

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 June 2018

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

Decision (including any steps ordered)

1. The complainant has requested information about particular communications and documents on a new team. The Financial Ombudsman Service (FOS) says it is not obliged to comply with the request under section 12(1) of the FOIA, as it would exceed the appropriate cost and time limit to do so.
2. The Commissioner's decision is that FOS is not obliged to comply with the request under section 12(1) and is satisfied that FOS met its obligation under section 16 to offer advice and assistance. The Commissioner does not require the public authority to take any steps.

Background

3. FOS provided the following as a background.
4. FOS was set up by Parliament under the Financial Services and Markets Act 2000 (FSMA) to resolve disputes that consumers and businesses are not able to resolve themselves. Each case is looked at on its individual merits.
5. There is a two-stage process for investigating complaints. When a consumer or their representative brings a complaint to the service it is investigated and the parties told what the outcome should be. If either party to the complaint disagrees with the outcome they can ask for the complaint to be passed to an ombudsman who will make the final decision.

6. FOS deals with a range of disputes (from current accounts to advice given on an investment) and employs around 2,000 case handlers and 300 ombudsmen to look into and investigate these cases. To help both parties understand how the decisions are reached, FOS shares the material information relied upon and publishes case studies, the ombudsman final decisions and technical notes on its approach to different types of complaints on its website.
7. The complainant represents a financial business on a number of complaints at FOS' service. The communications referred to in the FOI request were with an individual case handler at FOS about a current dispute being looked into.

Request and response

8. This request follows a previous 4-part request for communications about the way the new "specialist team" was set up and dealt with its conduct or processing of claims. (See Annex A below, FOS reference 2738 dated 28 June 2017 and considered by the Commissioner in the decision notice FS50692855 which found that section 12 had been cited correctly.)
9. On 10 October 2017 the complainant made a refined request for information '*limited to the 3 months before and the 3 months after the "special unit was established"*'.
10. This was clarified and confirmed on 24 October 2017 as limiting the original request (FOS reference 2738) '*to matters that have been communicated to or from [redacted name of case handler] three months before and three months after the special unit was established.*'
11. On 7 November 2017 FOS responded that the subject matter of the request remained too wide as the search brought back thousands of emails for the period 1 July 2015 to 1 January 2016. It refused to provide the requested information citing Section 12 of FOIA as it estimated that the cost of determining whether it held the information would exceed the cost threshold of £450.
12. FOS suggested it may be able to comply with a new request for a narrower category of information, such as searching for "new team". FOS explained that the search might not capture everything within the scope of the request but would capture some meaningful information.
13. On 9 October 2017 the complainant requested an internal review, suggesting that [redacted name of case handler] assist in the search.

14. FOS sent the outcome of its internal review on 7 December 2017 upholding its original position to cite section 12. It also explained that it was not required to create new information and would not be asking the Head of the Department for his thoughts on refining the request.

Scope of the case

15. On 2 January 2018, the complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He argued that his request involves the independence of FOS and the independence of individual Ombudsmen.
16. The Commissioner's investigation has focussed on whether FOS correctly applied section 12 to the request. She has also considered whether FOS met its obligation to offer advice and assistance, under section 16.
17. It is not within the remit of the Commissioner to consider the independence of FOS or the independence of individual Ombudsmen.
18. The Commissioner is also considering another refined request which specified a search term (FOS reference 2855) following the original 4-part request (FOS reference 2738) in her decision notice FS50718834.

Reasons for decision

Section 12 – cost exceeds the appropriate limit

19. Section 12 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.
20. The estimate must be reasonable in the circumstances of the case. 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 FOS.
21. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:

- determining whether it holds the information;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.
22. 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.

Would the cost of compliance exceed the appropriate limit?

23. As is the practice in a case such as this, the Commissioner asked FOS to confirm if the information is held, and if so, to provide a detailed estimate of the time/cost taken to provide the information falling within the scope of this request.
24. In its submission to the Commissioner FOS explained that the period limited to the time of the three months before and after the "special unit" was established is from 1 July 2015 to 1 January 2016 and to one individual who *'is one of our ombudsman leaders and in charge of the department where the complaint [redacted name of complainant] has at our service is being considered.'*
25. FOS searched the email system for any emails sent to or from the particular individual in this period. The search brought back 8,701 emails. FOS stated that it would need to manually review each of these emails.
26. FOS estimated that the IT team took one hour to run the search and that it would need to review *'512 emails an hour and 8.5 emails in a minute to see whether they fell within the appropriate limit.'* Given the number of emails FOS was satisfied that the time taken to search through each of these emails to see if they fall within the scope of the request would vastly exceed the appropriate time limit.
27. Given the volume of emails found in this limited period to and from one named individual, the Commissioner is prepared to accept that FOS would take more than the 18 hour limit to respond to the request. She is therefore satisfied that FOS is correct to apply section 12(1) to the request.

Section 16(1) – The duty to provide advice and assistance

28. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the “code”)¹ in providing advice and assistance, it will have complied with section 16(1).
29. In the initial response to the complainant, FOS advised that it may be able to comply with a new request using a specific search term, such as “new team”. Therefore, the Commissioner is satisfied that FOS complied with section 16.

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-ofpractice.pdf>

Right of appeal

30. If 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

31. 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.
32. 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

Annex A – The previous request dated 28 June 2017, FOS reference 2738, considered in the decision notice FS50692855

On 28 June 2017, the complainant wrote to FOS and requested information in the following terms:

'This is a request under the freedom of information Act

1. In a communication dated 25th November 2015 timed 15:53:05 it is stated "I just wanted to confirm that your case has moved with me to a new specialist team focussing solely on cases such as yours. This is to ensure we reach consistent views on these cases."

A copy of this note is provided see below. [1] Please provide copy of all disclosable communications setting up this team and any communications that it has dealing with its conduct or processing of claims, or indication as to how it should deal with points arising or may arise during the consideration of claims. For the avoidance of doubt no document dealing with a specific case is requested.

2. In a document headed "Outgoing Call" dated Monday 10 October 2016 timed 11:37 pm it states "Ombudsman is aware and will issue as soon as possible. In the long term the process has been delayed by the FCA's decision to review DB redress."

Copy supplied see below

Please supply all FCA correspondence relating to this issue to or from the FOS or from FOS to the author of the note.

3. In a document dated 15.10.2015 timed at 11:36:54 the communication says "We have been considering the issues associated with this case which are wide ranging – very carefully, that has taken a long time."

Copy supplied see below

Please supply all documentation (other than that of named parties) that were considered. State what were the issues considered.

4. In an undated document, it is stated "Asked for update. Explained that this issue was very high profile and was reliant on other external issues. Copy supplied. Please provide all documents disclosable in connection with the "other external issues." Please say why the issue was high profile and all documents relating to it

Copy supplied see below.'