

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

### **Decision notice**

**Date:** 24 June 2015

**Public Authority:** Financial Ombudsman Service (FOS)

**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 complaints/grievances about four managers at FOS. FOS refused to confirm or deny whether the requested information was held under section 40(5) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that FOS was correct to neither confirm nor deny whether the requested information was held under section 40(5) FOIA.
3. The Commissioner requires no steps to be taken.

### **Request and response**

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4. On 19 January 2015 the complainant requested information of the following description:

"For brevity and clarity, please see below for the information I am requesting.

1. Was [name], a manager in PPI subject to any investigation regarding my specific complaint of verbal physical intimidation in the canteen, on or around April 2013. After I raised concerns regarding a grade 2 application and other matters.

2. Was [name], a manager in PPI promoted, in 2014, to head of

division, despite the documented complaint against him and accepted/abuse/failures, use of racist language towards me, encapsulated in a complaint against him?

3. Was [name], investigated in relation to use of gross profanity in an open office regarding a customer, ['phrase removed'], while talking to [name] on the 4th/5th floor of independent house? Which was clearly heard by many other members of staff?

4. How many black and Asian (minorities) members of staff are in PPI? How many are managers? How many are grade 2 and above? How many have been subjected to disciplinary action?

5. Is it the policy of the organisation to hear evidence in secret? Why did [name] do so in some parts of my case? And then use that information as part of the decision? Could you provide records of that investigation held in secret?

6. Have any other complaints been made, by a member of staff, against [name], [name], [name] and [name] all of PPI? And what were the nature of the complaints?

5. On 16 February 2015 the FOS responded. It provided the complainant with some of the information he requested. In relation to parts 1-3 and 6 of the request, the FOS refused to confirm or deny whether it held the requested information as it would breach the data protection principles to do so. The relevant exemption under FOIA is section 40(5).

6. The complainant requested an internal review on 13 March 2015. The FOS sent the outcome of its internal review on 14 April 2015. It upheld its original position.

## **Scope of the case**

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7. The complainant contacted the Commissioner on the 15 April 2015 to complain about the way the request for information had been handled.

8. The Commissioner has considered whether FOS was correct to refuse to confirm or deny whether it held the information requested at parts 1-3 and 6 of the request under section 40(5) FOIA.

## Reasons for decision

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9. Section 40(2) of FOIA provides an exemption for information that constitutes the personal data of third parties:

*"Any information to which a request for information relates is also exempt information if—*

*(a) it constitutes personal data which do not fall within subsection (1), and*

*(b) either the first or the second condition below is satisfied."*

Section 40(3)(a)(i) of the Act states that:

*"The first condition is-*

*(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-*

*(i) any of the data protection principles, or*

*(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress),"*

10. Section 40(5) provides that:

*"The duty to confirm or deny-*

*(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and*

*(b) does not arise in relation to other information if or to the extent that either-*

*ii. the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded, or*

*ii. by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that*

Act (data subject's right to be informed whether personal data being processed).”

11. FOS explained that the information relates to the public life of four employees, in particular their employment records on whether or not they have been subject to any complaints, investigation or disciplinary action. As the complainant has requested information specifically about named individuals it believes that this by its nature identifies those individuals and that the information requested constitutes personal data. It said that even confirming or denying whether or not the requested information is held would reveal whether or not a complaint had been made about the individuals.
12. The Commissioner considers that confirming or denying whether or not a complaint/grievance has been made about an employee would constitute that individual's personal data.
13. FOS explained that the records of its employees are stored in their personnel files, which are restricted and information about performance or disciplinary matters of an employee can only be accessed on a 'need to know' basis. It therefore considers that the four managers named in the request have a legitimate expectation that their employment records will remain confidential and that any internal complaints, grievances or disciplinary matters would remain private. It considers that its employees would not reasonably expect their personal data, as to whether or not the individual is or is not subject to investigation or disciplinary action, would be disclosed into the public domain.
14. FOS provided some further submissions to explain why it would not be fair, and thereby breach the data protection principles, to confirm or deny whether the requested information is held. These further submissions are contained within the confidential annex attached to this Notice.
15. FOS concluded that it is satisfied that simply confirming or denying whether it holds the requested information would reveal the personal data of the individuals, as it would indicate that the individual is or is not subject to investigation or disciplinary action. This would be unfair to the named individuals in the request and therefore in contravention of the first data protection principle.
16. The Commissioner is satisfied that in this case section 40(5) FOIA was correctly applied by the FOS.

## Right of appeal

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17. 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)

18. 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.
19. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**