

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

### **Decision notice**

**Date:** 22 June 2017

**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 from the Financial Ombudsman Service (FOS) about its handling of subject access requests under the Data Protection Act. FOS has categorised the request as vexatious under section 14(1) of the FOIA and has refused to comply with it.
2. The Commissioner's decision is that the request is vexatious and FOS is correct not to comply with it.
3. The Commissioner does not require FOS to take any steps to ensure compliance with the legislation.

#### **Request and response**

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4. On 11 October 2016, the complainant wrote to FOS and requested information in the following terms:  
*"1) For each year since 2010, please provide:*
  - a) average time taken to process a Subject Access Request.*
  - b) longest time taken to process a Subject Access Request.*
  - c) shortest time taken to process a Subject Access Request."*

5. FOS responded on 10 November 2016. It refused to comply with the request which it said was vexatious under section 14(1) of the FOIA. In the circumstances, FOS chose not to carry out an internal review of its handling of the request.

## **Scope of the case**

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6. The complainant contacted the Commissioner on 6 December 2016 to complain about the way his request for information had been handled.
7. The Commissioner's investigation has focussed on whether the request can be categorised as vexatious under section 14(1) of the FOIA.

## **Reasons for decision**

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### **Section 14 – vexatious and repeat requests**

8. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request for information if the request is vexatious.
9. The term 'vexatious' is not defined in the FOIA. The Upper-Tier Tribunal considered the issue of vexatious requests in the case of the Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011) (Dransfield) and concluded that the term could be defined as "manifestly unjustified, inappropriate or improper use of a formal procedure".
10. The Dransfield case identified four factors that may be present in vexatious requests:
  - the burden imposed by the request (on the public authority and its staff)
  - the motive of the requester
  - harassment or distress caused to staff
  - the value or serious purpose of the request.
11. The Commissioner has identified a number of 'indicators' which may also be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests. In short they include:
  - abusive or aggressive language
  - burden on the authority
  - personal grudges
  - unreasonable persistence
  - unfounded accusations

- intransigence
  - frequent or overlapping requests; and
  - deliberate intention to cause annoyance.
12. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
13. The Commissioner's guidance suggests that, if a request is not patently vexatious, the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request on it and balance this against the purpose and value of the request.
14. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request. However, it is important to recognise that one request can in itself be 'vexatious' depending on the circumstances of that request.
15. In its submission to the Commissioner FOS noted that, in line with section 17(6) of the FOIA, in its response to the complainant's request it had informed the complainant that that it would not correspond any further about that particular matter.
16. FOS has told the Commissioner that it appreciates that to answer any request for information it is inevitable that it will experience a certain level of disruption. However it says that it needs to be certain that this disruption is not too great. Answering long, frequent and interlinked requests for information places an enormous strain on its resources. FOS says it had to think carefully about the request that is the subject of this notice.
17. When considering whether the request is vexatious, FOS says it weighed up the purpose and value of the request against the impact and disruption it would have on the organisation. FOS also took into account the complainant's other communications with its service. It believes that his request is a result of his general dissatisfaction with its service.

**Disproportionate or unjustified level of disruption, irritation or distress**

18. FOS has told the Commissioner that since 2011 subject access requests (SARs) to FOS have been processed by a small, dedicated group of individuals. Prior to this date they were all processed by FOS' legal team. All SARs since 2011 are logged and monitored on Excel

spreadsheets and all correspondence is sent and received via a shared mailbox. Its spreadsheets allow FOS to record who has made a request, what information he or she wants, that the address for correspondence is correct and up to date, and whether the request was responded to in time.

19. FOS says that the only way to work out the average time, the shortest time and the longest time taken to process a SAR for each year since 2011 would be to create a new formula on each of its logs to calculate the time taken to process each individual SAR. It would then need to go through each of these entries to determine the answers. For SARs made during 2010, FOS says it would need to manually go through the records stored by the legal team.
20. FOS acknowledges that it is in the public interest to know how many SARs a public authority receives and its compliance rates, which is why it says it is happy to share this information in response to other requests for information. In this case, however, FOS considers that the complainant's request for the shortest, average and longest time for particular years stems from his dissatisfaction with its services and that the request is intended to cause disruption to the team handling such requests.

**Does the purpose and value of the request justify the impact on the public authority?**

21. FOS has told the Commissioner that it was set up by Parliament to resolve disputes between consumers and financial businesses. Its aim is to do this fairly and reasonably, quickly and informally. It has limited resources and it needs to think carefully about where these are best deployed.
22. When it considered the complainant's request for information, FOS says it took into account the wider context of the complainant's communications with its service. The complainant has brought 10 cases to its service, made a number of complaints about how it has handled these cases, complained to FOS' Independent Assessor and raised concerns with his MP about how it has handled complaints. Between 26 February 2016 and 27 March 2017, the complainant has also submitted 13 requests under the FOIA, and two SARs.
23. According to FOS, there is not a common thread between these requests for information. They vary from the number of complaints received by FOS' Independent Assessor about bias, to annual leave dates for any consumer consultant that has a first name beginning with 'P' and last name beginning with 'B'. However, FOS confirmed that it believes that

all of these requests stem from the complainant's unhappiness with its service.

24. FOS has told the Commissioner that the complainant submits his requests through the 'WhatDoTheyKnow' (WDTK) website and in addition to submitting requests he has also made comments critical about FOS on requests submitted by other people. For example, on request reference FOI 2114 on WDTK, the complainant has written:

*"Impartiality - avoiding bias (or appearance of bias) or pre-judging the outcome." - I've experienced both of these with the FOS.*

*The document also says the ombudsman CAN be challenged on rules of natural justice. Perhaps adjudicators cannot be challenged?. Surely, the same rules apply both to adjudicators AND ombudsman?*

*For more on this rather cosy relationship (I don't mean just between ombudsman and adjudicator), see:*

*<http://www.ftadviser.com/2016/08/19/regu.....>"*

25. Taking all this into account, FOS therefore believes that it is not unreasonable to conclude that this request appears to be a continuation of behaviour which is intended to cause unjustified disruption to the Ombudsman service. FOS says it therefore applied section 14(1) to the request because it does not consider that the public interest lies in diverting its resources in order to disclose the requested information. Nor does FOS believe that this level of disruption and irritation would be justified or warranted by the limited purpose and value of this request.
26. The Commissioner agrees that the work needed to respond to the request (as outlined in paragraph 19) is disproportionate to the little inherent value that the request appears to have. In addition FOS has told the Commissioner that the complainant has brought 10 complaint cases to it, has submitted 13 information requests and two SARs over the course of 2015/2016. In addition, the requests do not appear to have one particular focus, and the complainant has posted comments critical of FOS on the WDTK website.
27. In the Commissioner's view this is sufficient evidence to suggest that the request in this case is born from a general dissatisfaction the complainant has with FOS' service. The Commissioner is inclined to believe that, if it was not the case with previous requests, the motive behind this request is now to disrupt and annoy FOS deliberately. Having considered all the circumstances, she is satisfied that the request can therefore be categorised as vexatious under section 14(1).

## Right of appeal

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28. 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)

29. 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.
30. 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**