

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 02 June 2011

Public Authority: The Pensions Regulator
Address: Napier House
Trafalgar Place
Brighton
BN1 4DW

Summary

The complainant made three requests under the Freedom of Information Act 2000 for information relating to Members Voluntary Liquidation Schemes (MVLs). The Pensions Regulator (the "Regulator") applied section 12 as it stated it would exceed the cost limit to comply with two of the requests. The Commissioner considers that section 12 was correctly applied. As the three requests were for information of broadly the same or of a similar subject matter, as it would exceed the cost limit to comply with some of those requests, the Regulator was not obliged to comply with any of the requests. The Commissioner has not therefore considered the other exemptions applied by the Regulator.

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 a request to the Regulator on 18 March 2010. The request was for the following information:
 - i. Information on any Member's Voluntary Liquidations entered into between 27 April 2004 and 14 February 2005 in respect of which there has been a regulatory investigation by the Pensions Regulator ("tPR") or where there has been a referral to tPR but tPR decided to not conduct an investigation, and, in relation to those Members' Voluntary Liquidations where there was an investigation, details of the outcome of the investigation including recommendations to take enforcement actions; and
 - ii. Information on any Warning Notices issued under Article 91(2)(a) of the Pensions (Northern Ireland) Order 2005 or under Article 96(2)(a) of the Pensions Act 2004 in connection to any Members' Voluntary Liquidations entered into between 27 April 2004 and 14 February 2005; and
 - iii. Copies of all notices issued under section 72 of the Pensions Act 2004 in relation to the (redacted name) Scheme ("the Scheme").
3. On 10 May 2010 the complainant again wrote to the Regulator as no response had been received.
4. On 4 June 2010 the Regulator responded to the request. It stated that it had not received the complainant's letter of 18 March 2010. It explained that the request was only received on 10 May 2010. In relation to point i of the request it stated that this information was exempt from disclosure under sections 30(2)(a)(iii), 30(2)(a)(iv) and 30(2)(b). It also stated in relation to points i and iii of the request, that this information was exempt from disclosure under section 31(1)(g) and (h) and 31(2)(a)-(d). It provided the complainant with an explanation as to why it believed these exemptions were applicable and also provided the complainant with the public interests arguments it had considered in relation to the application of these exemptions. It also stated that section 44(1)(a) was applicable to all three points of the request. It explained that section 82(4)

- and 82(5) of the Pensions Act 2004 prevented it from disclosing the information requested.
5. As the complainant was dissatisfied with the response, on 20 August 2010 the complainant asked the Regulator to conduct an internal review of its decision.
 6. On 9 September 2010 the Regulator wrote to the complainant with the result of the internal review. In relation to points i and ii of the request it applied section 12, section 31, section 41 and section 44. In relation to point iii of the request it provided the complainant with the four relevant notices however this information had been redacted under section 31(1)(g) for the purposes set out in section 31(2)(a)-(d), section 41(1), section 40(2) and section 44(1)(a). The Regulator no longer applied section 30.
 7. On 14 October 2010 the Regulator wrote to the complainant again and stated that in relation to points i and ii of the request the main and only section applied was section 12. It suggested that the other exemptions were only mentioned as an indication of the exemptions likely to apply if section 12 was not applicable. It also discussed its application of section 44(1)(a) to all of the information requested.

The Investigation

Scope of the case

8. On 22 November 2010 the complainant contacted the Commissioner to complain about the way the request for information had been handled. The complainant specifically asked the Commissioner to consider whether the Regulator had dealt with the requests for information in accordance with the Act.

Chronology

9. On 10 January 2011 the Commissioner contacted the Regulator to ask for any submissions the Regulator wished to make in relation its handling of these requests.

10. On 1 February 2011 the Regulator provided the Commissioner with detailed submissions in relation to the way in which it had handled these requests.
11. On 8 April 2011 the Commissioner wrote to the Regulator for further submissions in relation to its application of section 12.
12. On 20 April 2011 the Regulator provided further submissions in support of its application of section 12.

