

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

### **Decision notice**

**Date:** 28 July 2021

**Public Authority:** Financial Ombudsman Service  
**Address:** Exchange Tower  
London  
E14 9SR

#### **Decision (including any steps ordered)**

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1. The complainant requested information with regards to an internal system used by the Financial Ombudsman Service (the FOS). The FOS asked the complainant to refine the first part of his request, provided links to the second part and refused the part of the request asking for the index / contents page of its internal system under section 14(1) of the FOIA as it considered it to be vexatious.
2. The complainant complained to the Commissioner about the part of his request that was refused as vexatious.
3. The Commissioner's decision is that section 14(1) of the FOIA is not engaged.
4. The Commissioner requires the FOS to take the following steps to ensure compliance with the legislation.
  - Issue a fresh response to the part of the complainant's request that was refused as vexatious without relying on section 14(1) of the FOIA.
5. The FOS must take these steps 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

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6. On 3 March 2020 the complainant made the following information request:

*"I am particularly interested in*

- a) the information held on Discovery as to the FOS' jurisdiction when evaluating whether it can accept a complaint – in particular a complaint relating to an insurance policy.*
- b) how the FOS evaluates the financial compensation to be awarded to a complainant in terms of placing them back in the position they would have been but for the failings of the insurance company and how additional compensation is evaluated and calculated for things such as distress, inconvenience, misconduct, delay, consequential losses, pain and suffering, uninsured losses and such like.*

*Index/Contents*

*I would also request, should this be possible, the provision of the contents page(s) or index to Discovery so that I might more accurately indicate which particular areas of information therein are of particular interest."*

7. The council responded on 30 March 2020. For part a) of the request, the FOS provided some background information and asked that the complainant refine this part of his request.
8. For part b) of the request, the FOS provided links to its website for the information.
9. For the third section of the request, the FOS refused the information relying on section 14(1) of the FOIA as it considered it to be vexatious. It explained that providing the information would place an unjustified burden on it and it suggested refining the request to a particular area of interest.
10. The complainant requested an internal review on the 30 September 2020 dissatisfied with the application of section 14(1) of the FOIA.
11. He also contacted the Commissioner on the same day to complain about the refusal.

12. The FOS provided its internal review on the 28 October 2020 upholding its refusal.

### **Scope of the case**

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13. Following the internal review, the complainant has told the Commissioner that he still disputes the refusal.
14. The scope of the case is therefore to determine whether section 14(1) of the FOIA is engaged to the disputed part of the complainant's request, that being:

*"...Index/Contents*

*I would also request, should this be possible, the provision of the contents page(s) or index to Discovery so that I might more accurately indicate which particular areas of information therein are of particular interest."*

### **Reasons for decision**

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#### **Section 14(1) of the FOIA - vexatious requests**

15. Section 14(1) of the FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.
16. The term vexatious is not defined in the FOIA. The Upper Tribunal considered the issue of vexatious requests in the case of the Information Commissioner v Devon CC v Dransfield. The Tribunal commented that vexatious could be defined as the "manifestly unjustified, inappropriate or improper use of a formal procedure." The Tribunal's definition clearly establishes that the concepts of proportionality and justification are relevant to any consideration of whether a request is vexatious.
17. In the Commissioner's view, the key question for public authorities to consider when determining if a request is vexatious is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress.

