

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 October 2013

Public Authority: Financial Conduct Authority
Address: 25 The North Colonnade
Canary Wharf
London
E14 5HS

Decision (including any steps ordered)

1. The complainant made a request to the Financial Services Authority ("FSA") for any information it may hold in relation to financial recoveries made by the Receivers who had been appointed to a company in which the complainant had a substantial financial interest and was also the company Chairman. The complainant had made three previous requests between March 2008 and January 2010 in respect of matters broadly connected with this latest request and 3 additional requests for similar information had been made by two separate Members of Parliament. The FSA advised the complainant that it would not respond to the latest request as it dealt with substantially the same issues as the previous requests and was both vexatious under section 14(1) of the FOIA and repeated under section 14(2) of the FOIA.
2. The Commissioner's decision is that the FSA has correctly applied section 14(1) and (2) to the request. There are no further steps to be taken.

Background

3. The complainant was Chairman of a company which went into insolvent liquidation in the mid-1990s. The company had a loan from Lloyds TSB which was guaranteed by the complainant up to £500,000. The bank called on this guarantee and in due course obtained a substantial judgement against the complainant and started bankruptcy proceedings against him in 2003. The complainant maintains that there is a considerable amount of money missing from the receivership of his

company which he says means that his guarantee ought not to have been called upon. This dispute with the bank lasted several years.

4. The complainant has consistently sought to understand the discrepancies in what he understood to be the value of his business and the level of recoveries actually accounted for by the liquidators to the bank. As part of this process he made 3 FOIA requests over a three year period and involved his local MPs who made a further three requests. The focus of these requests appeared to be information in respect of an "investigation" which the complainant alleges the FSA carried out to look at the guarantee procedure of a bank in insolvency situations.
5. The FSA has always maintained that it has provided the information that it holds in respect of this matter. It has also stated that it did not conduct an "investigation" in the formal sense of the word but conducted enquiries as to the role of the bank in this particular situation. The complainant was not satisfied with the responses received to his requests and submitted complaints to the Information Commissioner (the "Commissioner"). The last complaint was appealed to the First Tier (Information Rights) Tribunal where the decision by the FSA not to comply with the complainant's request for information by reason of section 14(1) and 14 (2) of the FOIA was upheld.¹ The complainant attempted to appeal this decision but was refused leave to appeal to the Upper Tribunal. A subsequent appeal against the refusal by the Upper Tribunal for permission to appeal was dismissed. A later hearing for judicial review of this decision was also dismissed.
6. Since this date the complainant has pursued several avenues in an attempt to reopen issues in relation to the liquidation of his company. He has made several applications for third party disclosure in relation to the bankruptcy proceedings that were brought against him by the bank. None of these proceeding have resulted in the disclosure of any further information.
7. In June 2012 the complainant became aware, through comments made by legal representatives for the bank involved in his bankruptcy proceedings, that the bank was not aware of the amounts recovered by the liquidators, only the sums received by the bank itself. As a result the complainant made a further request to the FSA focussing on the sums recovered by the liquidators rather than the amounts received by the bank.

¹ Case No. EA/2010/0203 dated 7 June 2011

Request and response

8. On 20 December 2012 the complainant requested the following information:

"All information held by the FSA in relation to the recoveries made by [Name redacted] following the appointment of [Name redacted] and [Name redacted] of [Name redacted] as Administrative Receivers to [Name redacted]. For the avoidance of doubt please include all correspondence on this matter with the Treasury, my then MP and other Members of Parliament, and include briefing notes to [Name redacted]."
9. On 24 January 2013 the FSA provided a response indicating that all the relevant information had been provided in response to previous requests and that no further information was held. It also advised that because of the previous dealings that it had had with the complainant on this issue since 2008 it was of the view that the latest request for information was both vexatious and repeated in accordance with section 14(1) and (2) of the FOIA and would not take any further steps in respect of the request.
10. On 25 January 2013 the complainant sent an email chasing up a response from the FSA.
11. On 7 February 2013 the FSA provided a further response stating that it had already provided all the information it held. Also, as it believed no further assistance could be offered in respect of this issue it would not respond to any further communications from the complainant.
12. On the same date the complainant requested a review of the decision that had been made in respect of his request.
13. On 12 February 2013 the FSA provided a response to the request for an internal review. It advised that the initial decision was upheld. Further that as the present request for information was very similar to a previous request it would not be considering the same. It stated that this particular issue had already been considered by the Information Tribunal and the courts. Further that such a request had been considered to be repeated and vexatious. It advised that current unanswered and future requests for information on this particular issue would not be dealt with.
14. The complainant contacted the Commissioner on 28 February 2013 to advise that he was not satisfied with the response to his request.
15. On 1 April 2013 the FSA became the Financial Conduct Authority. However, for ease of reference this is referred to as the FSA throughout this notice.

