

Freedom of Information Act 2000

Decision notice

Date: 13 August 2014

Public Authority: Treasury Solicitor's Department
Address: One Kemble Street
London
WC2B 4TS

Decision (including any steps ordered)

1. The complainant requested the value of a deceased person's estate. The Treasury Solicitor's Department (TSol) refused the request under section 31(1)(a) of the Freedom of Information Act 2000 (the Act), as disclosure would be likely to prejudice the prevention of crime.
2. The Commissioner's decision is that TSol correctly refused the request under section 31(1)(a). No further action is required.

Request and response

3. The complainant wrote to TSol and requested information in the following terms:

"I need to know whether I should apply via the Small claims Court if the potential value of the estate is under £5,000 [sic] or to the County Court if it is over this amount.

Would you indicate the value of the estate so that I know to which recourse I should follow."

4. TSol responded on 21 February 2014. It refused the request under section 31(1)(a), and stated that the public interest test favoured maintaining the exemption.

5. TSol issued its internal review on 6 March 2014. It upheld the decision to refuse the request for the same reasons stated in its response of 21 February 2014.

Scope of the case

6. Following the internal review the complainant contacted the Commissioner to complain about the way his request for information had been handled. Specifically the complainant believes the information should be disclosed.
7. The Commissioner considers the scope of the request to be whether the request can be refused under section 31(1)(a).

Reasons for decision

Background

8. If a person dies without leaving a will and without known next of kin, TSol's Bona Vacantia Department becomes the executor of the estate.
9. Details of the estates administered by TSol are available online.¹ TSol does not provide all the information it holds about the deceased, but provides identifying information such as name, date of birth and place of death. It does not provide the value of the estate for the deceased.
10. If someone considers they are related to one of the deceased, they are able to make a claim to TSol by proving their identity and their relation to the deceased. If a claim is successful, that individual then becomes the executor of the estate. At this point TSol no longer has any legal authority over the estate of the deceased.
11. In this case, the complainant works for a client who believes they are entitled to a proportion of an estate that was held by the Bona Vacantia Division. This estate was successfully claimed for by the client's relative, and the client now wishes to know the value of the estate in order to know whether or not to instigate legal proceedings against said relative. The complainant explained to the Commissioner that the crucial point is

¹ <https://www.gov.uk/government/statistical-data-sets/unclaimed-estates-list>

whether the value of the estate is over £5,000 as this is the threshold for the Small Claims Court.

Section 31 – Law Enforcement

12. Section 31 of the Act states that:

(1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

(a) the prevention or detection of crime

13. Section 31 provides a prejudice-based exemption which protects a variety of law enforcement interests. Consideration of this exemption is a two-stage process. Firstly, in order for the exemption to be engaged it must be at least likely that disclosure would prejudice one of the law enforcement interests protected by section 31 of Act. Secondly, the exemption is subject to a public interest test. If the public interest favours disclosure then the withheld information will be released, even if the exemption is engaged.

Does the exemption apply?

14. For the exemption to apply to the withheld information it must meet the following criteria:

- The prejudice affects the particular interest that the exemption is designed to protect.
- The prejudice must be of substance and also have a causal link with disclosure.
- It must be shown that the prejudice would, or would be likely, to occur following disclosure.

Does the prejudice affect the particular interest that the exemption is designed to protect?

15. In its submissions to the Commissioner, TSol argued that disclosing the value of an estate would prejudice the prevention of crime. It stated that the value of an estate would reflect the assets of said estate, and would likely identify those estates which included a property (as property is generally an individual's most expensive asset). To disclose the value of an estate would identify empty properties, which would leave them at the risk of illegal occupation or criminal activity (such as criminal damage, cultivation of drugs etc.).

16. In addition to this risk, TSol identified arguments linked to fraud. It provided a report from the Society of Trust and Estate Practitioners (STEP) regarding – amongst other things – occurrences of fraud in the administration of the estates of the deceased. The STEP report highlights a survey it conducted in 2005 which found that nearly half its members had come across suspected cases of fraud in handling estates of the deceased. In the same report it also cites an estimate from 2005 produced by the RNIB that estate fraud amounted to £100 - £150 million.
17. The Commissioner considers these arguments compelling. TSol has identified several criminal activities that are linked to the information that has been withheld and it is evident the information does relate to the particular interest that the exemption is designed to protect.

Is the prejudice of substance and also has a causal link with disclosure?

18. TSol stated it used to provide the value of estates on its online list but decided to remove the values after receiving advice from the police. This came about after an attempted instance of probate fraud. In addition to this, TSol was able to provide the Commissioner with a number of other allegations of probate fraud. The Commissioner will not replicate the details of these instances in this decision as they are confidential.
19. The Commissioner considers there is a clear causal link between the value of estates being in the public domain and the occurrence of prejudice to the prevention of crime. He considers it especially significant that the police has taken measures to reduce the risk of fraud occurring.

What is the probability of prejudice occurring following disclosure?

