would charge it for any subsequent search that the MoJ requested it to do.

Analysis

Substantive Procedural Matters

14. Section 1(1) of the Act 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.'

15. The effect of section 1(1)(a) and (b) is that a public authority is under a duty to confirm to a requestor whether or not it holds the requested information and if it does, to provide it to the requestor unless it can rely on one of the Act's exemptions.
16. In determining whether a public authority holds requested information, the Commissioner makes enquiries that will satisfy the civil standard of proof, that is, on the balance of probabilities, does the public authority hold the requested information?
17. In deciding where the balance of probabilities lies, the Commissioner will consider the searches carried out by the public authority, the extent of those searches, the quality and thoroughness of the searches and the results the searches yielded. He will also consider any other information or explanation offered by the public authority which is relevant for his consideration of this matter.
18. The MoJ has advised that it has performed both electronic and manual searches for the requested information. The search focused on the MoJ's Procurement unit. The MoJ has explained that this unit was the most likely to hold the requested information; it is the unit which makes and holds all MoJ contracts. It would therefore hold any relevant information regarding companies/bodies the MoJ has contracted with. The Commissioner therefore accepts that this unit was the most likely part of the MoJ to hold the requested information.
19. Through the searches that the MoJ performed, it was able to confirm that it does not hold the requested information and confirm that RTL does.
20. The complainant has raised the point that the contract made between the MoJ and RTL requires RTL to provide the requested information to the MoJ annually and it should therefore be held by the MoJ. This point was raised by the Commissioner with the MoJ. The MoJ has pointed to a response RTL provided to the complainant in which it explained that soon after the contract was made, the MoJ and RTL agreed that data would only be provided to the MoJ when requested. RTL stated:

'Registry Trust and the MoJ agreed soon after the contract was signed, that data would be provided to the MoJ when requested (for example for audit purposes), rather than periodically as envisaged when the contract was let. Registry Trust do not keep records of requests: but they do keep information on customers who request data regularly and enter into a supply contract with them. There are 11 bulk supply (periodic supply) clients currently receiving data from varying sections of the Register.'

21. The MoJ has confirmed that it has not requested the information relevant to the complainant's request from RTL.
22. The Commissioner questioned the MoJ as to how it was aware that the number of bulk supply clients which the RTL has is 11. He also asked how the MoJ was able to comment in its internal review that the majority of clients were credit reference agencies.
23. The MoJ has confirmed that it became aware that RTL has 11 bulk supply clients through conversations that its Procurement department had had with RTL. It also advised that none of these conversations were held in a recorded manner. As a result of the explanations he received, the Commissioner accepts this to be the case.
24. The MoJ has explained that it understood that the majority of RTL's clients would be credit reference agencies, as stated in the internal review, as this was information which had been garnered through internal discussions and given to the complainant as an aid rather than as a matter of fact. The Commissioner accepts that this is not information held in a recorded format by the MoJ.
25. The Commissioner therefore accepts the following: the MoJ searched the unit most likely to hold the requested information, this search identified that the information is held by RTL; RTL is a body independent of the MoJ, it does not act on the MoJ's behalf and therefore the information held by RTL is not also held by the MoJ; the MoJ and RTL agreed that the requested information would only be provided on request; the MoJ has not requested the relevant information from RTL and it does not therefore have it in its possession.
26. Given this, the Commissioner accepts that, on the balance of probabilities, the MoJ does not hold the requested information. It was therefore correct to state this in its internal review.
27. However, the Commissioner finds the MoJ in breach of section 10 of the Act in relation to the time taken to respond to the second part of the request. Even though the MoJ did not hold any information falling within the scope of this part of the request, it was still under an obligation to inform the complainant of this within 20 working days of his request and this was not rectified by the internal review.

The Decision

28. With regard to the first part of the request the Commissioner's decision is that the public authority dealt with the request for information in

accordance with the Act. The MoJ correctly stated in its internal review that the requested information is not held by it.

29. With regard to the second part of the request, the Commissioner's decision is that the public authority breached section 10 of the Act.

Steps Required

30. The Commissioner requires no steps to be taken.

Right of Appeal

31. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 25th day of xx 2011

Signed

**Alexander Ganotis
Group Manager – Complaints Resolution
Information Commissioner’s Office
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Legal Annex

Section 3(2) provides 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.”

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.”