

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 March 2016

Public Authority: Financial Ombudsman Service
Address: South Quay Plaza
183 Marsh Wall
London
E14 9SE

Decision (including any steps ordered)

1. The complainant has requested information relating to complaints dealt with by a specific adjudicator.
2. The Commissioner's decision is that the Financial Ombudsman Service (FOS) has correctly applied section 40(2) to the withheld information.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 24 June 2015, the complainant wrote to FOS and requested information in the following terms:

I request the Financial Ombudsman Service provide the following information:

(1) The number of complaints received against Northern Rock Plc aka Northern Rock (Asset Management) Plc?

(2) The number of complaints found in favour of the complainant for complaints against Northern Rock Plc aka Northern Rock (Asset Management) Plc?

(3) The number of complaints (against any entity) that have been processed by [redacted], Adjudicator (2011-2015)?

(4) The number of complaints (against any entity) that were found in favour of the complainant for complaints processed by [redacted], Adjudicator (2011-2015)?

5. FOS responded on 13 July 2015. It provided some information within the scope of the request but refused to provide the information requested at parts three and four. It cited section 40(2) and 40(3) as its basis for doing so.
6. Following an internal review FOS wrote to the complainant on 11 August 2015 and upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 10 November 2015 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of this case to be to determine if FOS has correctly applied the exemptions it has cited to the withheld information.

Reasons for decision

Section 40 – personal information

40(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

40(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

9. The first question which the Commissioner has considered is whether the information is personal data for the purposes of the Data Protection Act 1998 (DPA). Personal data is defined in the DPA as:

“data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller.”

10. In this case the information withheld under section 40(2) consists of the number of complaints processed and the number of complaints upheld by a named adjudicator.
11. The information itself i.e. the numbers alone cannot be classed as personal data. However, it does relate to that individual adjudicator in terms of their work and is therefore also biographical. In addition the adjudicator is identifiable when that information is disclosed in this context. The Commissioner therefore considers that this constitutes personal data.
12. Having determined that the information is personal data, the next question for the Commissioner to consider is whether a disclosure of that information would breach any of the data protection principles.
13. The most relevant data protection principle in this case would be the first data protection principle. This requires that information is processed 'fairly and lawfully'. The Commissioner must therefore decide whether a disclosure of the information would be 'fair'.
14. The complainant argued that:

“the information requested is a matter of Public Record. Each complaint about NRAM processed by the Adjudicator is a matter of Public Record and the Adjudicator's name appears on the reports generated by the Adjudicator.

The information requested is about the number of complaints about NRAM processed by the Adjudicator and the denials of the outcomes of those complaints processed by the Adjudicator. The information is not the personal data of the Adjudicator.

The Adjudicator fulfils a Public role in processing complaints and making determinations about complaints for the FOS, which has a remit to act in a transparent and open way and to be accountable to the Public, and is

wholly funded by the Public. Therefore, it is in the Public Interest that the details of outcomes of complaints about NRAM processed by the Adjudicator be disclosed.

Furthermore, given that the subject of the complaint - NRAM - was taken into Public Ownership at the expend [sic] of the Public due to financial irregularities, it is a matter of Public Interest that details of the processing of the complaints by the Adjudicator be disclosed.

The Adjudicator has made a number of erroneous and false statements about NRAM and about the Financial Regulations applying to NRAM, and about the conduct of the FOS, as proven by information disclosed by the Financial Conduct Authority, and as proven by statements issued by associates of NRAM. The Adjudicator has (by virtue of false statements) assisted NRAM to evade investigation of breaches of Financial Irregularities.

The consequences of the Adjudicator's conduct with respect to complaints about NRAM adversely affects 21,899 former NRAM account holders (accounts to the value of some £2.2Billion as valued at January 2008). The majority of those 21,899 accounts are still active, and the accounts holders are still adversely affected by the misconduct of NRAM."

15. With regard to the complainant's assertion that as an adjudicator's name appears on reports and correspondence to members of the public, and so is already in the public domain, the Commissioner has reviewed a number of decisions published on the FOS website. The Commissioner notes that these decisions are signed off by an ombudsman and not by an adjudicator and the adjudicator is not named.
16. Information, such as a signatory, provided to a member of the public during the normal course of business does not automatically make the information available to the public as a whole i.e. is in the public domain.
17. In considering whether disclosure would be fair the Commissioner takes into account the following factors:
 - Whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;
 - The individual's reasonable expectations of what would happen to their information; and
 - Balancing the rights and freedoms of the data subject with legitimate interests.

18. FOS considered that disclosure of the requested information would breach the data protection principles. When considering the first principle FOS argued:
- The adjudicator has not consented to the release of this kind of information. FOS considers that any individual, who submits personal data for this purpose has not reasonably expected it to be used in this manner (i.e. to be disclosed to the world at large using the FOIA).
 - The adjudicator is not a senior member of staff – and is less senior than the FOS ombudsmen who issue final decisions.
 - The adjudicator's opinions are not legally binding, so FOS considers that there is little public interest in the outcomes they reach and the number of complaints they have considered, when compared to ombudsmen's statistics.
 - FOS does not publish the same level of information for other individual adjudicators, nor is this something its statistics can be compared against, for similar organisations in other sectors.
 - The publishing of this performance information in isolation may affect the adjudicator's public life and reputation because consumers who bring complaints to FOS could unfairly judge their ability to deal with complaints.
19. Reasonable expectations: The Commissioner's view is that when considering what information individuals should expect to have disclosed about them a distinction should be drawn as to whether the information relates to the individual's public or private life. In this case the information relates to the individual's public life and so the expectation of privacy is decreased.
20. However, this information is not made public about other adjudicators and it would be unfair to publish the information about one individual.
21. The Commissioner has next gone on to consider whether the release of the information would cause unnecessary or unjustified harm to the individual involved.
22. Consequences of disclosure: Disclosure is unlikely to be fair if it would have unjustified adverse effects on the employee concerned. Although employees may regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life.

23. FOS has argued that disclosure of this information may have an effect on the individual's public life and reputation.
24. Legitimate interest in disclosure to the public: Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
25. In relation to the final factor, the legitimate interest in the public knowing this information, the Commissioner notes the complainant's arguments relating to the impact on individuals affected by the public ownership of Northern Rock.
26. However, he does not consider there is any public interest in the release of this specific information about one adjudicator. FOS has explained that the decisions are not legally binding and that customers can appeal a decision to an Ombudsman.
27. The Commissioner does not consider it would provide any insight into the situation or contribute towards any debate on the matter. The Commissioner acknowledges that usually disclosure of information will increase transparency and accountability.
28. In making his decision the Commissioner has considered whether disclosure of the information would lead to a greater infringement of the individual's legitimate right to privacy than is outweighed by the legitimate interest in disclosure. The Commissioner is not convinced there is any legitimate public interest in the disclosure of this particular individual's work related information beyond simply increasing transparency within the public authority.
29. In considering this point, the Commissioner has also considered the potential adverse effect on the adjudicator, and their reputation. The Commissioner considers the disclosure of this information may cause unwarranted or unjustified damage or distress.
30. The Commissioner therefore considers that disclosure of this information would be unfair and in breach of the first data protection principle. As such, section 40(2) is engaged and the information is therefore exempt from disclosure.

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,
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

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.

Signed

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF