

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2023

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

Decision (including any steps ordered)

1. The complainant requested information from the Financial Ombudsman Service ("the FOS") relating to a decision made by their predecessor the Personal Investment Authority Ombudsman Bureau (PIAOB), in 1999.
2. The FOS stated it did not hold any information within scope of the request.
3. The Commissioner's decision is that on the balance of probability, the FOS does not hold any recorded information in scope of the complainant's request and has complied with section 1(1) of FOIA.
4. The Commissioner does not require any steps to be taken as a result of this decision notice.

Request and response

5. On the 16 and 20 July 2022, the complainant submitted a request for information in the following terms:

"I am making a Freedom of Information Request to the FOS for a copy of the PIAOB Ombudsman Decision of 3rd of March 1999 Ref C67808D accepted in writing on 15th July 1999 to [REDACTED] at the PIAOB.

Please also supply me the name and address of the Person Organisation and all information I require including, who I can directly contact, to obtain the copies, documents, data, information, etc, that I require.

The FOS is a supporting Service of the Ministry of Justice and I find it very strange and sinister that the FOS is refusing to help me a disabled citizen."

6. On 5 August 2022, the FOS responded to the complainant stating they do not hold copies of information in scope of the request and explained the response.
7. The final position of the FOS was that it does not hold information within scope of the request.

Scope of the case

8. The complainant initially contacted the Commissioner on 20 September 2022, to complain about the way their request for information had been handled, and the case was accepted for investigation on 8 November 2022.
9. The Commissioner considers the scope of his investigation is to determine if the FOS is correct when it says it holds no information falling within scope of the request.

Reasons for decision

Section 1 FOIA - determining whether information is held

10. Section 1(1) of the FOIA states:

"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."

11. In cases where there is a dispute as to the information held by a public authority, the Commissioner will use the civil standard of proof, i.e. the balance of probabilities. In order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request.

12. Accordingly, the investigation will consider the scope, quality, thoroughness, and results of the searches, and/or other explanations offered by the Trust as to why the information is not held.

13. The Commissioner will also consider any arguments put forward by the complainant as to why the information is likely to be held (as opposed to why it ought to be held). Finally, the Commissioner will consider whether there are any further steps the public authority could be required to take if the complaint were upheld.

The complainant's position

14. The complainant has argued that: "I am entitled in law to receive all information that the FOS Had/Has access to, which included copies of the PIAOB Archives that were accessed by Mr Tilson Ombudsman as recorded in his Secret letter to Abbey Life Chris Beer. As stated here by FOS Ombudsman he looked at the PIAOB archives and stated that all the records are destroyed in 2008 where in 2022 Dame Dedre Hutton Chair of the PIAOB Council and member of the FSA and FCA for many years, has stated they are in archives in 2022."

The FOS's position

15. The FOS has said: "under Section 1 of the Act, we did not hold the information (name redacted) requested as: 'the decision was from the PIAOB, so we won't hold a copy of it. The predecessor scheme was in place before the Financial Ombudsman Service existed, and the Financial Ombudsman Service did not take on the PIAOB's case files when the Financial Ombudsman Service was set up, and it had no obligation to do so."
16. They also said they had confirmed that the paper files from the PIAOB had been destroyed in 2008, and the FOS was not legally required to keep a copy of the PIAOBs decisions, contrary to the requester's understanding. The records management department confirmed they were not obligated to take on the PIAOBs case files and are satisfied they don't hold the information requested.
17. And stated: "Given we have consulted with the appropriate colleagues, and the decision was issued before the existence of the Financial Ombudsman Service, and we did not take on the PIAOB's case files, we're satisfied the information requested is not held for the purposes of Section 1 of the Act, and that the request has been handled appropriately. I can also confirm that we have explained this to the requester a number of times."

The Commissioner's view

18. The Commissioner has carefully considered the points made and information supplied by the complainant and the FOS.
19. The Commissioner appreciates that the complainant has concerns about the way their request was handled by the FOS. However, the Commissioner considers that the FOS's responses have adequately addressed these points.
20. In addition, the Commissioner is unable to identify any further action that the FOS could reasonably be expected to take as part of its statutory obligations under FOIA in order to identify or locate any further information falling within the scope of this request. As has been set out above, if information is not held then it cannot be disclosed in response to a request.
21. In conclusion, the Commissioner finds, on the balance of probabilities, the FOS does not hold any recorded information falling within the scope of this request and has complied with its duties under the FOIA by confirming this to the requester.

Right of appeal

22. 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@justice.gov.uk

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

23. 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.
24. 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

Joanna Marshall
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