

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 November 2021

Public Authority: Financial Conduct Authority
Address: 12 Endeavour Square
London
E20 1JN

Decision (including any steps ordered)

1. The complainant requested information about the number of appointments made by the Financial Conduct Authority (the 'FCA') where the appointment was not advertised. By the date of this notice, the FCA had not issued a substantive response to this request.
2. The Commissioner's decision is that the FCA has breached section 10(1) of the FOIA in that it failed to provide a valid response to the request within the statutory time frame of 20 working days.
3. The Commissioner requires the FCA to take the following step to ensure compliance with the legislation.
 - The FCA must provide a substantive response to the request in accordance with its obligations under the FOIA.
4. The FCA must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 15 July 2021, the complainant wrote to the FCA and requested information in the following terms:

"I would like to request the following information:

- How many appointments did the FCA make in the 18 months to June 2021 where the job/role/position was not advertised? Please break this figure down into appointments made where the role was not advertised internally, and those where it was not advertised at all.

So long as it does not cause my request to exceed the FOI time limit please break these appointments down on a monthly basis.

So long as it does not cause my request to exceed the FOI time limit, please break this figure down into full time, part time, and other roles, or any other method the FCA uses to classify jobs."

6. The FCA acknowledged the request on 20 August 2021. To date, a substantive response to the request has not been issued.

Scope of the case

7. The complainant contacted the Commissioner on 24 September 2021 to complain about the FCA's failure to respond to their request.
8. The Commissioner has considered whether the FCA has complied with its obligations in relation to the time for compliance at section 10(1) of the FOIA.

Reasons for decision

9. Section 1(1) of the FOIA states that:

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

10. Section 10(1) of the FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
11. On 6 October 2021 the Commissioner wrote to the FCA reminding it of its responsibilities and asking it to provide a substantive response to the complainant's request within 10 working days.
12. Despite this intervention the FCA has failed to respond to the complainant.
13. From the evidence provided to the Commissioner in this case, it is clear that the FCA did not deal with the request for information in accordance with the FOIA. The Commissioner finds that the FCA has breached section 10(1) by failing to respond to the request within 20 working days and it is now required to respond to the request in accordance with the FOIA.

Right of appeal

14. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

15. 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.
16. 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

Michael Lea
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