18. The Commissioner has identified a number of “indicators” which may be useful in identifying vexatious requests. These are set out in her published guidance<sup>1</sup>. 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 the case will need to be considered in reaching a judgement as to whether a request is vexatious
19. The FOS has provided the Commissioner with its reasons as to why it has applied section 14(1) of the FOIA.
20. It has firstly explained that the portal named Discovery was launched in 2016 and it is its internal knowledge resource that holds content about financial products, complaint issues and complaint handling processes.
21. At the time of the request, the FOS has stated that the content of Discovery was made up of:
  - 1,425 live content notes, however each note contains its own history – which consists of all its previous versions. It estimates that each note has at least three previous versions.
  - 76 draft content notes yet to be published
  - 1,341 archived notes and their previous versions. Approximately three versions each.
  - Another 1,400 items including discussion boards and announcements.
22. The FOS has argued that complying with the request would cause it a disproportionate and unjustified level of disruption, irritation and distress because if it released the information it would need to manually review each title of live content notes, draft content notes, archived notes, discussion boards and announcements.
23. As set out above, this is over 4000 titles. It would then need to consider whether there would be any harm or prejudice in releasing the information. Reviewing this information would require the input of the FOI adviser, a member of the Discovery Team, the content owner and in some cases, the legal team.
24. The FOS says this is because it would need the expertise to determine the risk of harm and prejudice. For example, the FOS has listed:

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<sup>1</sup> [dealing-with-vexatious-requests.pdf \(ico.org.uk\)](https://ico.org.uk/dealing-with-vexatious-requests.pdf)

- *"The title of the discussion boards are staff members asking for help and assistance on a topic. In order for our case handlers to share ideas and deliberate on issues they need a safe space to share information and may prejudice our effective conduct of affairs or our ability to resolve cases in line with our statutory obligation. We'd need to consider the application of section 31(1)(c) and section 36(2)(b)(ii) and 36(2)(c).*
  - *The titles of some content notes or discussion boards notes may be exempt under section 31(1)(a) (the prevention and detection of crime) – for example those relating to fraud, money laundering, proceeds of crime or our security procedures and guidance notes.*
  - *The titles of some content notes or discussion boards may reference specific financial businesses. We'd need to consider whether the title of the note would cause them prejudice or whether the information was provided in confidence solely for use by our case handlers. And we'd have to consider whether if this information was shared publicly whether it would make financial businesses less willing to share information in the future or how we cascade information to our case handlers, thereby affecting to resolve individual disputes.*
  - *The titles of some content notes or discussion boards may contain commercially sensitive information about the financial sector or specific financial business so will have to consider applying section 43(2). Where that information might have been provided by a specific financial business, in line with ICO guidance and Derry City Council v Information Commissioner EA/2006/0014, (11 December 2006), we would need to contact that financial business for their thoughts on the application of section 43(2), which would also take considerable time."*
25. The Commissioner appreciates that the FOS may need to consider whether exemptions apply to some of the information. However, simply stating that there may be exemptions to consider does not, in the Commissioner's view, demonstrate that this would cause a disproportionate or unjustified burden in terms of disruption, irritation or distress.
26. Part of responding to an information request, in many cases, for countless public authorities, requires considerations as to whether exemptions apply to information that has been requested. Having to have discussions with several members is not, in itself, something that should be considered unjustifiable or disproportionate.
27. Considering and applying exemptions when responding to information can require significant time, it can require speaking with other members

within a public authority. These are the sorts of things that a public authority should expect it may have to do in order to respond to requests.

28. It has not provided the Commissioner with a sufficient level of detail as to how a burden would be placed on it.
29. The FOS has also told the Commissioner that when considering this request, it took into account similar requests for lists and index pages made to its service in 2014 and 2015.
30. In 2015, the FOS has explained that it released information relating to its training courses and intranet on the *whatdotheyknow* website in the spirit of being open and transparent.
31. Following the release of these documents, the FOS says that it received numerous requests from individuals via the *whatdotheyknow* website asking for copies of the training material and guidance for multiple intranet pages.
32. The FOS has told the Commissioner that these requests were borne out of a desire to cause disruption and annoyance to its service rather than to seek information for the purpose that the FOIA was intended.
33. The FOS states that this campaign was from individuals using over 80 pseudonyms to make requests and cause disruption.
34. The Commissioner appreciates the concerns the FOS raises, due to the past behaviours of other individuals. But there is no evidence that the complainant was part of this past campaign, nor does the FOS suggest this to be the case.
35. The Commissioner, has concerns about penalising a member of the public by denying them information under section 14(1) of the FOIA based on the potential future actions of others, to whom the requestor has no links. This, in the Commissioner's view, goes against the spirit of the FOIA.
36. The Commissioner is therefore very reluctant to accept such an argument in this case.
37. The FOS has also raised that the Commissioner's guidance on section 14(1) of the FOIA explains that requests can be considered vexatious when they lack a clear purpose and could be considered a fishing expedition.
38. It claims that the complainant's request is an example of this as he has been provided with advice and assistance on how to refine his request

