

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

### **Decision notice**

**Date:** 4 October 2023

**Public Authority:** Financial Ombudsman Service

**Address:** PO Box 73208  
London  
E14 1QQ

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

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1. The complainant has requested the Financial Ombudsman Service (FOS) to disclose some training materials. FOS refused to disclose the requested information, citing section 43 of FOIA.
2. During the Commissioner's investigation FOS decided to disclose some information to the complainant. For the remainder, the Commissioner is satisfied that section 43 of FOIA applies.
3. The Commissioner has recorded a breach of section 1 and 10 of FOIA for failing to disclose information to the complainant to which they were entitled, within 20 working days of the receipt of the request.
4. The Commissioner does not require any steps to be taken.

### **Request and response**

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5. On 18 November 2022, the complainant wrote to FOS and requested information in the following terms:
  - "the said training provided to "everyone in unconscious bias and the perceptions of bias, as well as equality, diversity and inclusion – to reinforce the importance of treating everyone equally."

- what more you have subsequently done "to reassure customers that we're fair and impartial in our dealings with everyone."
6. FOS responded on 18 December 2022. It refused to disclose the requested information citing section 43 of FOIA.
  7. The complainant requested an internal review. FOS carried out an internal review and notified the complainant of its findings on 19 January 2023. It upheld its previous application of section 43 of FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. During the Commissioner's investigation FOS decided to disclose some of the requested information to the complainant, on the basis that it accepted that section 43 of FOIA does not apply.
10. The Commissioner will now consider the remaining withheld information and whether or not section 43 of FOIA applies. He will also consider if there has been any procedural breaches of FOIA.

### **Reasons for decision**

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#### **Section 43 – commercial interests**

11. Section 43 of FOIA states that a public authority may withhold information if its disclosure would or would be likely to prejudice the commercial interests of the public authority itself and/or a third party.
12. It is also subject to the public interest test. It therefore needs to demonstrate that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.
13. FOS advised that the remaining withheld information includes training materials provided to it by a third party commercial entity on topics of active allyship, micro behaviours and inclusive language, unconscious bias, and The Equality Act (2010). It confirmed that these form part of its mandatory new starter learning and are available to staff throughout their employment.
14. It stated that the training provider has commercial terms with the subject matter experts whose content forms parts of the training

material. In return for this, those subject matter experts are paid royalties, which then restricts the third-party training provider from providing access to these courses unless under licence. FOS confirmed that their courses all attract licence fees, so disclosure outside of a licence would be likely to prejudice their revenue streams.

15. FOS stated further that the training provider operates in a competitive market and disclosure would be likely to provide the open market access to content, which would allow competitors to review that material and duplicate it at little or no cost to themselves, thereby damaging the training provider's competitive position in the market place.
16. It said that it has contacted the training provider about the request and the potential disclosure of information and it has said that disclosure would be likely to damage their commercial interests for these reasons. It informed FOS that it is very protective of its intellectual property, as on occasions, several subject matter experts are involved in a topic all of whom will receive royalties and recognition. To disclose the training material unless under licence would be likely to prejudice income streams and the training provider's professional relationships with these experts.
17. The Commissioner is satisfied that the remaining withheld information is supplied to FOS by a third party training provider under licence. That third party training provider uses subject matter experts to produce that material and for their contribution receive royalties and recognition. If the remaining withheld information was disclosed to the world at large, other organisations and competitors could access that material for free and use it for their own purposes or commercial gains. Disclosure would damage the training provider's income streams from this training material and damage the working relationship it has with the subject matter experts. It would also hinder the royalties and recognition the subject matter experts receive from the marketing of the training material.
18. For the above reasons, the Commissioner is satisfied that section 43 of FOIA applies.

### **Public interest test**

19. FOS confirmed that it recognised the public interest in the disclosure of information which would help the public gain a better understanding of its work. Disclosure would show the guidance and training provided to staff to address issues such as unconscious bias and highlight how it raises awareness around the issues of equality, diversity and inclusion. It stated there is also a general public interest in openness and transparency.

20. However, FOS reached the view that there are significant public interest factors in favour of maintaining the exemption. Disclosure would be likely to damage the commercial interests of the training provider and it does not consider this is in the public interest. Instead it considers it is in the public interest to ensure that third parties are able to protect their intellectual property and revenue streams and avoid prejudice to their ability to compete within the training and development market. In addition, it considers there is a significant public interest in allowing third party commercial organisations to protect and maintain their professional business relationships with subject matter experts and to also protect the income generation for those experts.
21. The Commissioner accepts there are public interest arguments in favour of disclosure. Disclosure would promote openness and transparency and allow members of the public to see exactly what training is provided to FOS staff in relation to unconscious bias, equality, diversity and inclusion.
22. However, he has accepted disclosure would be likely to damage the commercial interests of both the training providers and the subject matter experts. They have developed this training material and it would be unfair to disclose this under FOIA, allowing competitors and other organisations to use it for free or use it to develop their own versions. The Commissioner considers the public interest lies in protecting those third parties' ability to compete fairly and profitably within their market area and there are no significant or overwhelming public interest arguments in favour of disclosure which would warrant or justify the commercial damage disclosure would likely cause.
23. For these reasons, the Commissioner is satisfied that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.

### **Procedural matters**

24. The Commissioner notes that information (to which the complainant was entitled to receive under section 1 of FOIA) was not disclosed until late into the Commissioner's investigation. This information should have been disclosed to the complainant within 20 working days of receipt of the request (in accordance with the statutory timeframe outlined in section 10). Therefore, the Commissioner has recorded a breach of section 1 and 10 of FOIA in this case.

## Right of appeal

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25. 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)

26. 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.
27. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**