

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 6 December 2010**

**Public Authority:** Financial Services Authority  
**Address:** 25 The North Collonade  
Canary Wharf  
London  
E14 5HS

### Summary

---

The complainant made a freedom of information request to the Financial Services Authority for information in relation to an investigation which he believed it had undertaken. The public authority refused the request under section 14(1) and section 14(2) of the Act on the grounds that it was both vexatious and repeated. The Commissioner has made no decision on the public authority's application of sections 14(1) or 14(2) but has instead found that the information falling within the scope of the request comprised the complainant's own personal data and therefore was exempt from disclosure under section 40(1) of the Act.

### The Commissioner's Role

---

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

---

2. On 13 January 2010 the complainant made a freedom of information request to the public authority for information relating to an investigation which he believed the public authority had conducted into Lloyds TSB in connection with the insolvency of a business in the mid

1990's of which he was Chairman. Both the complainant and his MP had previously been engaged in lengthy correspondence with the public authority regarding this matter which led him to believe that an investigation had taken place. The complainant's request read as follows:

'...I now formally request all documentation held by the FSA following their internal memo of 14<sup>th</sup> June 2007 headed Dr R Vis MP and Heritage plc.

Most particularly an investigation was undertaken (see subsequent emails) and Dr R Vis MP was promised a full response.

I require documentation of this "full response" or alternatively documentation demonstrating how, when and why and on who's [sic] instructions this investigation was terminated.

Could you please provide relevant documentation held at ALL LEVELS [complainant's emphasis] within the FSA.'

3. The public authority responded to the request on 9 February 2010 when it confirmed to the complainant that it held information in relation to 'all documentation held by the FSA following their internal memo of 14<sup>th</sup> June 2007 headed Dr Vis MP and heritage plc'. However it went on to explain that no investigation was undertaken on this matter and so no information was held in relation to the second element of the request – 'I require documentation of this "full response" or alternatively documentation demonstrating how, when and why and on who's [sic] instructions this investigation was terminated'.
4. As regards the information it did hold the public authority said that the request was being refused under both section 14(1) and section 14(2) of the Act. It explained that the request was a repeat of previous requests submitted by the complainant and was also vexatious as it was obsessive in nature. It went on to explain that the information falling within this request had already been considered under two previous requests both of which were considered at an internal review and by the Commissioner. It said that the complainant had previously been advised that no investigation had taken place regarding Lloyds TSB and Heritage Plc and that he had already received any information which could be disclosed under the Act or the Data Protection Act 1998.
5. On 11 February 2010 the complainant asked the public authority to carry out an internal review of its handling of his request.

6. The public authority presented the findings of its internal review on 23 February 2010 at which point it upheld the decision to refuse to disclose the information it held in relation to the request under section 14(1) and 14(2) of the Act. It reiterated that no new information had been located since his previous requests and that any information which it did hold had been considered under his previous requests which it noted had both been appealed to the Commissioner.

## The Investigation

---

### Scope of the case

7. On 27 February 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the public authority's decision to refuse the request under section 14 of the Act. The complainant also disputed the public authority's assertion that no investigation had ever taken place into his complaints against Lloyds TSB and that therefore it held no information in relation to this element of his request.

### Chronology

8. On 15 June 2010 the Commissioner contacted the public authority to inform it of the complaint and to ask for further details on its reasons for refusing the request. As regards section 14(1) of the Act the Commissioner explained that his approach to deciding if a request is vexatious is to consider the context and history of the request as well as the strength and weaknesses of both parties' arguments in relation to the following factors:
  - whether compliance would create a significant burden in terms of expense **and** distraction
  - whether the request is designed to cause disruption or annoyance
  - whether the request has the effect of harassing the public authority or its staff
  - whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable
  - whether the request has any serious purpose or value
9. The public authority's refusal notice had referred to the amount of correspondence submitted by the complainant and MPs acting on his behalf as evidence of the obsessive nature of the request. The

Commissioner now asked to be provided with a schedule of this correspondence briefly detailing the dates and content of the public authority's contact with the complainant.

