

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 July 2016

Public Authority: Financial Conduct Authority
Address: 25 The North Colonnade
Canary Warf
London
E14 5HS

Decision (including any steps ordered)

1. The complainant has requested information about Swift Group trading as Swift Advances Plc. The Financial Conduct Authority (FCA) says that it is not obliged to comply with the request under section 12(1) of the FOIA (cost/time exceeds appropriate limit). It says that section 31(1)(g) (law enforcement); section 43(2) (commercial interests) and section 44(1)(a) (prohibition on disclosure) would also be likely to apply to the request.
2. The Commissioner's decision is that the FCA has correctly applied section 12(1) to the request because the cost of complying with it exceeds the appropriate limit. The Commissioner considers that, as far as it was possible given the scope of the request, the FCA complied with its duty under section 16 of the FOIA to offer advice and assistance.

Request and response

3. On 15 August 2015 , the complainant wrote to the FCA and requested information in the following terms:

"... in terms of supplying me with copies of the fines your organisation have imposed on the Swift Group and I am looking for any documents, tape recordings and any other correspondence you may have to assist me in preparing this case for court eg any copies of your investigations you have done regarding this organisation and the outcome of your investigation."

4. The FCA responded on 15 September 2015. It provided a link to where a copy of a Final Notice it issued to Swift 1st Ltd in 2011 is published on its website. It told the complainant that the Office of Fair Trading (OFT) had imposed a requirement on Swift Advances Plc in the same year and it provided a link to where this requirement is published. The FCA told the complainant that it holds information about both investigations but refused to comply with this part of the request under section 12 of the FOIA as to do so would exceed the appropriate cost limit. It said that it would be difficult to offer help and assistance to refine the request, given the volume of information that it holds pertaining to the investigations and the formats in which it is held. Any refined request would still be likely to exceed the statutory cost limit. Finally, the FCA told the complainant that the exemption under section 44 would be likely to apply to the request.
5. Following an internal review the FCA wrote to the complainant on 10 November 2015. It clarified the relationship between Swift Advances Plc, Swift Group Ltd and Swift 1st Ltd. The FCA acknowledged that the complainant had offered to pay the difference of any cost above the section 12 limit of £450. However it said that it is not its policy to divert its resources from its regulatory functions in order to meet requests under the FOIA that are in excess of the appropriate limit. The FCA could not therefore take up the complainant's offer and carry out an exercise to identify the requested information. The FCA upheld its position that it was not obliged to comply with the request under section 12(1). It explained that it would not be able to offer any suggestions as to how the request might be refined as the information requested could potentially be held across various FCA departments. To identify whether it holds all the information requested (including any that may not be in the public domain) would require extensive searches across a number of departments.
6. Finally, the FCA told the complainant that the requested information would also be likely to be exempt under sections 31(1)(g) and 43(2) as well as section 44.

Scope of the case

7. The complainant contacted the Commissioner on 3 November 2015 to complain about the way her request for information had been handled.
8. The Commissioner has focussed this investigation on the complainant's request of 15 August 2015 and the FCA's application of section 12(1) of the FOIA to the second element of the request, that is '*...any documents, tape recordings and any other correspondences*'. The FCA has

addressed the first element, namely '*...copies of the fines...imposed on...*' by providing links to relevant published information.

9. The Commissioner has also considered whether the FCA met its obligation under section 16 of the FOIA.

Reasons for decision

Background

10. In its submission, the FCA has provided background to the complaint. It confirmed, as it had explained to the complainant in its internal review, that Swift Advances Plc and Swift 1st Ltd are separate legal entities to Swift Group Ltd.
11. FCA explained that it took over consumer credit regulation from the OFT with effect from 1 April 2014. Some information held by the OFT in relation to consumer credit regulation was passed to the FCA. Licencing of Swift Advances Plc for consumer credit purposes was the responsibility of the OFT up until this date. Details of the firms, individuals and other bodies that are now, or have been, regulated by the FCA can be found on the Financial Services Register, on the FCA's website.
12. Regarding the two firms referred to above, the FCA says that Swift 1st Ltd is an authorised firm with permission to provide regulated products and services. On 25 July 2011, the (then) Financial Services Authority (FSA) – the FCA's predecessor – fined Swift 1st Ltd as a result of breaches of the FSA's Principles for Businesses and Rules relating to Mortgages and Home Finance: Conduct of Business Sourcebook. These breaches occurred in the period between 1 June 2007 and 31 July 2009. The FSA Final Notice (referred to in FCA's response to the complainant) related only to Swift 1st Ltd.
13. FCA has told the Commissioner that Swift Advances Plc is an Appointed Representative of Swift 1st Limited but a separate legal entity to the latter. On 17 June 2011, the OFT placed a requirement on Swift Advances Plc under section 35 of the Consumer Credit Act 1974. This requirement applied to the firm's Consumer Credit Interim Permission under the FCA. The requirement is in the public domain.

