

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 January 2023

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 the number of case files/call audits carried out by the FCA in respect of not-for-profit debt advice providers over a specified period.
2. The FCA refused to comply with the request citing section 12 (cost limit) of FOIA in respect of the requested information.
3. The Commissioner's decision is that the FCA was entitled to refuse to comply with the entirety of the request in accordance with section 12(1). The Commissioner also finds that the FCA complied with its obligations under section 16 of FOIA to offer advice and assistance.
4. The Commissioner does not require the FCA to take any steps.

Request and response

5. On 14 February 2022, the complainant requested information in the following terms:

"[H]ow many case files/call audits have been carried out at NFP (Not for Profit) Debt advice providers by the FCA since 1st January 2017. We do not need individual firm names, but if this case be broken down into:

firm 1: 20 reviews, between x & y dates

firm 2: 30 reviews, between x & y dates

etc

etc

Cumulative x reviews”

6. On 14 March 2022, the FCA responded citing the cost exemption in section 12 of FOIA for withholding the requested information.
7. In its internal review response dated 9 May 2022, the FCA upheld its original decision.

Scope of the case

8. The complainant contacted the Commissioner on 9 May 2022 to complain about the way their request for information had been handled. The complainant argued that the FCA was incorrect to apply section 12(1) of FOIA because information had been provided in response to a previous request which the complainant believed would have involved a similar amount of work to respond to as the current request.
10. The Commissioner considers the scope of this case to be to determine if the FCA has correctly cited section 12(1) of FOIA. The Commissioner has also considered whether the FCA met its obligation to offer advice and assistance, under section 16 of FOIA.
11. The Commissioner notes that FOIA does not require publicly available information to be provided in a particular requested format.

Reasons for decision

Section 12 – cost of compliance

12. Section 12(1) of 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 limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
13. Section 12(2) of FOIA states that subsection (1) does not exempt the public authority from the obligation to comply with paragraph (a) of section 1(1) (the duty to inform an applicant whether it holds information of the description specified in the request) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit. The FCA relied on section 12(1) in this case.

14. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies, and the armed forces and at £450 for all other public authorities. The appropriate limit for the FCA is £450.
15. 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.
16. 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; and
 - extracting the information from a document containing it.
17. 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 in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, 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.
18. 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 FOIA to consider whether there is a public interest in the disclosure of the information. It is worth noting that if one part of a request triggers the section 12 exemption, then that will apply to the entirety of the request and there is no requirement for the Commissioner to consider any other exemptions cited by the public authority.
19. Where a public authority claims that section 12 of 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 FOIA.

Would the cost of compliance exceed the appropriate limit?

20. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked the FCA to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
21. In its submission to the Commissioner, the FCA explained that the relevant information is stored on a case management system called "INTACT". Information is stored on INTACT identifying which "portfolio" it belongs to. A portfolio is a collection of firms with similar business models. The relevant portfolio for this request is the "Debt Advice" portfolio and within that portfolio will be both not for profit ("NPF") and commercial firms.
22. The FCA explained that INTACT does not have a search function which allows searches to be carried out for records containing client file reviews. Further, the FCA explained that not all records on INTACT relate to the way a firm interacts with its customers (which may result in a review of client files by the FCA), records can also relate to governance, management and other regulatory issues which do not require the review of client files.
23. The FCA advised the Commissioner that in order to satisfy this request, i.e. identify all the NFP firms from within the "Debt Advice" portfolio over a specific period, a complete manual review of all of the records in the "Debt Advice" portfolio would be required.
24. The FCA explained to the Commissioner that it had carried out a piece of work when the request was received which determined that there were around 700-800 NFP organisations within the "Debt Advice" portfolio. The FCA also identified 2400 potentially relevant records associated with Debt Advice firms since 2017 to the date of the request. From this the FCA produced a list of 717 records relating to NFP firms which was done by using the Firm Record Numbers (FRN) against the 2400 potentially relevant records. The FRN is the automated unique identifier associated with a firm and is on the FCA public register.
25. The FCA informed the Commissioner that this process alone took around 10 hours to complete, and that additional time had been spent by other business areas within the FCA whose input was required in order to respond to the request.
26. FCA explained that the next step would be to manually review each of the 717 identified records relating to NFP firms on INTACT to effectively identify information relevant to the request. respond to the request.
27. The FCA estimated that it would take between 5 to 45 minutes (depending on the complexity of the record) to go through each record.

This work would include locating the information, retrieving it, reading it and extracting what was relevant. The FCA estimated (based on an average of 25 minutes per record) that it would take 25 minutes x 717 files to carry about a manual search for relevant information, a total of 299 hours.

28. The Commissioner considers that, even if it only took 10 minutes to review each file and extract the relevant information, that would still be almost 200 hours' work.
29. It is the Commissioner's view that the FCA estimated reasonably that it would take more than the 18 hours / £450 limit to provide the information requested. The FCA Office was therefore correct to apply section 12(1) of FOIA to the complainant's request.

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

30. Section 16(1) of 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).
31. The Commissioner notes that in its internal review response the FCA explained that it was unable to suggest a way in which the request may be refined and explained why this was the case. The Commissioner further notes that in its initial response on 14 March 2022 the FCA provided the complainant with details of work carried out on NFP firms as part of the FCA's Debt Management review in 2018/2019 which included the number of client file reviews carried out for NFP firms as part of that review.
32. In the Commissioner's view this advice and assistance was consistent with what would be required to comply with section 16(1).
33. The Commissioner is therefore satisfied that the FCA met its obligations under section 16 of FOIA.

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

Right of appeal

34. 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

35. 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.
36. 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

Michael Lea
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