Analysis

Substantive Procedural Matters

Section 12(1)

13. Section 12(1) of the Act states 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."

14. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the "Regulations") sets the appropriate limit at £450 for the public authority in question. A public authority can charge a maximum of £25 per hour for work undertaken to comply with a request which amounts to 18 hours work in accordance with the appropriate limit set out above. 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.
15. To determine whether the Regulator applied section 12 of the Act correctly the Commissioner has considered the submissions provided by the Regulator on 1 February 2011.

16. The Regulator has explained that in order to establish whether it held the information requested at point i of the request for the relevant period it would have to search its DISC database, its O-Drive which contains OPRA casework information (OPRA was the Regulator's predecessor and was the relevant body for the time period of the request), all cases sent to the Regulator's Determinations Panel and all cases sent to the OPRA board. The Regulator explained that although OPRA did not proactively collect the information requested at point i of the request, or keep statistics or records relating to such, it could have held this information because, for example, it could have been given the information voluntarily by scheme members (e.g. whistle blowing) or it could have been included when a trustee or employer, in compliance with a statutory duty, reported non-compliance with the Pensions Act 1995 (which was in force at the relevant time) to OPRA. It explained that the Regulator does not proactively collect such information either nor does it keep statistics or records, however it said that it may become aware of this information as a result of it being included with information sent to the Regulator through the scheme return process, or as part of clearance activity or with information sent in as a result of the notifiable events regime. It explained that in order to determine whether the Regulator held the information requested at point i of the request, manual searches of the relevant files would also have to be carried out.
17. The Regulator explained that a search of OPRA records revealed that in the year 2004/2005 the number of reports received by OPRA was 77,200, as a result of which OPRA made 2,200 further enquiries. It said that the O-Drive holds all documents relating to old OPRA cases. It explained that these documents are split into relevant year and have subfolders containing information relating to specific case numbers. For the year 2004, it explained there are 14 subfolders which then further divide into 10 subfolders each holding 100+ cases. For example it said that subfolder 001-99 contains 109 records. Searches were conducted for the year 2004 under folder cases 0001-999, subfolder cases 001-99 of which there were a further 109 subfolders using the key phrases, 'liquidation', 'members voluntary liquidation' and 'Section 75' (deficiencies in scheme assets). There were no hits for cases containing these key words. It explained that manual checks of 3 of the 109 subfolders were then conducted:

- 01-4 which had two documents but none were relating to or involving MVL information – time taken 1 minute.
 - 11-4 which had 15 documents within it but none were relating to or involving MVL information - time taken 5 minutes.
 - 95-4 which had 13 documents within it but none were relating to or involving MVL information – time taken 6 minutes.
18. The Regulator explained that OPRA did not have in place an electronic records system, much of the information held was saved in Microsoft Office, the O-Drive and manual case files. It said that the search functionality in Microsoft Outlook does not provide a robust search facility which is capable of interrogating data during a search as an electronic management system would be able to do. It explained that as the initial searches conducted of the O-Drive records didn't bring any results up, given that the Regulator was aware of the limited functionality it did not feel it was appropriate to rely upon those results alone. This is why it was therefore considered necessary to conduct additional manual searches of those electronic records.
19. The Regulator estimated that in order to interrogate the OPRA files alone it would involve:
- 2200 records contained in 14 folders
 - Each of those 14 folders contains 10 subfolders
 - Each of one of those 10 subfolders contains 109 records
 - 3 of the 109 records took approximately 10 minutes to search through
 - $106 \text{ (remaining records)} \div 3 = 35 \times 10\text{mins} = 350 \text{ mins} \div 60\text{mins} = 5.833333 \text{ hours (therefore roughly 6 hours)}$
 - $6 \text{ hours} \times \text{remaining 9 subfolders (of the 10)} = 54 \text{ hours}$
 - $54 \text{ hours} \times \text{remaining 13 folders (of the 14)} = 702 \text{ hours}$
 - Roughly equivalent to 2.7 weeks (working on a 35 hour week)

