



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Information Rights**

<b>Tribunal Reference:</b>	EA/2014/0036
<b>Appellant:</b>	Carol Harries
<b>Respondent:</b>	The Information Commissioner
<b>Judge:</b>	NJ Warren
<b>Member:</b>	A Lowton
<b>Member:</b>	R Creedon
<b>Hearing Date:</b>	6 June 2014
<b>Decision Date:</b>	3 December 2014

**DECISION NOTICE**

1. In October 2006 Mrs Harries made a request for information under the Freedom of Information Act (FOIA) to the Financial Services Authority. From 1 April 2013 this became the Financial Conduct Authority (FCA) and we will use this term to describe both organisations. The request, which related to the possibility of an investigation into Barclays Private Bank read as follows:-

“I am writing to request under the terms of the FCA’s Freedom of Information policy to be supplied with the information you hold with regard to the matters reported on in the article in the Sunday Times with regard to BPB’s involvement with Columbian drugs money.”

Ultimately, a Tribunal, to which we refer as “the First Tribunal” ruled that the information should not be disclosed. On 13 November 2012 Mrs Harries asked for the same information again. It was again refused and she complained unsuccessfully to the Information Commissioner (ICO). She now appeals to this Tribunal.

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2. In a decision dated 1 July 2014, we dealt with the main issue. We agreed with the ICO and with the First Tribunal that the bulk of the material is exempt from disclosure under Section 44 FOIA. This deals with information where disclosure is prohibited by some other law, in this case Section 348 Financial Services and Markets Act 2000. This is an absolute ground of exemption and we rejected arguments advanced on Mrs Harries behalf to the effect that Section 348 did not apply.
3. Another exemption invoked was Section 21 FOIA which deals with information accessible by other means. At the hearing, it was accepted on behalf of Mrs Harries that we need not disclose the copies of the Sunday Times article held by the FCA. They are public and Mrs Harries has them already. The disputed material includes one other internal FCA memo, part of which, it is said, is exempt from disclosure under Section 21. This consists of about six lines of text summarising the content of the Press reports. It does not include any information not already publically available in the newspaper reports. We are satisfied therefore that all the information in respect of which Section 21 FOIA is claimed is properly exempt.
4. As we explained in our last decision, that leaves a number of passages in the disputed information, which we have seen, and which are marked “section 31/section 43”. As the ICO and the first Tribunal have remarked, they contain little of significant value. We agree with the First Tribunal that it is doubtful whether they really come within the information sought by Mrs Harries or whether they should not also be exempt under Section 44 FOIA. (See paragraph 13 of the First Tribunal’s decision). It also includes material left over from a perhaps over conscientious redaction of Section 44 material. Sometimes it covers extracts from a sentence which on their own convey little if any meaning. We delayed taking a decision in respect of this material because we wanted to give the parties an opportunity to comment on whether Section 31(1)(g) FOIA might apply. This question was canvassed before the First Tribunal but not in these proceedings. We have received further submissions from Mrs Harries, from Mr Bousfield her representative, and from the ICO.
5. We take first Section 43(2) FOIA. This deals with information disclosure of which would be likely to prejudice the commercial interests of any person, in this case,

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Barclays Private Bank. This exemption is effective only if in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information. We accept that, speaking generally, there is a serious live issue about the decisions taken by the FCA and whether they are and/or have been too gentle, especially when compared with regulation in the USA, in their dealings with banks and other financial institutions. We also take into account the passage of time since Mrs Harries made her first request. On the other hand, in our judgement, none of the information for which an exemption under Section 43(2) is claimed would have any significant value in bringing the FCA to account if it were disclosed.

6. We have made up our own mind but, having reread the First Tribunal's decision, we find ourselves, even having factored in the extra arguments to which we have referred in para 5, to be in complete agreement with it on the S43(2) issue and we adopt its reasoning as our own. No purpose would be served by us attempting to express an identical view in different language. In our judgement the public interest in maintaining the exemption under Section 43(2) outweighs the public interest in disclosure.
7. There is therefore no need for us to consider Section 31(1)(g) FOIA.
8. Our decision is that the ICO decision is correct.

**NJ Warren**

**Chamber President**

**Dated 3 December 2014**