Scope of the case

16. The focus of the Commissioner's investigation has been to determine whether the FSA, handled the request dated 20 December 2012 in accordance with the FOIA. Specifically, whether the FSA is justified in seeking to rely on sections 14(1) and (2) as a basis for refusing to comply with this request for information.

Reasons for decision

Section 14 - "Vexatious requests"

17. Section 14 of the FOIA provides:

"14.—(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request."

18. The Commissioner's previous published guidance² on section 14(1) (which was the current guidance at the time of the request) provided that the following five factors should be taken into account when considering whether a request can accurately be characterised as vexatious:

- whether compliance would create a significant burden in terms of expense and distraction;
- whether the request is designed to cause disruption or annoyance;
- whether the request has the effect of harassing the public authority or its staff;
- whether the request can otherwise fairly be characterised as obsessive or manifestly unreasonable; and
- whether the request has any serious purpose or value.

²http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/vexatious_and_repeated_requests.pdf

19. The guidance stated that it is not necessary for all five factors to be engaged, but explained that the Commissioner will reach a decision based on a balance of those factors which are applicable, and any other relevant considerations brought to his attention.
20. The Commissioner has recently issued new guidance³ on the application of section 14(1) and this adopts a less prescriptive approach. It refers to a recent Upper Tribunal decision⁴ which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.
21. The new guidance therefore suggests that the key question a public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. Where this is not clear, the Commissioner considers that public authorities should weigh the impact on the authority and balance this against the purpose and value of the request. Where relevant, public authorities will need to take into account wider factors such as the background and history of the request.
22. The FSA advised the complainant of its decision to treat his request as vexatious on 24 January 2013. In this letter the FSA made reference to the impact that compliance would have upon the FSA and the fact that it regarded the current request as obsessive. As part of its submissions to the Commissioner the FSA provided arguments encompassing aspects of the more recent guidance.
23. The Commissioner has therefore considered the arguments put forward by the FSA and by the complainant in light of the Upper Tribunal's view of the importance of 'proportionality' and 'justification' and has balanced this against the purpose and value of the request. Where relevant, he has taken into account wider factors such as the background and history of the request.

Background and history to this request

24. The FSA has argued that the requests of the complainant should be considered in the light of the previous requests made by the complainant on 4 March 2008, 17 January 2009 and 13 January 2010; together with requests made by MPs on his behalf on 4 November 2008,

³http://www.ico.org.uk/for_organisations/guidance_index/~//media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

⁴ *Information Commissioner vs Devon County Council & Dransfield* [2012] UKUT 440 (AAC) (28 January 2013)

26 November 2008 and 11 December 2008. It argues that the content of the complainant's current request is simply a way to reopen issues that have already been reviewed by way appeal to the First Tier (Information Rights) Tribunal (7 June 2011) and by the Upper Tribunal (Administrative Appeals Chamber) (8 September 2011 and 19 March 2012) – when leave to appeal and permission to appeal against the refusal of leave to appeal to the Upper Tribunal was refused.

25. It further submitted that the decision of the Upper Tribunal was also considered by way of Judicial Review and dismissed (18 December 2012) and that several applications for disclosure of documents in bankruptcy proceeding, which covered essentially the same information as that requested under the FOIA, were dismissed.
26. The FSA advised the Commissioner that because of its past experience with the complainant on this issue it is of the opinion that the complainant will never be satisfied with the outcome of any information provided. Its view is that he will continually seek to ask questions for the sole purpose of reopening the debate on the issue of the "investigation" that he believes the FSA conducted when the issue of accountability of sums recovered in the liquidation of his company was raised.
27. The FSA has argued that any responses lead to further correspondence and the complainant does not accept that all information held within the scope of the request of this matter has been provided. This is despite the finding of the courts and Tribunals on several occasions. The FCA states this demonstrates obsessive and unreasonable behaviour on the part of the complainant - that it is unlikely that any response would end the exchange of correspondence or communication.
28. The Commissioner is aware from communications with the complainant that he is of the belief that an "investigation" or significant enquiries were undertaken by the FSA into the process of the liquidation of his company. He maintains that there are issues in the way his insolvency was handled by the receivers and in the way it accounted for or did not account for sums that were recovered.
29. From the investigation undertaken in respect of this request it is noted that, on becoming aware that the bank did not know the exact amount of monies recovered by the liquidators, he made a further request for information. This focussed on any enquiries the FSA could potentially have made of the liquidators themselves which may have clarified the monies actually recovered, the sums provided to the bank and the costs incurred in the process. The FSA maintains that this request is a substantially similar request to the previous requests.