20. The Regulator then explained that due to the way in which it operates, much of the information which is collected or received, or both is retrospective. Therefore it would not have been sufficient to just review OPRA case files for the relevant period. It was considered necessary to also establish whether information was held for the relevant period which was received by the Regulator retrospectively and would/could have resulted in an investigation. Therefore the Regulator would need to conduct a search of the 8,529 cases held on DISC for the period 6 April 2005 (when the Regulator took over from its predecessor OPRA) to the date of the request. The searches of DISC were conducted to verify what information, if any was held in relation to the information requested at point i of the request. These records were searched using the key words, 'members' voluntary liquidations', 'MVL's', 'liquidation', and 'voluntary liquidation'. It said that there were over 500 mixed results in the searches. It explained that initial analysis of the data showed that it did not relate to the information requested at point i of the request but had been caught in the search by the words 'member' and 'liquidation'. It explained that it became clear that manual checks would need to be carried out on each of the files to ascertain if any did in fact relate to the information requested at point i of the request. It explained that it would be a significant task to manually search 8,529 records.
21. For completeness searches were also conducted in respect of all those cases which had been heard by the OPRA board for its entire existence. For the relevant period 45 cases were heard however none related to the information requested at point i of the request. Again it explained that it was also necessary to check all cases heard by the Determination Panel up to the date of the request as investigations may have been retrospective, however none related to this information.
22. In relation to point ii of the request, the Regulator explained that there is no statutory provision for the issue of warning notices within the Pensions Act 1995. Therefore OPRA did not issue any warning notices. It explained that OPRA instead issued 'statement of facts' to parties prior to a case being handed to the OPRA board for a determination. This is important to note because the relevant period specified in the request predates the Regulator and covers a period when OPRA was operational. To search for this information the same process as that described

above relating to point i of the request would have to be followed (O-Drive and manual records).

23. It did however explain that the Regulator does issue warning notices under section 96(2)(a) and article 91(2)(a) of the Northern Ireland Order 2005 but it doesn't currently record the number of warning notices issued against the different types of cases. As mentioned above there were 8,529 Regulator cases at the time of the request (which would need to be searched in case a warning notice was issued retrospectively). When conducting searches in DISC to ascertain if information was held, the same issues arose in the results as highlighted above. It explained that DISC is unable to collect management information on the number of or type of warning notices issued. Given the number of case records to search and the fact that it would require manual searches, the Regulator considered it would exceed the cost limit to ascertain whether or not the information was held.
24. The Commissioner notes that in this case the complainant did make three requests within a single item of correspondence. Section 12(4) provides that, in certain circumstances set out in the Regulations, requests can be aggregated so that the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them. Regulation 5 of the Regulations sets out the relevant condition in this case and provides that multiple requests can be aggregated in circumstances where the two or more requests relate to any extent, to the same or similar information. Although this test is very broad, it is possible that one or more requests may not meet this test and the Commissioner has therefore considered whether he is satisfied that the requests relate to the same or similar information. In this case the Commissioner is satisfied that all three requests relate to information about MVLs. The Commissioner considers therefore that the requests were for the same or similar information and therefore can be aggregated. Therefore although the Regulator did provide the complainant with some redacted information relevant to point 3 of the request it was not obliged to do so and therefore is not obliged to provide the redacted information.
25. As the Commissioner considers that section 12 was correctly applied in this case he has not gone on to consider the Regulator's application of the exemptions any further.

The Decision

26. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

27. The Commissioner requires no steps to be taken.

Right of Appeal

28. 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: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

29. 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.
30. 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 2nd day of June 2011

Signed

Pamela Clements

Group Manager, Complaints Resolution

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 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Exemption where cost of compliance exceeds appropriate limit

Section 12

(1) 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.

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.

(3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.

(4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.