

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 16 November 2022

**Public Authority:** Financial Ombudsman Service  
**Address:** Exchange Tower  
London  
E14 9SR

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to dismissed decisions.
2. The Financial Ombudsman Service ('FOS') withheld the requested information, citing section 31(1)(c) (law enforcement) and section 40(2) (personal information) of FOIA.
3. The Commissioner's decision is that the withheld information engages section 31(1)(c) and the public interest lies in maintaining the exemption.
4. The Commissioner does not require the public authority to take any steps.

#### **Request and response**

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5. On 22 January 2022, the complainant wrote to the FOS and requested information in the following terms:

"I understand that the FOS does not publish its dismissal decisions but stores them all on an internal database.

I understand that a dismissal decision is where a case - that is within the FOS' jurisdiction and could therefore be investigated - is nevertheless dismissed without a decision on the merits, because that course of action is thought to be appropriate.

The FOS tells its Ombudsmen and Investigators:

"We should rarely **need** to dismiss a complaint. After all, we were set up to give complainants access to a free alternative way of resolving their problem with a firm. So, to decide that we don't want to do that is a very important decision to make." [Emphasis added]

Please could you provide a copy of all such decisions.

If you believe there is a valid reason why you cannot provide all the dismissal decisions then please either:

1. Provide as many of the decisions as you can; or
2. Provide as many of the decisions that include delay as a reason for dismissing the case as you can

Please also confirm how many dismissal decisions you hold and the timespan within which the decisions were made.

If you can provide all the dismissal decisions then please also (if you can) also provide the dismissal decisions - that include delay as a reason for dismissing the case - in a separate folder or pdf etc also for ease of reference."

6. The FOS responded on 18 February 2022. It refused to provide the requested information, citing section 31(1)(c) and section 40(2). The FOS explained that 'these types of decisions aren't required to be published on our website, and won't usually be anonymised. The Freedom of Information Act 2000 doesn't require us to create new information in the form of re-writing the decisions to anonymise them. It isn't just a case of redacting names, the reasoning in the decision needs to be written by the ombudsman in such a way that the complainant cannot be identified.'
7. The complainant was dissatisfied and requested an internal review on 18 February.
8. The FOS provided the outcome to its internal review on 4 April 2022. It upheld its original position.

## Reasons for decision

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9. The Commissioner notes that he has already dealt with a similar case,<sup>1</sup> IC-50964-X5Q0. In that case the information requested was whether a complainant had accepted or rejected the FOS's decision, In that case the FOS originally sought to rely upon section 40(2) but then changed its position to rely upon section 31(1)(c).
10. The FOS is still relying on section 40(2) in this case. However, the Commissioner acknowledges the complainant's concern that at least some of the information could be anonymised. Therefore, like in IC-50964-X5Q0, the Commissioner has considered the FOS's application of section 31(1)(c).
11. Section 31 of FOIA states:

“(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—

(c) the administration of justice...”
12. To reiterate, the Commissioner understands that the dismissal decisions that have been requested are not routinely published and therefore contain the personal data of those involved in the FOS complaints process. The Commissioner is satisfied that, to remove the personal data contained in the dismissal decisions, would require the FOS to rewrite the decisions in an anonymised format, and therefore create new information which FOIA does not require public authorities to do.
13. Paragraph 14 of IC-50964-X5Q0 explores why, if the FOS were to disclose the details of a complaint that was brought to it, this would be likely to prejudice the administration of justice. The Commissioner does not deem it necessary to repeat this analysis in full detail.
14. However, to summarise, the Commissioner agrees that the disclosure of this information would be likely to prejudice the administration of justice. Ultimately, it would undermine the reassurance given to all parties involved in the FOS complaint process that their details will not be shared any wider, and that only an anonymised version of the decision will be published.

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<sup>1</sup> [ic-50964-x5q0.pdf \(ico.org.uk\)](https://www.ico.org.uk/casesandupdates/cases/50964-x5q0)

15. The FOS has explained that, in turn, this would deter complainants from using the service, as well as volunteering and sharing information freely and quickly, and this would be likely to hinder the FOS's ability to resolve disputes quickly and with minimum formality.
16. The Commissioner is satisfied that the exemption is engaged and therefore he has gone on to consider whether the public interest lies in maintaining the exemption or in disclosure.

### **The public interest test**

#### **The public interest in disclosure**

17. The FOS acknowledges that disclosure would demonstrate openness and transparency.
18. It also acknowledged that there is a public interest in understanding how the FOS make its decisions and the circumstances in which it might choose to dismiss a complaint.

#### **The public interest in maintaining the exemption**

19. The FOS has explained that there is an 'inherent public interest in the administration of justice and the Financial Ombudsman Service being able to fulfil its statutory functions which is to resolve disputes between customers and financial businesses fairly and reasonably as an alternative to the courts.'
20. It also considers there is a public interest in being able to resolve complaints quickly and with minimal formality by dismissing decisions where appropriate.
21. The FOS then repeated its arguments that disclosure of the requested information, which cannot be anonymised without being rewritten, would be likely to undermine its complainants process, deter future complainants from using the service and, in turn, place an increased burden on the already stretched courts system which is not in the public interest.

#### **The balance of the public interest test**

22. The Commissioner notes that the complainant is a party who has been involved in the FOS's complaints process. Requests made under FOIA are purpose blind which means a requestor is entitled to make a request regardless of their motives. However, if any party involved in the FOS's complaints process has a concern about how the case has been handled, there is an internal complaints procedure which they can exhaust.

23. Therefore, taking all circumstances into account, the Commissioner does not consider the public interest in disclosure outweighs the need to protect the FOS's processes and, by extension, the administration of justice.
24. Since the Commissioner is satisfied that the withheld information is exempt from disclosure under section 31(1)(c), he does not need to go on to consider the FOS's application of section 40(2).

### **Other matters**

25. Public authorities should provide their internal review responses within 20 working days. This can be extended by a further 20 working days if the matter is particularly extensive or complex, but the public authority must notify the requester of the outcome within 40 working days of the internal review being requested, which the FOS did.
26. In the FOS's refusal notice it explained that the dismissal decisions were not **usually** anonymised. Therefore, in the complainant's internal review request they asked to be provided with the anonymised dismissed decisions, as by the FOS's implication, some are anonymised.
27. In its internal review response, the FOS confirmed to the complainant 'You have now asked whether some of these decisions are in fact already anonymised and if so, you would like a copy of these anonymised dismissal decisions. This a different question to the one that you posed in your original request. As such I have asked for this to be treated as a new request, you will receive an acknowledgement of this request shortly.'
28. Looking at the wording of the complainant's original request, the Commissioner notes they asked for any information that could be provided, to be provided. However, the Commissioner believes that the FOS's interpretation of the request was a reasonable one and the FOS was correct to treat the complainant's comment at internal review stage, about any dismissed decisions that might already be anonymised, as a new request.

## Right of appeal

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29. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

30. 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.
31. 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

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**