Section 12 – cost of complying exceeds the appropriate cost/time limit

14. Section 12(1) of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit

to either comply with the request in its entirety, or confirm or deny whether the requested information is held. The estimate must be reasonable in the circumstances of the case.

15. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the FCA. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information
 - (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
16. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit – in line with section 16 of the FOIA.
17. The FCA has confirmed what it has previously explained to the complainant; that it has considered the request for information under the FOIA without reference to the identity or motives of the requester. To help it consider whether it could comply with the request under FOIA, the FCA has only considered what information it may hold that would relate to Swift 1st Ltd or Swift Advances Plc (ie not to any other entities with or under the name Swift Group Ltd). The FCA has confirmed to the complainant that it does hold information related to the investigations that led to the Final Notice and requirement referred to above. It has confirmed to the Commissioner that it is unable to comply fully with the request – ie identify if it holds any other relevant information – as to do so would exceed the appropriate limit under section 12.
18. The FCA has told the Commissioner that, as it explained in its response to the complainant, it holds a large volume of information relating to the investigations referred to above. It says this is not recorded or held in a readily extractable format that would allow it to locate, retrieve, extract and review the information within the appropriate limit to identify if it was within the scope of the complainant's request.
19. The FCA says its Credit Authorisations department alone holds a significant number of paper and electronic records relating to the case leading up to the requirement imposed by OFT on Swift Advances Plc.

FCA says that, in addition, there are other files and folders in this department that would need to be reviewed in order to establish whether it holds further information relevant to the request. With regard to the request, the FCA has provided the Commissioner with more detail about the general records held by different areas of the organisation. The FCA has said that any information about the firms concerned, if held, would also be likely to engage the exemptions under section 31, 43 and 44. For this reason, the further detail the FCA has provided about its general records is summarised in the Confidential Annex to this notice.

20. The Commissioner has considered the arguments and supporting information that the FCA has provided to him. Based on these, he is satisfied that the cost of complying with the request would exceed the appropriate time limit and that the FCA is entitled to rely on section 12(1). It is clear that answering the complainant's request would not be straightforward and would involve a great deal of effort on the part of the FCA. It would need to search through a very large amount of material, across different departments, to identify what relevant information, if any, that it holds.
21. The FCA has acknowledged that it does hold some information within the scope of the request, namely a large volume of information regarding the investigations that led to the published requirement and Final Notice. The FCA has provided some explanation as to why it would not be able to provide this particular information within the appropriate limit provided by section 12(1). Notwithstanding this explanation, if information – relating to the Final Notice and requirement – were to be located, retrieved, extracted, reviewed and, if found to be relevant to the request, released to the complainant, this information alone would not satisfy the entirety of the complainant's request.
22. The Commissioner has found that the FCA's estimates of the time needed to comply fully with the request, detailed in the Confidential Annex, are credible and reasonable. Therefore, the Commissioner's has decided that the FCA has correctly applied section 12(1).
23. Because the Commissioner is satisfied that the FCA is not obliged to comply with the request under section 12(1), it has not been necessary to consider whether the request engages the exemptions under section 31(1)(g), section 43(2) and/or section 44(1)(a).

Section 16 – advice and assistance

24. Section 16 of the FOIA places an obligation on a public authority to offer advice and assistance to an applicant "*so far as it would be reasonable to expect the authority to do so*". In relation to section 12(1), where a

public authority estimates that to comply with a request would exceed the appropriate limit, the authority is expected to consider giving an indication of what, if any, information could be taken into account within the cost ceiling by advising how the request might be reformed or refocused.

25. The FCA has told the Commissioner that, in this case, it was not able to offer any suggestions as to how the request could be reformed or refocused because any information, if held, could potentially be within numerous records held by FCA. The FCA has also taken account of the purpose for which the complainant has requested the information. The Commissioner understands this to mean that if, for example, the search was narrowed to a specific timeframe, and some information were to be identified, this would be unlikely to provide the comprehensive evidence that the complainant appears to want to support the court case referred to in the request. The Commissioner notes that the FCA provided the complainant with links to where some relevant information is published and its observation to the complainant that even a refined request would be likely to exceed the limit under section 12(1). In the circumstances, the Commissioner considers that the FCA met its obligation under section 16 so far as it was reasonable.

Right of appeal

26. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. 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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