and by asking what topics he is interested in. But despite submitting a refined request for information about the FOS's jurisdiction to consider complaints, he has also asked to see the index of an internal tool to see if any other information may be of interest.

39. The FOS sees that by asking for a list of information, this shows a lack of focus or purpose. In the absence of any wider context, this demonstrates a 'fishing expedition' for information.

40. The Commissioner's guidance at paragraph 82 states:

*"Whilst fishing for information is not, in itself, enough to make a request vexatious, some requests may:*

- *Impose a burden by obliging the authority to sift through a substantial volume of information to isolate and extract the relevant details;*
- *Encompass information which is only of limited value because of the wide scope of the request;*
- *Create a burden by requiring the authority to spend a considerable amount of time considering any exemptions and redactions;*
- *Be part of a pattern of persistent fishing expeditions by the same requestor."*

41. On reflection of the four bullet points above, the Commissioner has not been convinced that the authority would need to sift through a large volume of information in order to isolate and extract relevant details – pinpointing an index or contents page would, it appears to the Commissioner, be a straight forward task.

42. The value of the information requested, is argued by the FOS to be of little value against the disproportionate burden the request would cause it. It has provided the Commissioner with links to its website that are publicly available, and would allow the complainant to suitably refine his request. These being links to page such as "complaints we deal with", "case studies", "annual reviews" and "ombudsman final determinations".

43. And so it is of the view that the complainant does not require this internal index to be able to refine his request or pinpoint specific areas of interest. It believes he can do it with the information that is already readily available. The FOS also noted that the complainant already has successfully refined his request for guidance notes about jurisdiction.



44. With regards to whether the FOS would be required to spend a considerable amount of time considering any exemptions and redactions, although the FOS has said it would need to consider potential exemptions, the Commissioner has not been presented with any evidence of how long this would take.
45. With regards to the fourth bullet point, no evidence has been presented to the Commissioner that the complainant is part of any persistent fishing expeditions.
46. The Commissioner would find it hard, based on what has been presented to her, to accept that this request is a fishing exercise that would, alone, engage section 14(1) of the FOIA.
47. Lastly, to support the FOS's position that this request is vexatious, it has referred to decision notices that it considers reflects its position in applying section 14(1) of the FOIA to this request.
48. The Commissioner has reviewed these decision notices and in each of the decisions the public authorities suitably demonstrated to the Commissioner either there was a long history of contact with the complainant and no response given would satisfy their requests, that their was a substantial burden that would be placed on the public authority to respond, and successfully argued that the complainant was part of a unjustified campaign.
49. The Commissioner's view is that the FOS has not, in this case, evidenced to a similar or same degree the disproportionate burden being placed on it to respond to this request.
50. Also, the Commissioner considers that it could be argued that asking for a list or index is a very specific request, and could in fact allow a requestor to then make specific requests for specific parts of the index, which in turn could help negate a 'fishing expedition' as a requestor could pinpoint the type of information they require.
51. The Commissioner recognises that the FOS has demonstrated that it does hold a lot of information on its website that could help with the refining of a request, however she has not been convinced that providing the information, that it has withheld in this request, would cause a disproportionate or unjustified burden in terms of disruption, irritation or distress.
52. The Commissioner therefore finds that section 14(1) of the FOIA is not engaged and the FOS is required to issue a fresh response to the complainant as stipulated in paragraph 4 of this decision notice.



## Right of appeal

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53. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

54. 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.
55. 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 .....**

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