



The Insolvency
Service

The Insolvency Service
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Thomas Martin
request-653252-f86dee0f@whatdotheyknow.com

Your ref: request-653252-f86dee0f
Our ref: FOI2019-179(7)
Date: 02 April 2020

Dear Mr Martin

Re: Freedom of Information Act 2000

Thank you for your email of 08 March 2020 in which you requested from the Insolvency Service:

“Please provide me with the policy regarding the pursuit of directors who breach a bankruptcy by acting as a director without permission to remain, but subsequently obtain an annulment.

An annulment would put the director in a position as if he had never been made bankrupt, so should the director still be pursued for the breach?

What is the Insolvency Services policy on the above?

Please provide me with any internal documents, counsel/solicitor opinions or emails which would advise or discuss the above scenario”.

Your request has been dealt with under the Freedom of Information Act 2000 (FOIA).

Regarding the policy you are requesting; the Insolvency Service does not hold the information you have requested. However, under section 11 and 13 CDDA, it is a criminal offence for an undischarged bankrupt or a person subject to a bankruptcy restrictions order or undertaking to act as a director of a company or, directly or indirectly, to take part in the promotion, formation or management of a company without the leave of the court. There is no statutory bar to the institution or continuation of criminal proceedings under the Company Directors Disqualification Act 1986 (CDDA) after the annulment of a bankruptcy. There is no formal Insolvency Service policy on whether to institute or continue criminal proceedings in such circumstances and each case would be considered in accordance with the two-stage test under the Code for Crown Prosecutors, particularly whether the facts of the case were such that a prosecution was required in the public interest.

Please note FOIA only applies to recorded information, it does not require public authorities to answer a question unless recorded information exists. Therefore, to answer a request FOIA does not oblige a public authority to create information if the requested information is not held.

Regarding internal documents of counsel or solicitor's opinion on the scenario you outlined, we do not centrally collate opinions or email by inhouse lawyers or external counsel or solicitors, although it is possible that information in this format is held on individual cases. However, this information is exempt from disclosure under s12 (costs) of FOIA, as it is estimated to locate and retrieve such information would be over the cost limit, because it would be necessary to examine each individual case to ascertain whether the issue arose and whether there were any relevant documents.

The appropriate limit has been specified for Central Government at £600. This represents the estimated cost of one person spending 24 hours in determining whether the Service holds the information, and locating, retrieving and extracting the information.

Under section 12(1) of the Freedom of Information Act the Insolvency Service is not obliged to comply with your request and we will not be processing your request further.

When section 12 is applied, section 16 requires we provide advice and assistance as to how you may narrow the scope of your request to meet the cost limit, however, due to the nature of your request I am afraid that I cannot recommend how you could narrow it in a way to bring it within the cost limit. Additionally, as the information requested would be on individual case files and therefore relate to the respective individual cases it is worth noting that once collated it would likely be exempt under s42 (Legal Professional Privilege), or s30 (Investigation and Proceedings) of FOIA, subject to any prejudice or public interest tests.

If you are not satisfied with the response we have provided you and would like us to reconsider our decision by way of an internal review (IR), please contact our Information Rights Team at foi@insolvency.gov.uk or by post at:

Information Rights Team
The Insolvency Service
3rd Floor
Cannon House
18 Priory Queensway
Birmingham
B4 6FD
United Kingdom

You also have the right to contact the Information Commissioners Office (ICO) if you wish for them to investigate any complaint you may have in regards to our handling

of your request. However, please note that the ICO is likely to expect an IR to have been completed in the first instance. The ICO contact details can be found on their website: <https://ico.org.uk/global/contact-us/>.

Kind regards

Laurie Judge
Information Rights Manager
The Insolvency Service

The Department for Business, Energy and Industrial Strategy, Official receivers and the Adjudicator are Data Controllers in respect of personal data processed by the Insolvency Service. For the details about how personal data is processed by the agency, please see the full Insolvency Service Personal Information Charter here: <https://www.gov.uk/government/organisations/insolvency-service/about/personal-information-charter>