Unreasonable persistence/ Serious purpose or value

30. The FSA has argued to the Commissioner that the complainant has received all the information that it holds in relation to the liquidation of his company and that the appeals process that has been conducted has found that there is no merit in this matter being pursued. The FSA is of the view that the current request for information represents an unreasonable persistence on the part of the complainant which lacks serious value or purpose to the public at large. It maintains that the complainant has received all the information that is held in respect of the enquiries that it made into this matter.
31. The Commissioner appreciates that this is a serious issue for the complainant and one upon which he is firmly of the belief that the liquidators concerned have not been held to account properly for the sums that it recovered from the liquidation of his company. This is evident from the information provided to the Commissioner by the complainant.
32. The Commissioner is also mindful that issues in relation to how liquidators account for or not account for monies received in liquidation proceedings to the interested parties is of a wider public interest, given the issues within the financial sector in recent years.
33. In this case there have been 7 requests over 3 ½ years and there was a gap of nearly 2 years between the last two requests. However the request of 13 January 2010 was still a live issue until 18 December 2012 when the application for judicial review was refused. The Commissioner considers that the request of 20 December 2012 represents an attempt on behalf of the complainant to reopen issues that have already been reviewed on several occasions by various regulatory bodies.
34. The Commissioner is satisfied, having considered the documentation provided to him, that the circumstances of the complainant's situation have been already considered at length by the FSA and that it has been concluded that no further information is held by the FSA and no action is required. In particular, the First Tier (Information Rights) Tribunal concluded that it was satisfied that there was no "investigation" as suggested by the complainant and that there was no evidence that information existed to suggest there was a document containing a calculation of the banks' losses supplied to or created by the FSA.
35. Taking these factors into account, the Commissioner is satisfied that whilst the general issue of accountability of financial bodies has serious purpose or value to a wider audience other than to the complainant, in this case the issue of whether the FSA holds further information in

relation to this request has already been fully explored on several occasions previously.

Detrimental impact: workload, irritation and distress

36. The FSA has put forward the argument that the amount of time, effort and resources spent on the complainant has been unduly excessive in respect of the FOIA requests made. The FSA argued that a considerable amount of time had been taken up dealing with the appeals to the Commissioner in respect of the requests and then the subsequent appeals that were undertaken in respect of the issue up to and including judicial review which was concluded two days before the current request. In relation to the applications for disclosure within the bankruptcy proceedings the FSA was also required to submit evidence and attend court to give evidence.
37. The FSA contends that, given the complainant will not accept the limited extent of its involvement and maintains that an "investigation" did occur it would prove an unacceptable burden upon the use of its resources given the amount of time and resource already allocated to deal with this one issue since 2007. The FSA has advised that it has considered this a closed issue since 2007, and further time spent covering the same issue which has already been considered on several occasions is an unreasonable drain on its resources and diverts it from dealing with other requests.
38. Whilst the Commissioner understands the complainant is firmly of the view that the process involved in the liquidation of a company's assets should be subject to independent scrutiny and accountability, he is satisfied that the present request represents an attempt to cover substantially similar issues which have already been considered on several occasions by both the Commissioner, the Tribunal and also the courts.
39. For this reason the Commissioner is satisfied that responding to the request is likely to cause an unjustified level of irritation to the FSA as it is very unlikely that the complainant will be satisfied by any response he receives from the FSA on this particular issue.
40. The Commissioner accepts that to deal with this request would be a burden on the resources of the FSA moving forward as the complainant seems unable to accept that no further information is held by the FCA.

Section 14(2) – Repeated requests

41. The Commissioner's guidance in respect of repeated requests provides as follows:

Requests can be refused on the basis of section 14(2) if:

- It is made by the same person as a previous request;
 - It is identical or substantially similar to the previous request; and
 - No reasonable interval has elapsed since the previous request.
42. In this matter the complainant has made 4 separate requests himself about substantially the same issue with three further requests being made on the same issue on his behalf by MPs.
43. The issue of section 14(2) was considered by both the First Tier (Information Rights) Tribunal and the Upper Tribunal which both decided that the request of 13 January 2010 was a repeated request.
44. The current request dated 20 December 2012 asked for information in relation to all "recoveries" made by the liquidators which covers information required in the earlier request dated 13 January 2010. This earlier request asked for information the FSA held in respect of the "investigation" it had carried out into the actions of the bank in the insolvency matter of the complainant.
45. The Commissioner is of the view that the request concerns substantially similar issues and although the last request was 13 January 2010 this matter was still a "live" issue until the conclusion of the judicial review on 18 December 2012. Accordingly the Commissioner is of the view that, in the circumstances, no reasonable interval has elapsed since the previous request and therefore the request of 20 December is a repeated request.

Conclusion

46. The Commissioner therefore considers that the FSA was correct in its approach. However having considered the evidence provided the Commissioner is of the view that section 14(1) and (2) FOIA are the appropriate exemptions to be applied in this case. No further action is required on the part of the FSA.

Right of Appeal

47. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

48. 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.
49. 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

Rachael Cragg
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF