

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 June 2022

Public Authority: Financial Conduct Authority
Address: 12 Endeavour Square
London
E20 1JN

Decision (including any steps ordered)

1. The complainant requested information from the Financial Conduct Authority (FCA) relating to employment tribunal claims. The FCA refused to comply with the request citing section 12(1) (cost limit) of the FOIA.
2. The Commissioner's decision is that the FCA was entitled to refuse to comply with the request in accordance with section 12(1) of the FOIA. He also finds that the FCA met its obligations under section 16(1) of the FOIA to offer advice and assistance.
3. The Commissioner does not require the FCA to take any steps.

Request and response

4. On 6 May 2021, the complainant wrote to the FCA and requested information in the following terms:

"In relation to the following Unfair Dismissal Employment Tribunal Claims:

3201378/2019
3202186/2019
3201665/2018
3202195/2018

Can you please confirm the following:

(1) What is the total cumulative monetary amount the FCA paid out as part of any settlement agreements with the Claimants?

(2) What was the total cumulative monetary cost of all external legal services (e.g. legal advice, solicitors, barristers etc.) incurred by the FCA?

(3) Can you confirm that the Decision Maker on behalf of the FCA that unfairly dismissed the individuals who had brought the respective Unfair Dismissal claims was [name redacted]?

(4) If the Decision Maker queried in (3) is not [name redacted] please can you confirm the name(s) of the Decision Maker(s)?

Note: For (1) and (2) I am not asking for any personal data but the total cumulative monetary costs spent by the FCA."

5. The FCA responded on 24 November 2021 and refused to provide the requested information citing section 12(1) (cost limit) of the FOIA as its basis for doing so.
6. On 24 November 2021, the complainant wrote to the FCA to request an internal review.
7. Following an internal review, the FCA wrote to the complainant on 4 February 2022. It maintained its reliance on section 12(1) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 7 February 2022 to complain about the way their request for information had been handled.

9. The scope of this case and the following analysis is to determine if the FCA has correctly cited section 12(1) of the FOIA in response to the request.

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of the FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate cost limit.
11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for public authorities such as the FCA.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the FCA.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held
 - locating the information, or a document containing it
 - retrieving the information, or a document containing it
 - extracting the information from a document containing it
14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal decision in the case of *Randall v IC & Medicines and Healthcare Products Regulatory Agency EA/20017/00041*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under

the FOIA to consider whether there is a public interest in the disclosure of the information.

16. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of the FOIA.

The FCA's position

17. As is the practice in a case in which the public authority has cited the cost limit under section 12(1) of the FOIA, the Commissioner asked the FCA to provide a detailed explanation of its estimate of the time and cost of responding to the request.
18. In its submissions to the Commissioner, the FCA maintained its reliance on section 12(1) of the FOIA and offered an explanation for how it had calculated that the request exceeded the cost limit.
19. The FCA explained that the information requested in question 2 of the request is not held in a readily extractable format that would allow the FCA to identify, locate, retrieve and extract the information within the appropriate limit.
20. The FCA explained that it holds information within the scope of question 2 of the request within 2 different filing systems. The filing systems contain the records of the four employment tribunal cases specified in the request. However, the records are not organised by key terms such as their case reference number. They are organised using appropriate naming conventions determined by the relevant business area.
21. The FCA explained that it had conducted a review of its records for information relating to the four employment tribunal cases specified in the request. In total, the FCA estimated that it would have to review 96 records to determine the cost of legal services for each of the four employment tribunal cases. These records include the commissioning of external legal support and invoices for these services. The FCA explained that as invoices can include costs related to more than one litigation or legal opinion, each invoice would have to be manually reviewed to determine the costs associated with the four employment tribunal cases.
22. The FCA estimated that it would take approximately 12 minutes to manually review each of the 96 records for information which could be used to determine the costs associated with each of the tribunal cases specified within the request. Therefore, in total, the FCA calculated that it would take 19.2 hours to provide the information requested in question 2 of the request (96 records x 12 minutes = 19.2 hours).

The Commissioner's position

23. The Commissioner considers the FCA's estimate of 19.2 hours to review 96 records for information within the scope of the request to be reasonable.
24. Whilst the Commissioner recognises that the Council's estimate of 19.2 is not considerably higher than the appropriate limit, the Commissioner accepts that the cost of complying with the request still exceeds the appropriate limit.
25. Furthermore, the Commissioner recognises that the FCA's estimate of 19.2 hours only takes into account the amount of time it would take the FCA to comply with question 2 of the request. If the FCA was to include the time it would take to comply with questions 1, 3 or 4 of the request in its estimate, it is likely that the cost of complying with the request would further exceed the appropriate limit.
26. The Commissioner's decision is that the FCA estimated reasonably that the cost of complying with the request would exceed the appropriate limit. Therefore, the FCA was correct to apply section 12(1) of the FOIA to the request.

Section 16(1) – the duty to provide advice and assistance

27. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1).
28. The FCA advised the complainant that they could reduce the scope of their request to bring it within the cost limit. The FCA suggested to the complainant that they could narrow the scope of their request by limiting their request to only questions 1, 3 and 4 of the request.
29. The Commissioner considers that this was an appropriate response in the circumstances. He is therefore satisfied that the FCA met its obligations under section 16(1) of the FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

Right of appeal

30. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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

Ben Tomes
Group Manager
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SK9 5AF