20. Given the evidence provided by TSol in response to the first two criteria it is clear that the probability of criminal activity occurring is more than theoretical.
21. TSol accepted that the probability of fraud would be more likely in some instances than in others. Properties of higher value would obviously be of greater interest to potential fraudsters than those of low value. However, TSol argued that there was a danger of setting a precedent of giving out the information for estates of low values. This would make it harder to refuse other requests, even only for those of a low value, and once it became common practice to disclose information around a certain threshold it would make it much easier to identify those estates of high value.
22. TSol also acknowledged that where a successful claim had been made by the deceased's next of kin (as in this case), there was a reduced risk

of fraud occurring and so the likelihood of prejudice is also reduced. However, whilst this risk would be diminished it would not be removed. TSol highlighted a practice note from the Law Society on property and registration fraud. This document clearly identifies that personal representatives are particularly at risk of fraudulent activity, especially if the estate contains a high value property.

23. The Commissioner is satisfied that the information provided by TSol shows the criteria has been met to engage section 31(1)(a). The exemption is designed to stop information being disclosed if it would or would be likely to prejudice prevention of crime. The value of estates has previously been utilised in instances of probate fraud; the link is clear from the evidence provided, and the standard of this evidence is such that the Commissioner considers it would be likely to occur were such information to be disclosed, given the number of instances where it has occurred in the past. He notes that the risk in this case might be lowered as a successful claim has already been made, and there is the chance the estate in question is of low value. However, the Commissioner is mindful of setting a precedent and considers that allowing this to happen would be likely to prejudice the prevention of crime.

Public interest test

24. As the exemption applies, the Commissioner needs to consider the balance of the public interest test. The information could be disclosed even though the exemption applies, but it would be necessary to demonstrate that the arguments in favour of disclosure outweighed those in favour of maintaining the exemption.

Arguments for disclosing the information

25. The Bona Vacantia Division is paid for with public funds, so there is an inherent argument for TSol to be open and transparent about the information it holds. Transparency would increase understanding of the work carried out by TSol and provide further information about its activities.
26. The complainant has argued that there is a strong public interest in the withheld information being disclosed. He works for a probate company where his client is in dispute with a relative who has already successfully claimed the estate from TSol. The complainant's client wishes to know the value of the estate so that they know whether to approach the Small Claims Court or Crown Court. If the value is over £5,000 then it cannot go to the Small Claims Court, and the client is interested in pursuing money that might be owed to him. The complainant argued that there is

a public interest in individuals being able to pursue justice and obtain what is rightfully theirs.

Arguments for maintaining the exemption

27. The Commissioner's view is that the arguments for transparency are not significant in this instance. The information would not provide much insight into the activities of TSol, nor would it do much to promote accountability of the actions taken by TSol or the Bona Vacantia Division. It is also noted that the Division is subject to close audit scrutiny by the Crown Nominee Accounts, which publishes holistic information about the Division's finances. The Commissioner considers that this goes some way to meeting the need for transparency of the Division, and – combined with the aforementioned point about the information not being overly useful for transparency – this severely diminishes the argument for transparency and accountability in favour of disclosing the information.
28. The Commissioner has demonstrated that there is a palpable risk of fraud and other criminal activities occurring if the information about the value of estates is disclosed, and there is a strong public interest for no information to be disclosed that would be likely to prejudice the prevention of crime.
29. The purpose of the Bona Vacantia Division's list is to provide enough information so that potential next of kin can be found. The Commissioner does not consider it necessary for the value of the estate to be provided in order for this purpose to be met. Whilst the complainant has not expressed any desire to know the value of other estates, if TSol was to disclose the value of one it would set a precedent and strengthen the argument for disclosing others. As disclosure of this information is seen to prejudice the prevention of crime and is not needed for the purpose of the Division, the Commissioner considers there is a strong public interest argument in maintaining the exemption.
30. The Commissioner disagrees with the complainant's view of there being a strong public interest argument in this information being disclosed. The matter is very clearly a private interest to the complainant and his client, and not one that has any wider implications for the public. Whilst there is an argument that this scenario could occur more frequently and therefore be of greater concern to the public, the Commissioner does not consider this likely. The complainant's client only has a grievance because of their relative being unwilling to provide the value of the estate, and the Commissioner does not consider that an exemption under the Act should be undermined because of a family dispute.

31. The Commissioner also considers it significant that the Act is purpose and applicant blind. The purpose of this request is for private gain but if provided it would also have to be given to the world at large. Whilst the complainant might not have any intention of committing fraud, the Commissioner has to take into account the wider implications of disclosing this information, irrespective of the complainant's individual circumstances. For the reasons set out in this decision the Commissioner's view is that this information is likely to prejudice the prevention and detection of crime, in which there is a clear public interest.

Balance of public interest test

32. The Commissioner has weighed up the arguments for both disclosing the information and maintaining the exemption and his decision is that the exemption should be maintained. The arguments in favour of disclosing the information are not in any way substantial beyond the complainant's own concerns, and lack significance for the broader public. Balanced against this is the strong public interest in not providing information which would be likely to prejudice the prevention of crime, as well as the argument that the Bona Vacantia Division is able to carry out its public functions without this information being in the public domain.
33. As the Commissioner's decision is that the exemption applies and the public interest is in maintaining the exemption, TSol was correct to withhold the information and no further action is required.

Right of appeal

34. 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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

35. 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.
36. 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

Alexander Ganotis
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