

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 March 2023

Public Authority: Financial Ombudsman Service
Address: PO Box 72308
London
E14 1QQ

Decision (including any steps ordered)

1. The complainant has requested Financial Ombudsman Service (FOS) to disclose 93 items from its Discovery database. FOS refused to comply with the request, citing section 14(1) of FOIA as it considered the request to be vexatious.
2. The Commissioner's decision is that FOS is not entitled to rely on section 14(1) of FOIA in this case.
3. The Commissioner requires FOS to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant which does not rely on section 14(1) of FOIA.
4. The public authority 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.

Background

5. The complainant requested FOS to disclose the information contained in its Discovery system on 27 January 2020. This request was investigated by the Commissioner under case reference IC-62333-D6W0 and it was informally resolved. Both parties accepted that section 12 of FOIA applied to this request. FOS agreed to provide the complainant with appropriate advice and assistance in accordance with its obligations under section 16 of FOIA.
6. This led to the complainant submitting a further request, on 3 March 2020. They asked FOS to disclose an index or contents page for the Discovery system. FOS applied section 14 of FOIA. This request was investigated by the Commissioner under case reference IC-96726-S0R3. A decision notice was served to both parties on 28 July 2021. The Commissioner did not uphold the application of section 14 of FOIA and ordered FOS to provide a fresh response under FOIA.
7. FOS complied with the steps outlined in the decision notice and disclosed a contents list of the Discovery system. Some titles were withheld and this was the subject of further correspondence up to 16 December 2021.
8. The complainant then made the request that is the subject of this notice.

Request and response

9. On 25 January 2022, the complainant wrote to the FOS and requested information in the following terms:

"please could you provide the information held on your Discovery database relevant to the following index entries"

The request then lists 93 items.
10. FOS responded on 18 February 2022, refusing to comply with the request under section 14(1) of FOIA.
11. The complainant requested an internal review (date unknown).
12. FOS carried out an internal review and notified the complainant of its findings on 23 May 2022. It upheld its previous application of section 14(1) of FOIA.
13. The complainant wrote to FOS again on 24 May 2022 and requested it to review its decision.

14. FOS responded on 22 June 2022 and advised the complainant to refer the matter to the Commissioner, as its consideration of their request had come to an end.

Scope of the case

15. The complainant contacted the Commissioner on 5 September 2022 to complain about the way their request for information had been handled. They disagree with FOS' application of section 14(1) of FOIA and believe it should comply with their request.
16. The Commissioner considers the scope of his investigation is to determine whether or not FOS is entitled to refuse to comply with the request in accordance with section 14(1) of FOIA.

Reasons for decision

17. Section 14 of FOIA states that a public authority is not required to comply with a request if it considers the request is vexatious.

FOS' position

18. FOS stated that the request is not made in a targeted way; instead the complainant has just asked for the first 93 items of the contents list it disclosed in response to their previous request. It believes the complainant will not be happy with just these 93 items and will continue to make requests until they have had all the database. FOS argued that to prepare and disclose the 93 items requested and then the rest of the database in its entirety in a piecemeal fashion would be disproportionate and divert its resources away from its statutory functions.
19. FOS argued that it sees very little purpose or value in the request, considering the information it does make available on its website. It does not believe any serious purpose or value that can be identified outweighs the time and resources compliance would take for this request and the likely others it will receive.
20. In further submissions to the Commissioner, FOS stated that the complainant has also made information requests relating to how it handles complaints as well as requests relating to its Discovery system. It has also received a considerable amount of follow up correspondence from the complainant. It believes the complainant's method of communication is designed to cause FOS confusion, disruption and unjustified burden.

21. It confirmed that the complainant has submitted numerous correspondence to casework colleagues trying to reopen their complaint about a company, copying in multiple colleagues and sending multiple attachments. FOS advised that the complainant's complaint was dismissed in February 2022. Despite it being investigated, a decision reached and all avenues exhausted, the complainant continues to correspond and makes requests for information. It feels this behaviour is not a genuine desire to view information which is of public interest but a means of expressing dissatisfaction with the service, how their complaint was handled and to try and open up communication on the matter and the complaint.
22. It believes the complainant is trying to find a loophole so that FOS has to provide the entire system in a piecemeal fashion. It refers to correspondence with the complainant in May 2022, where it states that the complainant advised FOS that they were not seeking all items in the Discovery system. FOS proceeded to collate the information and consult the views of content owners, with a view to providing the requested information. However, in that time, it confirmed that the complainant proceeded to make 20 further information requests, which clearly contradicts the complainant's earlier position.
23. FOS stated at the time of this request it had received 16 previous requests from the complainant. In its submissions to the Commissioner dated 23 January 2023 it referred to 60 information requests being made in the last calendar year (going from the date of the response – January 2022 to January 2023). It submitted that it had received 19 information requests from the complainant alone since December 2022, which represented 33% of all requests made at that time. It also said that it had received 200 emails from the complainant over this period, relating to either their FOIA requests or their financial complaint.
24. The Commissioner provided FOS one final opportunity to provide its submissions to support its application of section 14 of FOIA on 24 January 2023. The Commissioner explained that a significant amount of the arguments presented so far to him related to matters which post dated the request. He reminded FOS that he can only consider the circumstances at the time of the request. He also said that it was incorrect to rely on this exemption for actions and behaviour it anticipated could happen. Additionally, the Commissioner asked FOS again to explain how the task of preparing and redacting the 93 items would place such an oppressive burden on it, in terms of time and resources, to warrant the application of this exemption.
25. FOS responded on 1 February 2023, making no additional arguments. It stated that it would wait for the Commissioner's decision notice.

The Commissioner's position

26. Referring back to the background section of this notice, it is noted that this request stems from an information request the complainant made back in January 2020. They started out by asking for the entire Discovery system. Understandably given the volume of content, FOS applied sections 12 and 14 of FOIA. During the handling of case reference IC-62333-D6W0 it was agreed that FOS was entitled to rely on section 12 but would provide the complainant with advice and assistance in accordance with its obligations under section 16 of FOIA.
27. This led to the second request on this topic, where the complainant asked for a contents page or list of the items on the Discovery system. One can see from this request that the complainant wanted to know, first, what the system contained so they could then target a further information request for the contents they required. The Commissioner is of the view that if the complainant did not wish to take a targeted approach, then they would have submitted a request for the first 93 items (or whatever number the complainant felt could be processed without engaging section 12 or 14) at this point.
28. FOS applied section 14 of FOIA to this request. The Commissioner rejected its application and issued a decision notice to this effect under case reference IC-96726-S0R3. Similar arguments were made then but the Commissioner was sceptical about them. FOS complied and provided a contents list to the complainant.
29. Of the back of that, the request that is the subject of this notice was then made. While it appears that the first 93 items were selected by the complainant, and understandably this may lead to FOS questioning whether the complainant is now going to submit request after request to gain access to the entire system, the Commissioner does not consider it is appropriate to take into account these concerns when deciding on the application of section 14 of FOIA at the time of this request, as those future requests had not happened. FOS did not know at this point if they would happen at all. The complainant could have obtained the first 93 items and then felt it was not really the information they were looking for and no further requests would then have been made. Equally, wishing to obtain voluminous information on a piecemeal basis, is not inappropriate in terms of FOIA. Section 12 addresses aggregation of requests; suggesting that it is entirely acceptable to make one request after another for particularly voluminous information, provided the appropriate amount of time is left between each one (60 consecutive working days).
30. At the time of the request, FOS stated that the complainant had made 16 previous requests. But the Commissioner notes that this would have

been prior to the decision being reached on their financial complaint. It is possible that these requests were necessary (in the complainant's view) to obtain the information they felt they needed to understand the process being followed and aid them if they needed to challenge the outcome once it was made.

31. A significant amount of information provided by FOS in support of its application of this exemption post-dates the request and this cannot be taken into account. The further 60 requests made since January 2022 and correspondence with caseworkers would be relevant to the consideration of this exemption now (or even several months on from the date of this request) but it not evidence the Commissioner can accept for this case.
32. FOS referred to the tone of correspondence being unacceptable – detailing grudges, making unfounded accusations and demonstrating behaviour which is unreasonably persistent. But from the submissions received to date, the Commissioner does not know if this correspondence post-dates the request or not. Considering the outcome of the complainant's financial complaint was not made until February 2022, it seems quite likely that it does.
33. FOS has suggested that it would take it numerous hours to prepare and redact the 93 items and that this process would impose an unreasonable burden on it, in terms of time and resources. The Commissioner has explained to FOS what information he needs to consider the application of the section 14(1) exemption from this viewpoint (or which he could take into account in conjunction with other factors which would render a request vexatious) and asked for this on two separate occasions. FOS has not provided it.
34. For the above reasons, the Commissioner has decided that section 14 of FOIA does not apply to this request. He would however point out that complaints are considered on a case by case basis and just because the Commissioner has found here that section 14 is not engaged, and previously too, does not mean that he would not find it engaged in relation to similar requests in the future.

Right of appeal

35. 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

36. 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.
37. 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

Samantha Coward
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