10. Section 14(2) of the Act provides that where a public authority has already complied with a request for information by a person it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable time has elapsed between the previous request and the making of the current request. The Commissioner now asked the public authority to provide him with details of the complainant's previous identical or substantially similar requests. The Complainant had suggested that his current request was somehow wider in scope than his previous requests and therefore could not be considered to be repeated. The Commissioner asked for the public authority's comments on this point.
11. The public authority responded to the Commissioner on 23 July 2010. It now provided the Commissioner with further details on the background to the complainant's request and the history of its dealings with the complainant on this matter. It explained that its dealing with the complainant's requests and surrounding correspondence had 'consistently triggered further requests and correspondence, making it unlikely that a response ending the exchange of correspondence could be realistically be provided.' It also highlighted the fact that the complainant had, in the course of his ongoing bankruptcy case, applied to the Courts three times for third party disclosure of information relating to his complaint against Lloyds TSB. The public authority confirmed that the application had been dismissed by the Judge on the grounds that the public authority had already provided the information or did not hold it. In light of this the public authority believed that the request was vexatious because it was obsessive and would also create a significant burden in terms of expense and distraction, when all its dealings with the complainant and his representatives were taken into account. The public authority also provided the Commissioner with a schedule of its correspondence with the complainant about his freedom of information requests in the form of letters, emails and telephone calls. It said that if needed it could provide a schedule of his wider correspondence on this issue from April 2007 which it said amounted to a 'significant volume'.
12. As regards section 14(2), the public authority provided the Commissioner with details of requests submitted by the complainant or by MPs acting on his behalf together with comments as to how they related to each other.

## Analysis

---

13. A full text of the relevant statutory provisions referred to in this section is contained within the legal annex.

## Exemptions

### Section 40(1) – Personal information

14. The public authority has refused the complainant's request for information under sections 14(1) and 14(2) on the grounds that it is both vexatious and repeated. The public authority argues that the complainant's current request is a repeat of previous requests he has submitted including his request of 17 January 2009 which the complainant appealed to the Commissioner. In that case the Commissioner took the view that the requested information comprised the personal data of the complainant and therefore would have been exempt from disclosure under section 40(1) of the Act. The Commissioner decided that the correct approach would have been for the public authority to treat the request as a subject access request in accordance with section 7 of the Data Protection Act 1998.
15. Section 40(1) provides that the personal data of the applicant is exempt from disclosure.
16. Personal data is defined in the DPA 1998 as:
- ...data which relate to a living individual who can be identified-
- (a) from those data, or
  - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,
- and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.
17. In the previous case the Commissioner had decided that the information was the personal data of the complainant because it dealt with complaints he had made to, and other dealings he had had with, the public authority and because the complainant was identifiable from that information. The Commissioner is satisfied that any information falling within the scope of the request which is the subject of this decision notice would also have been captured by the complainant's previous request. There is nothing which would lead the Commissioner

to a different view from the one he reached in the previous case and therefore the Commissioner must conclude that any information falling within the scope of the request of 13 January 2010 is the personal data of the complainant. Consequently the Commissioner has decided that the requested information is exempt from disclosure under section 40(1) of the Act.

## **The Decision**

---

18. The Commissioner's decision is that the information requested by the complainant is exempt from disclosure under section 40(1) of the Act.

## **Steps Required**

---

19. The Commissioner requires no steps to be taken.

## **Other matters**

---

20. Section 7 of the DPA 1998 gives an individual the right to request copies of personal data held about them – this is referred to as the right of Subject Access. The Commissioner notes that this request should have been dealt with as a subject access request, under section 7 of the DPA 1998 from the outset, and he would encourage public authorities to consider requests under the correct access regime at first instance.
21. The Commissioner will now carry out an assessment under section 42 of the DPA 1998. This is a separate legal process from the consideration of a complaint under section 50 of the Act and so does not form part of this decision notice. The Commissioner will contact the complainant separately to inform him of the outcome of this investigation.

## 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 6<sup>th</sup> day of December 2010**

**Signed .....**

**Lisa Adshead  
Group Manager FOI Policy Delivery  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

---

**Section 14(1)** provides that –

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

**Section 14(2)** provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

**Section 40(1)** provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”