

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 March 2017

Public Authority: Information Commissioner's Office

Address: Wycliffe House
Water Lane
Wilmslow SK9 5AF

Decision (including any steps ordered)

1. The complainant has requested information about the Data Protection Act, the Duchy of Cornwall and a data controller application. The Information Commissioner's Office (ICO) says it does not hold the requested information.
2. The Commissioner's decision is that, on the balance of probabilities, the ICO does not hold the requested information.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 28 June 2016, the complainant wrote to the ICO and requested information in the following terms:

"The Data Protection Act 1998 section 1 states a Data Controller is a 'person'. Data Protection Act 1998 section 63(3)(c) refers to 'such person as the Duke of Cornwall...appoints'. The decision in 'The A-G for the Prince of Wales v the IC and Mr Michael Bruton (2016) UKUT 0154(AAC)' states 'the Duchy of Cornwall is not a person body or entity that has a separate identity of its own'.

My request therefore is to ask you provide any information you possess by which the ICO agreed an entity that is not a person in accordance

with the requirements of the Data Protection Act 1998 was registered as a Data Controller. Please also provide copies of the Application made by the Duchy of Cornwall."

5. The ICO responded on 21 July 2016. It said that the ICO has not concluded that the Duchy of Cornwall is not a data controller for the purposes of the DPA and, as such, it did not hold any related information.
6. Following an internal review the ICO wrote to the complainant on 22 August 2016. It confirmed that, at the time of the request, it did not hold information within the scope of either the first part or the second part of the complainant's request. In correspondence dated 23 September 2016, the ICO confirmed to the complainant that there was no further right of review.

Scope of the case

7. The complainant contacted the Commissioner on 26 September 2016 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on whether the ICO holds the information the complainant has requested.

Reasons for decision

Background

9. In his complaint to the Commissioner, the complainant has said that section 1 of the Data Protection Act (DPA) provides that a 'data controller' is a 'person', while section 63 provides that 'person' is 'such person as the Duke of Cornwall appoints.'
10. The complainant says that the Duke of Cornwall has chosen to appoint as the 'person' the Duchy of Cornwall, but that Mr Justice Charles in the Bruton Case concluded the Duchy of Cornwall was not a 'person' for any purpose. The complainant maintains that the ICO takes the view that, by the Duke of Cornwall naming the Duchy of Cornwall as a 'person' for the DPA, it becomes a person.
11. It appears to the complainant that the Duchy can be whatever it wants to be when it is convenient and the authorities concur. The complainant argues that calling the Duchy of Cornwall a 'person' for the purposes of the DPA, despite a clear decision of the courts and the protestations of the Duchy itself, makes the Duchy a 'person'.

12. The complainant says that the Duchy of Cornwall devotes considerable resources to pursuing litigation to demonstrate it is not a 'person' and so is not subject to the FOIA or Environmental Information Regulations 2004 (EIR), yet becomes a 'person' by the fiat of the Duke of Cornwall. He considers it wrong that the courts find in favour of the Duchy in the Bruton case, and say the Duchy is not a 'person', but the ICO finds in favour of the Duchy and says it *is* a 'person'.

Section 1 – general right of access to information

13. Section 1(1) of the FOIA says that anyone who requests information from a public authority is entitled (a) to be told if the authority holds the information and (b) to have the information communicated to him or her if it is held.
14. In its submission to the Commissioner, the ICO has said that in the first part of his request, the complainant asked for information the ICO held that shows the ICO had agreed an entity that is not a 'person' in accordance with the requirements of the DPA, was registered as a data controller.
15. The ICO has pointed out that the context of the case from which the statement '*The A-G for the Prince of Wales v the IC and Mr Michael Bruton (2016) UKUT 0154(AAC)*' arises was a case about whether the EIR applied to the Duchy of Cornwall.
16. In light of the context of the case law, the ICO has told the Commissioner that it did not carry out specific searches in order to respond to the complainant's request. Its approach was to discuss the request with relevant areas of the business and to use its judgement on whether such information is held. Notes of such discussions are not held.
17. The ICO says it looked at the request logically and, on the balance of probabilities, concluded that no information would be held. This is because the Duchy of Cornwall is registered as a data controller and has been registered since 2004. This fact in itself proves that the ICO considers it to be a data controller for the purpose of the DPA and it has not made a determination that the Duchy is not.
18. The ICO says a degree of judgement is required in order to determine whether or not it holds information about a specific issue and that this was exercised on this occasion.
19. For completeness however, the ICO has told the Commissioner that it has now conducted a number of searches of its electronic document and records management system using the following search terms and can confirm that it does not hold information falling within the scope of the

complainant's request: 'Duchy of Cornwall as data controller'; 'a person for the purposes of the DPA'; 'a person for the purposes of the Data Protection Act'; 'an entity that is not a person in accordance with the requirements of the Data Protection Act'; 'entity registered under the Data Protection Act'; 'legal person under the DPA'; and 'legal person under the Data Protection Act'.

20. The ICO says it has also consulted its Policy department who specifically searched the ICO's policy advice forms and knowledgebase. The search did not retrieve information within the scope of the request.
21. With regard to the second part of the request, "*please also provide copies of the Application made by the Duchy of Cornwall*", the ICO says that it consulted its Notification department. This department confirmed that the original application dating back to 2004 is no longer held. This is in line with the ICO's retention and disposal schedules which, at the time, stated that manual records relating to applications would only be held for two years.
22. The Commissioner has considered the background to the request, the complainant's arguments and the submission provided by the ICO. She considers that the logic the ICO initially applied to the request is sound, and that the searches it has now carried out were adequate. On this occasion, the Commissioner is prepared to accept that the ICO does not hold the information the complainant has requested and has complied with the obligations under section 1(1) of the FOIA.
23. Finally, the ICO clarified that the complainant had referred to a decision under EIR: *Prince of Wales v the IC and Mr Michael Bruton (2016) UKUT*, where the issue of the Duchy of Cornwall as a legal person was mentioned. It has offered the complainant a general explanation of who are considered to be data controllers for the purpose of the Data Protection Act 1998. The ICO considers this issue might be better dealt with as an enquiry from the complainant. Its Policy department may be able to provide him with clarification on whether the Upper Tribunal judgement can have an impact on the status of the Duchy of Cornwall as a data controller. The complainant may want to consider taking this step.

Right of appeal

24. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

25. 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.
26. 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

Pamela Clements
Group Manager
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SK9 5AF