

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 December 2022

Public Authority: Financial Ombudsman Service (FOS)

Address: Exchange Tower
London
E14 9SR

Decision (including any steps ordered)

1. The Commissioner is satisfied that FOS is entitled to rely on section 14(1) to refuse to comply with the complainant's seven requests because the requests are vexatious. FOS' refusal breached section 17(5) as it was issued outside the 20 working day requirement in respect of the earlier requests. The Commissioner does not require FOS to take any steps.

Request and response

2. Between 19 April 2022 and 9 May 2022 the complainant submitted seven requests to FOS. The requests were titled:
 - "is there a binding agreement or contract between the FOS and the complainant"
 - "Duty of legal and jurisdiction team to negotiate settlements"
 - "are employees at the FOS civil servants and subject to civil codes"
 - "Reporting and investigation of acts of gross misconduct."
 - "Verifying identification of complainant before sending information"
 - "Procedure when complaint is withdrawn."
 - "Sharing Opinion of the information commission"

3. FOS' final position was to refuse to comply with the requests under section 14(1) of FOIA. It advised that it would rely on section 17(6) of FOIA not to issue a further refusal in respect of any future requests about the same or similar topics.

Reasons for decision

4. This reasoning covers whether FOS is entitled to refuse the complaint's requests under section 14(1) of FOIA.
5. Under section 14(1) of FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
6. Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.
7. To analyse vexatiousness, the Commissioner considers four broad themes that the Upper Tribunal (UT) developed in **Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (ACC)**:
 - Value or serious purpose
 - Motive
 - Burden; and
 - Harassment to staff
8. The Commissioner will first look at the value of the requests as this is main point in favour of the requests not being vexatious. He will then look at the negative impacts of the requests ie the three remaining themes of burden, motive and harassment, before balancing the value of the request against those negative impacts.
9. In its response to the request, upheld at internal review, FOS advised that in determining whether the requests were vexatious, it had considered the complainant's motives for making the requests, their previous interactions with its service, and the volume of requests they have made. FOS said that it was clear from these communications that the complainant's requests for information stem from their unhappiness with FOS' service and its handling of their complaint against a particular company.
10. Over the course of time, FOS said, the complainant had made a number of FOIA requests. Since April 2021 they had made 16 FOIA requests, as well as a number of requests for internal reviews and follow up correspondence about these FOIA requests, all borne out of their unhappiness with FOS' service.

11. FOS continued that it had thought about what the complainant had asked for in their recent and previous requests and weighed up the purpose and value of the information against the impact and disruption they are causing. FOS said it had also taken into account the amount of correspondence the complainant has had with other colleagues in the organisation over the past year, including with its Legal team and its Data Protection team.
12. FOS noted that over the past year the complainant had raised multiple complaints about the way in which its service has handled their complaint against the company, particularly from a data protection perspective. The complainant has received a final response from FOS' Data Protection team, as well as responses from its Legal team in relation to their legal concerns. However, FOS said, the complainant has continued to send correspondence to multiple departments within FOS, about issues that it has already addressed. It appeared to FOS that the complainant was attempting to re-open these issues.
13. FOS advised that FOIA is not the appropriate forum to reiterate complaints about its service, nor is it an appropriate forum in which to attempt to continue pre-action discussion. FOS said it therefore believed that these requests are the result of the complainant's unhappiness with its service and borne out of a desire to cause disruption and annoyance, rather than to seek information for the purpose that FOIA was intended for.
14. FOS did not consider that the public interest lay in diverting resources away from its statutory functions in order to comply with the complainant's requests. It concluded by advising that the resources required from FOS to deal with their continued correspondence and requests, which all stem from their dissatisfaction with its service, were disproportionate and likely to cause an unjustified level of disruption to its service.

The Commissioner's conclusion

15. The Commissioner is satisfied that the complainant's requests can be categorised as a vexatious. Considering the value of the requests first, the Commissioner considers that, at this point in their correspondence with FOS, they have minimal value to the complainant or to the wider public. They stem from the complainant's dissatisfaction with FOS, which they had been pursuing for some time, and which appears to have been comprehensively addressed at the point of the requests.
16. The Commissioner considers that the complainant's correspondence with FOS has moved away from their substantive complaint and on to more inconsequential matters, what can be categorised as "vexatiousness by drift".

17. The Commissioner has weighed the requests' minimal value against the cumulative burden to FOS of complying with the complainant's requests; the motive behind the requests which is known only to the complainant but may well be simply to bother FOS and waste its resources; and the fact that the complainant has continued to correspond with FOS about a matter which appears to have been concluded. The Commissioner is satisfied that the value of these requests is outweighed by the negative impacts caused by complying them. FOS was correct to draw a line in the sand at this point in their correspondence with the complainant and to rely on section 14(1) of FOIA.

18. Under section 17(5) of FOIA a public authority that is relying on section 14(1) to refuse a request must issue the applicant with a refusal notice within 20 working days of the request. The complainant originally contacted the Commissioner on 17 June 2022 because they said they had not received any response from FOS to their request(s). FOS subsequently confirmed to the Commissioner that it had issued the complainant with a refusal on 31 May 2022 and noted that the refusal was a little delayed. The Commissioner must therefore find that FOS did not comply with section 17(5) with regard to the earlier of the complainant's requests.

Right of appeal

19. 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: 0203 936 8963
Fax: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

20. 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.
21. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF