

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 17 February 2015

**Public Authority:** Financial Ombudsman Service

**Address:** South Quay Plaza  
183 Marsh Wall  
London E14 9SR

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to internal procedures of the Financial Ombudsman Service (FOS).
2. The Commissioner has investigated the complaint and found that FOS has correctly applied section 12(1) of the FOIA to the requested information.
3. However, the Commissioner also finds that FOS failed to provide adequate advice and assistance under section 16. Therefore FOS has not complied with its obligations under section 16 of the FOIA.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide advice and assistance under section 16 FOIA, to enable the complainant to submit a refined request within the cost limit.

#### **Request and response**

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5. On 7 August 2014, the complainant wrote to FOS and requested information in the following terms:

1. *The FOS procedures*

*As a matter of honesty and transparency, would you please send to me a copy of all FOS internal procedures including, but no limited to, those which justify your assessment (for example: "it is usual for the*

*adjudicator address these before referring it to an ombudsman"). This will allow me to assess how my complaint was considered and prepare my complaint to The Independent Assessor. (Without it I'm not in a position to do it.)*

6. FOS responded on 12 September 2014. It provided some information within the scope of the request. FOS also advised that the scope of the request was too wide and invited the complainant to narrow his request.
7. With regard to part 1 of the request FOS cited section 12(1) of the FOIA as its basis for not providing this information in its entirety.
8. It appears that there was some confusion surrounding the internal review. However, the Commissioner has confirmed with FOS that it maintains its position with regard to section 12.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 20 October 2014 to complain about the way his request for information had been handled.
10. The Commissioner considers the scope of this case to be to determine if FOS has correctly cited section 12 in response to the request.

### **Reasons for decision**

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11. Section 12 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 doing so would exceed the appropriate limit.
12. The appropriate limit is a cost limit set out in regulations that were introduced under the Act. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004, known as the 'Fees regulations' set the appropriate for non-central government departments, such as the FOS, at £450.
13. Under the Fees Regulations public authorities are required to cost their spending on the relevant activities at £25 per person per hour. Consequently, the appropriate limit would be exceeded if a local authority estimated that it would take longer than 18 hours to carry out the relevant activities in order to comply with a request.
14. Under regulation 4(3) of the Fees Regulations, a public authority may, for the purposes of estimating the cost of complying with a request, only take account of the costs it reasonably expects to incur in:

- a. determining whether it holds the information;
  - b. locating the information or a document which may contain the information;
  - c. retrieving the information or a document which may contain the information; and
  - d. extracting the information from a document containing it.
15. When estimating the cost of locating and retrieving the information the first thing to consider is what information has actually been requested as this obviously impacts on what searches are required.
  16. FOS explained that the original request was for a copy of all internal procedures used and employed by FOS. When FOS began to process the request it consulted with its records management team who are responsible for, amongst other things, the retention and deletion of information on its central IT systems.
  17. FOS also consulted with its HR department to establish the size of the service as a whole to include headcount and department numbers.
  18. The records management team provided a list of all folders held on the central electronic drive for each department. It should be noted that some departments had restricted access to their information. FOS explained that a decision was made that for the IT, HR and Finance departments, individual local records officers would need to be consulted to determine what information would be held in their particular folders.
  19. FOS stated that it employs 3,364 individuals who work across a number of different groups. It explained that its statutory function is to resolve financial complaints quickly and informally, however in all other respects it also functions as any other commercial organisation.
  20. Therefore a request for all internal procedures employed by FOS would cover procedures employed by its casework/complaint handling departments, the procedures required by individual roles and as far reaching as its IT, legal, building management and HR departments, amongst others.
  21. FOS confirmed that it had carried out a sampling exercise to estimate how long it would take to search for and retrieve information which would fall within the scope of the request, or to confirm if the information was held.
  22. FOS went on to explain that the easiest method to search and retrieve information would begin with a search of its central electronic records as this is where all recorded information about the service would be held.

23. Following this, a manual search would be required with an experienced member of the relevant teams and department or local record officer for teams/departments. This search would verify whether any specific folder exists which record procedures used by that particular team or department. In addition to this, FOS stated that it would need to search every folder for a record of any procedure not highlighted or marked as a procedure, which could potentially fall within the scope of the request.
24. FOS explained that it began by searching for information held on the central drive for its casework departments. The casework or complaint handling departments included 2,435 people split across 37 larger product areas or divisions. Within these divisions each team will have its own specific folder with information relevant to that team and the products it deals with.
25. For the sampling exercise, FOS looked at its Payment Protection Insurance departments. There were 132 teams including adjudicators and team managers, as well as heads of casework and other senior management. The assistance of a team manager was required to search through a team specific folder to establish whether any of the information held would be classed as an internal procedure. This process took approximately 30 minutes per folder.
26. FOS explained that as internal procedures are not required to be labelled or stored as such on its central drive, this process would have to be repeated for each team across the organisation. It was further noted that processes may have been communicated or updated by email.
27. Having consulted with its IT department to determine how long a search for one keyword such as 'procedure' would take. The IT department confirmed that even confining the search to emails sent to or from individuals in the PPI department for the past year would take an average of three hours. IT had confirmed that such a search had been conducted in the past and would return thousands of results, which would then manually need to be opened and reviewed as to the specific content contained within.
28. Therefore using this sample exercise with the parameters chosen being the PPI casework department for the past year FOS concluded the following estimations:
  - Consulting HR and Records Management department for details of numbers of individuals, teams and number of records kept – 30 minutes.
  - Looking through individuals' folders to search, retrieve and confirm existence of any procedural documents – 30 minutes per folder.

- With the search limited to the PPI department the folder search would take 132 x 30 minutes = 66 hours.
  - Search for emails sent within the PPI department containing the word 'procedure' – 3 hours for the initial search
  - Likely result output from above IT search – minimum 1,000 results.
29. The Commissioner has considered the response from FOS. He is satisfied that based on the sampling exercise undertaken and the estimates above the FOS is entitled to rely on section 12(1) of the FOIA to refuse the request. The estimate of 66 hours far exceeds the 18 hours, equating to £450, as set out in the Fees Regulations.

### **Section 16 – Advice and assistance**

30. Section 16 places a duty on a public authority to provide advice and assistance in compliance with the section 45 Code of Practice. This states that where a public authority refuses a request because it would exceed the appropriate limit to do so, it should consider providing an indication of what, if any, information could be provided within the cost ceiling.
31. In cases where it is reasonable to provide advice and assistance in the particular circumstances of the case, the minimum a public authority should do in order to satisfy section 16 is:
- either indicate if it is not able to provide any information at all within the appropriate limit; or
  - provide an indication of what information could be provided within the appropriate limit; and
  - provide advice and assistance to enable the requestor to make a refined request.
32. FOS explained that it had advised the complainant to refine his request to bring it within the cost limit. However, it did not provide any guidance or advice on how to do this.
33. FOS had noted that the complainant appeared to be concerned that his complaint had not been handled in line with its complaint handling process. It therefore provided some information that it believed would help the complainant, namely, the relevant section of its case handling process document which highlights that an adjudicator would address any issues raised by the business or complainant before the complaint is passed to an ombudsman for a final decision.

34. The Commissioner considers that FOS has not met its obligations under section 16. FOS should have provided advice and assistance to the complainant as to how to refine his request within the cost limit, for example, by focussing on one specific policy or procedure or policies or procedures on specific areas or issues of interest.

## Right of appeal

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35. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

36. 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.
37. 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 .....**

**Gerrard Tracey  
Principal Adviser  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
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