

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 December 2013

Public Authority: Financial Ombudsman Service
Address: South Quay Plaza
183 Marsh Place
London
E14 9SR

Decision (including any steps ordered)

1. The complainant made a freedom of information request to the Financial Ombudsman Service ("the FOS") for information related to its current procedures on various matters. The FOS refused the request under section 14(1) of FOIA on the grounds that it was vexatious. The Commissioner has investigated the complaint and found that the FOS was correct to refuse the request as vexatious under section 14(1) and so requires no steps to be taken.

Background

2. The complainants' are two brothers who had previously made joint complaints to the FOS about a financial business. Whilst the request which is the subject of this decision notice was submitted by just one of the brothers they both asked to be copied into each other's correspondence and the Commissioner understands that it was sent on behalf of them both as was the complaint to the Commissioner. For ease of reference the Commissioner refers to "the complainants" in this decision notice even though in some cases correspondence may have been between the FOS and just one of the brothers.

Request and response

5. On 20 August 2012 the complainants made a request to the FOS for information regarding its current procedures covering a number of different scenarios. The request read as follows:

We require all current FOS procedures which govern all the actions that should, or must, be taken by the following:

- i. *FOS staff who receive referrals of complaints from members of the public:*
 - (a) *by phone; or*
 - (b) *in writing.*
- ii. *FOS staff charged with assessing whether the Financial Ombudsman Service has jurisdiction over complaints, where the staff are:*
 - (a) *Case-handlers; or*
 - (b) *Ombudsmen.*
- iii. *FOS staff who receive evidence of directors of regulated firms:*
 - (a) *flouting FSA regulations on complaints handling; including*
 - (b) *attempting to deceive the FSA and/or the FOS.*

We also require all current FOS procedures governing the following:

- iv. *Jurisdiction over multiple complaints by the same complainants against the same firm.*
 - v. *Complaints about FOS staff.*
 - vi. *Provisions for re-adjudication (not review) of complaints.*
6. The FOS responded to the request on 18 September 2012 when it confirmed that it held the requested information. However it said that it was refusing the request as it was considered to be vexatious within the meaning of section 14(1).
7. The complainants subsequently asked the FOS to carry out an internal review of its handling of his request and the FOS presented its findings on 12 December 2012. At this point the FOS upheld its initial response, refusing the request under section 14(1).

Scope of the case

8. On 28 March 2013 the complainants contacted the Commissioner to complain about the decision to refuse the request.
9. The Commissioner considers the scope of his investigation to be to decide whether the FOS was correct to refuse the complainants' request under section 14(1) of FOIA.

Reasons for decision

10. Section 14(1) provides that a public authority is not obliged to comply with a request for information if the request is vexatious. The Commissioner has recently issued guidance on his approach to deciding when a request can be considered vexatious.¹ This follows the decision of the Upper Tribunal in *Information Commissioner and Devon County Council v Dransfield*² which placed emphasis on the importance of adopting a holistic and broad approach to the determination of whether or not a request is vexatious.
11. The Commissioner's guidance suggests that the key question a public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
12. The Commissioner has therefore considered the arguments put forward by the FOS and by the complainants in light of the Upper Tribunal's view of the importance of 'proportionality' and 'justification' and has balanced this against the purpose and value of the request. Where relevant, he has taken into account wider factors such as the background and history of the request.

¹http://www.ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

² Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC) (28 January 2013)

The FOS's view

13. The FOS has said that it considers that the purpose of the complainants' request was to evidence wrongdoing and non-compliance with its processes. However, it said that the requests were so broad, essentially all procedures or guidance provided to its operations support department, adjudicators and ombudsmen, that it was difficult to see how such expansive material would be of any value, particularly when the complainants said that they already had evidence to substantiate their allegations.
14. Bearing this in mind the FOS said that it had come to the conclusion that the requests were borne out of "personal grievances with staff and unfounded allegations as part of a pattern of unreasonable persistence and overlapping and frequent communications". It also concluded that dealing with the requests would cause considerable disruption and diversion of resources as well as irritation and distress to the individuals who were the subject of allegations made by the complainants.
15. As to its claim of personal grievances and unfounded allegations it provided examples of where the complainants had complained about the actions of staff at the FOS making reference to "serious allegations of intentional wrongdoing", "criminal acts", "persistent wrongdoing, concealment and obstruction" being perpetrated by its staff. It explained that none of its subsequent investigations concluded that there had been any intentional wrongdoing.
16. Whilst it post-dated the complainants' request the FOS also pointed out that it had investigated the complainants' service complaints through its independent assessor who, it said, conducted an impartial review of their concerns. The independent assessor found no evidence to support these allegations although the complainants dispute the findings.
17. The FOS also said that the complainants had displayed unreasonable persistence and overlapping and frequent communications. The complainants had made their complaint to the FOS (about a financial business) jointly and as such asked to be copied into communications with each other, often sending in interlinked letters, cross referencing its communications with the other.
18. The FOS has also considered the purpose and value of the request and whether this justified the detrimental impact on its functions. It acknowledged that the complainants' request was not without purpose and value and that it could appreciate the strength of feeling regarding the complaint about the business they had complained about. It said

that it had no doubt that the complainants had genuine and legitimate concerns.

19. Whilst it said that it accepted that uncovering and addressing wrongdoing at a public authority is in the public interest, it did not believe that this aim would be met by disclosure. Neither did it believe that it would justify the distress to staff or the disproportionate and detrimental impact on the FOS.
20. The complainants have submitted a substantial volume of correspondence regarding their complaint against the financial business. The paper file is 2500 pages long and it also holds extensive electronic records. Therefore managing the complainants' correspondence has, it said, proved extremely challenging.
21. The FOS has also argued that collating all of the information for the request would be a "considerable exercise in itself". The requested procedures and guidance would cover a vast amount of information. It explained that it would need to ascertain what guidance it holds and where it is located. Additionally, it said that a considerable amount of information would not be suitable for disclosure and therefore it would need to spend time redacting exempt information. For example, it suggested that information relating to part 3 of the request could potentially prejudice the prevention and detection of crime and infringe on the Financial Conduct Authority's work. Therefore it argued that reviewing and preparing the information for disclosure would constitute an oppressive burden and divert resources away from the resolution of disputes.
22. Finally, it said that its resources were limited and that whilst it believed that there was some purpose and value to the requests it did not consider that the public interest rested in diverting resources away from its statutory functions in order to disclose huge volumes of information.

The complainants' view

23. The complainants have provided very detailed submissions on why their request should not be considered vexatious and they have also seen and commented on the submission from the FOS. Whilst the Commissioner has considered all of the comments made, he has summarised only the most relevant arguments in this notice.
24. Firstly, the complainants acknowledge that they have written a large amount of correspondence to the FOS but that this was done out of necessity due to the fact that the FOS failed to answer their questions or adequately respond to their complaints. This includes delays in

responding to subject access requests made under the Data Protection Act for information about the investigation into complaints they made about the financial business. Furthermore, they say that the FOS has refused to respond to specific allegations about intentional wrongdoing by its staff which they say is supported by evidence. Whilst they accept that they have been persistent they do not consider they have been unreasonably so.

25. They argue that the FOS has unfairly classed some of their correspondence as freedom of information requests so as to give a misleading impression of the amount of requests they have made.
26. As to the purpose of the requests the complainants' have said that in their view there has been serious intentional wrongdoing by the FOS and its staff and disclosure of the procedures they are seeking would show whether the actions of the FOS were permissible or not. Otherwise, disclosure would demonstrate whether the FOS' procedures were fit for purpose.

The Commissioner's view

27. First of all, the Commissioner would agree with the points made by the FOS that the complainants' requests are not without purpose and that they have genuine concerns. He would also go further and say that at least part of the reasons for the complainants' persistence is due to the problems they appear to have experienced in the past in getting the FOS to release information concerning their investigation.
28. However, at the same time it is clear that the correspondence from the complainants has imposed a serious burden on the FOS. The FOS has given the Commissioner a list of correspondence from the complainants to its Information Rights Officer in the approximately 2 months leading up to the 20 August 2012 request. From this it is apparent that considerable effort would have been involved in managing the communications from the complainants. The very wide ranging request of 20 August 2012 would only add to this burden. As the FOS notes, the complainants are also in the habit of sending repeated and often very demanding requests and correspondence. Correspondence often overlaps between the two complainants and on occasions new correspondence has been sent before the FOS has had a chance to respond to previous correspondence.
29. The Commissioner notes that the complainants dispute the number of freedom of information requests they have made to the FOS but this ignores the fact that all requests for recorded information are valid requests for the purposes of FOIA and public authorities are entitled to

treat them as such. The complainants had explicitly said to the FOS that some requests should not be treated as FOIA requests but instead were requests for clarification on previous responses or else were submitted under what they termed "natural justice". This is to miss the point as the complainants still clearly expect responses to their various requests, however submitted, and the effect is the same in that it imposes a burden on the FOS.

30. It is also clear to the Commissioner from the correspondence he has seen that the purpose of the request is to enable the complainants to pursue their complaint against the FOS and certain members of staff who they believe to be guilty of wrongdoing. Again the Commissioner is inclined to agree with the FOS that the disclosure is unlikely to achieve the complainants' stated aims and moreover will in all likelihood lead to and encourage further protracted correspondence from the complainants which will continue to act as a distraction from the public authority's core functions. On this point it is also relevant that the concerns raised by the complainants have been considered by the FOS and its independent assessor, who the Commissioner understands considers complaints about the standard of service provided by the FOS and who is free from its influence and control. This found that there was no intentional wrongdoing as was alleged and this points to the obsessive nature of the request and a lack of proportionality in continuing to contact the FOS and make requests with a view to pursuing this grievance.
31. The Commissioner has concluded that the purpose and value of the request does not justify the detriment that would be caused to the FOS. The request does not obviously serve to further the complainants' stated aims and there is no wider public interest in disclosure since the requests for information are driven by the complainants' own private disputes with the FOS. Moreover, the background and history of the complainant's contact with the FOS suggests that disclosure is unlikely to satisfy the complainants and that further correspondence and requests will ensue.
32. For all these reasons the Commissioner has decided that the FOS was correct to refuse the request as vexatious by relying on section 14(1) of FOIA.

Right of appeal

33. 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: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

34. 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.
35. 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

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