

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 March 2023

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

Decision (including any steps ordered)

1. The complainant made a request for information relating to Blackmore Bonds. The FCA refused to comply with the request under section 14(1) FOIA as it considers the request to be vexatious.
2. The Commissioner's decision is that the FCA was entitled to rely on section 14(1) of FOIA to refuse the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 28 November 2022 the complainant requested the following information:

"I refer you to the attached response to my Freedom Of Information request submitted to City of London Police.

I hereby make the similar request to the FCA as I did to the City of London Police:

NEW FOIA

1. Please provide information as to how many times did the FCA receive a report, intelligence or allegation about Blackmore Bond, Blackmore Group or any other Blackmore vehicle between 1st January 2012 and 25th November 2022.

Please provide this information in same table format as the COLP provided in their DSAR response. I.E. Name of 'Blackmore' Vehicle

and year that each report was made, with same sub table showing the month in each year that the reports were received.

NEW FOIA

2. The FCA has made representations to BBC Panorama, the media, the public and the Treasury Select Committee in recent months claiming that The FCA did take action in respect to intelligence received about Blackmore Bond in 2017, particularly claiming that "We shared information with City of London Police in 2017".

In a letter to me dated 21st December 2021 the FCA wrote:

"In addition, regarding Blackmore, I have reviewed evidence that shows the FCA shared intelligence about this entity with other law enforcement agencies in July 2017. The underlying details of this intelligence, which would have included your March 2017 communications were, however, unfortunately not shared due to human error."

Please provide a copy of the information that The FCA claim was shared with City of London Police in 2017, particularly in light of the fact that the key intelligence was not."

5. On 29 December 2022 the FCA responded, allocating this request the reference FOI9815 and applying section 14 FOIA as it considered the request to be vexatious. In particular it explained that:

"We indicated in our response to FOI8975 of 6 October 2022 that we were likely to treat any further requests on the same or similar topic we receive from you as vexatious. We have considered your request on its specific merits, in line with the provisions of the Freedom of Information Act 2000 (FOIA), and we have concluded that s14(1) FOIA is engaged and that we are not obliged to comply with a request for information of this nature."

FOI8975 has been investigated by the Commissioner separately under the reference IC-209200-H4H2 and a Decision Notice has been issued.

6. On 30 December 2022 the complainant asked the FCA to carry out an internal review.
7. On 25 January 2023 the FCA acknowledged the complainant's request for internal review however an internal review has not been conducted. The Commissioner exercised his discretion to accept this case under the circumstances without an internal review having been carried out.

Scope of the case

8. The complainant contacted the Commissioner on 12 March 2023 to complain about the way the request for information had been handled.
9. The Commissioner has considered whether the FCA was correct to refuse the request under section 14(1) FOIA.

Reasons for decision

10. Section 1(1) of FOIA states that:

Any person making a request for information to a public authority is entitled –

- (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.

11. Section 14(1) of FOIA states that:

Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

12. The term “vexatious” is not defined within FOIA. The Upper Tribunal considered the issue of vexatious requests in *Information Commissioner v Devon CC & Dransfield* [2012] UKUT 440 (AAC). It commented that “vexatious” could be defined as the “manifestly unjustified, inappropriate or improper use of a formal procedure”. The Upper Tribunal’s approach in this case was subsequently upheld in the Court of Appeal.
13. The Dransfield definition establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
14. Dransfield also considered four broad issues: (1) the burden imposed by the request (on the public authority and its staff), (2) the motive of the requester, (3) the value or serious purpose of the request and (4) harassment or distress of and to staff. It explained that these considerations were not meant to be exhaustive and also explained the importance of: “...adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially

where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests.” (paragraph 45).

15. The Commissioner has published guidance on dealing with vexatious requests¹, which includes a number of indicators that may apply in the case of a vexatious request. However, even if a request contains one or more of these indicators it will not necessarily mean that it must be vexatious.
16. When considering the application of section 14(1), a public authority can consider the context of the request and the history of its relationship with the requester, as the guidance explains:

“The context and history in which a request is made will often be a major factor in determining whether the request is vexatious, and the public authority will need to consider the wider circumstances surrounding the request before making a decision as to whether section 14(1) applies”.
17. However, the Commissioner is also keen to stress that in every case, it is the request itself that is vexatious and not the person making it.
18. In some cases it will be obvious when a request is vexatious but in others it may not. The Commissioner’s guidance states: “In cases where the issue is not clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.”
19. The Commissioner considers that the request made on 28 November 2022 is another request on the same subject matter as 7 previous requests considered in the Decision Notice reference IC-215591-J4Q5 (FCA reference FOI 9688). The Decision Notice on IC-215591-J4Q5 provides a detailed background of the context and history of the complainant’s FOIA requests and correspondence to the FCA on this subject matter as does the Commissioner’s decision on IC-209200-H4H2 (FCA reference FOI8975). For the same reasoning as provided in IC-209200-H4H2 and IC-215591-J4Q5, the Commissioner considers that the 28 November 2022 request was correctly categorised as vexatious by the FCA under section 14(1) FOIA.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/dealing-with-vexatious-requests-section-14/>

Right of appeal

20. 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

21. 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.
22. 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.....

Gemma Garvey
Senior Case Officer
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Cheshire
SK9 5AF