

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2023

Public Authority: Financial Ombudsman Service

Address: Exchange Tower
London
E14 9SR

Decision (including any steps ordered)

1. The complainant has requested information from the Financial Ombudsman Service ('FOS') relating to its policies, procedures and standards. The FOS initially applied section 12(1) of FOIA to the request, however it eventually withdrew this and disclosed some of the requested information to the complainant, provided links to some further information, and stated that it did not hold the remainder.
2. The Commissioner's decision is that the FOS has not complied with sections 1, 10 and 17 of FOIA.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To issue a fresh response to the complainant in relation to part b of their request, which does not state that the information is not held.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 9 November 2021 the complainant made a request for information as follows:

"Please provide all information on the following if not already provided (see attached letter):-

a) Financial Ombudsman's remit

b) Policies, Guidance, Procedures, Codes of Practice, Rules and similar which the FO provides to investigating i) Investigating Ombudsmen, and ii) Investigating Staff/Agents (who carry-out preliminary investigations re complaints to the FOS. [Note: this request is, as its description indicates, for the package of FOS formal Guidance, Procedures, Policies, Codes of Practice, Rules and similar, as are provided (or access to is provided) to an employee or agent dealing with relevant investigations and complaints - ref context of letter dated 12th July 2021. And is not a request for - "our internal knowledge sharing tool, individual case files or in emails between our investigators and ombudsmen and the vast amount of information we're likely to hold," However, it does include formal updates and added appendix to those formal Guidance, Procedures, Policies, Codes of Practice, Rules and similar, arising from FOS experience, legislation changes, etc].

c) Please include all procedures etc related to complainants who are dissatisfied with the initial (draft?) findings.

d) The FO structure, including the management and senior management/directors of the FO (with the names of the postholders in the senior managers/directors positions).

e) A copy of your internal management/information system (commonly referred to as an organisations 'intranet; (for employees/agents) indexes.

f) A copy of all the Banking Standards, C of P, Codes, Guidance, recommended procedures and similar, relevant to this case, to which the FO is working."

6. The FOS responded to the complainant on 13 January 2022. It stated that the complainant's request was the same as the one he submitted on 14 September 2021 and that therefore the FOS' response was the same as that provided on 12 October 2021.
7. The complainant's request on 14 September 2021 was submitted as a refined request due to the FOS initially having applied section 12(1) of FOIA to the complainant's original request of 12 July 2021. The FOS again advised that it was applying section 12(1) of FOIA to the complainant's request.

8. Following correspondence from the Commissioner, the FOS replied stating that the complainant had not sought an internal review of its response. It stated that it would carry out an internal review and provide the result of this to the complainant.
9. The FOS provided an internal review response to the complainant on 24 May 2022. That response stated that the FOS no longer wished to rely on section 12(1) of FOIA as it did not consider that this applied to the complainant's refined request.
10. The internal review response by the FOS disclosed information in response to part d of the complainant's request, with section 40(2) having been applied insofar as the names of some non-public facing members of staff were redacted. The FOS also provided the complainant with links to the information requested in parts a and c of their request. It stated that it did not hold information requested in parts b and e of the request as the information in part b was held in a centralised location, i.e. the FOS' internal knowledge sharing tool, to which the complainant had previously stated that they were not seeking access. The information in part e was an index, which the FOS specified they did not hold as recorded information. The information in part f was considered to be specific subjective information in relation to an ongoing complaint, so the FOS did not consider it appropriate to deal with this under FOIA, instead passing it to their casework team.

Scope of the case

11. The complainant contacted the Commissioner on 14 October 2021 to complain about the way his request for information had been handled. Following the Commissioner's intervention, the FOS provided the above information in its correspondence as cited above. However, the complainant still had concerns regarding the way their case had been handled by the FOS.
12. The Commissioner has considered the way the complainant's request was handled by the FOS. The complainant expressed no concerns regarding the application of section 40(2) so the Commissioner has not considered this.

Reasons for decision

Section 1 - General right of access

13. Section 1(1) of FOIA states: "Any person making a request for information to a public authority is entitled-
14. (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
(b) if that is the case, to have that information communicated to him."
15. In its response of 13 January 2022 to the complainant's request of 9 November 2021, the FOS stated that the complainant's request was the same as a previous request and applied section 12(1) of FOIA. It later stated that section 12(1) did not apply and responded to the complainant as detailed in paragraph 10 above.
16. Section 10(1) of FOIA requires authorities to comply with section 1(1) within 20 working days.
17. In this case the complainant submitted their request on 9 November 2021 and did not receive information from the FOS until 24 May 2022. Therefore the FOS has breached sections (1)(a) and (b) and section 10(1) of FOIA.

Information not held

18. The FOS stated that it did not hold the information sought in part b of the complainant's request as this was contained within its internal knowledge-sharing tool. It is correct that the complainant stated that he was not seeking access to the internal knowledge-sharing tool, however the FOS has not shown on the balance of probabilities that it does not hold the requested information, as it clearly states that it is held within the internal tool, named 'Discovery.' The FOS does not appear to have explored the possibility of extracting copies of the information sought by the complainant from 'Discovery' or indeed any other ways of ensuring they can get the information without having to have access to 'Discovery.'
19. The Commissioner's conclusion is that the FOS has not demonstrated, on the balance of probabilities, that it does not hold the information requested in part b of the complainant's request.

Section 17(1) of FOIA

20. Section 17(1) of FOIA states: "A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which- (a) states that fact, (b) specifies the exemption in question, and (c) states (if that would not otherwise be apparent) why the exemption applies."
21. The Commissioner notes that the FOS in its response to the complainant of 24 May 2022 provided links to enable the complainant to access some of the relevant information. As this information was clearly accessible to the complainant via the links, the FOS should have either provided the complainant with the links in the first instance or applied section 21 of FOIA. As it did not specify that exemption or why it applied, the Commissioner considers that the FOS has breached section 17(1) of FOIA.

Right of appeal

22. 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

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

23. 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.
24. 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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF