

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 July 2014

Public Authority: Financial Ombudsman Service
Address: South Quay Plaza
183 Marsh Wall
London
E14 9SR

Decision (including any steps ordered)

1. The complainant has requested a copy of the Financial Ombudsman Service (FOS) Knowledge and Information Toolkit.
2. The Commissioner's decision is that the FOS has correctly applied section 14(1) of the FOIA.
3. The Commissioner therefore does not require the FOS to take any steps to ensure compliance with the legislation.

Background and previous request

4. In response to a complaint submitted by the complainant to the FOS (FOS), it sent her a copy of its Adjudicator's assessment on 18 December 2012 explaining why it considered it to be frivolous. This was followed by a decision by its ombudsman on 28 February 2013 setting out in detail why the FOS had concluded that the complaint was frivolous.
5. On 18 January 2013 the complainant requested;

'I wish to be provided with "Knowledge Information Toolkit" which the FOS refers to in order to decide if a complaint is frivolous or vexatious under DISP¹ rule 3.3.4(2) as in the above 'closed' case being clearly consulted by Adjudicator in order that I might better understand FOS rationale.'

6. The FOS responded on 29 January 2013 and stated that it did not hold any recorded information falling within the scope of the complainant's request. However, it added that if she had any specific questions about her complaint or the way it was handled she might get a more timely response if she contacted the Adjudicator direct.
7. On 31 January 2013 the FOS upheld its original decision following an internal review and pointed out that it did hold a 'Knowledge and Information Toolkit' containing notes dealing with a variety of topics but there was no note for case handlers on how to process complaints considered to be frivolous or vexatious.
8. Following the Commissioner's intervention in April 2013, the FOS supplied him with a link to its online technical resource² setting out its general approach to the types of complaints it regularly receives.
9. The Commissioner provided the complainant with details of this link who responded on 18 April 2013 by stating that it was not adequate and what she wanted was the detailed version of the internal guidance used by FOS which was not available to the public.

Request and response

10. On 19 April 2013 the Commissioner wrote to the FOS on behalf of the complainant stating that she wished to make a new clarified request for its;

'Knowledge and Information Toolkit, used as internal complainants handling guidance by the FOS'.

¹ Dispute Resolution: Complaints (DISP) <http://fshandbook.info/FS/html/handbook/DISP>

² <http://www.financial-ombudsman.org.uk/publications/technical.htm>

11. The FOS responded on 13 May 2013. It stated that it was withholding the Knowledge and Information Toolkit under the exemption in section 36(2)(c) of the FOIA on the grounds that, in the reasonable opinion of a qualified person, disclosure would be likely to prejudice, the effective conduct of public affairs with the public interest balanced in favour of maintaining the exemption. It did however provide various links to its website including one for its online technical resource which sets out its usual approach to handling disputes.
12. On 13 May 2013 the complainant requested an internal review.
13. Following an internal review on 11 June 2013 the FOS wrote to the complainant and stated that it was upholding its original decision to withhold the requested information under section 36(2)(c) of the FOIA. It pointed out that much of its Knowledge and Information Toolkit was already available to the public in its online technical resource. Furthermore, in addition to the exemption under section 36(2)(c) of the FOIA, the FOS said that it was also applying the exemptions in sections 40(2)-personal information, 31(1)(a)-law enforcement and 21(1)-information reasonably accessible.

Scope of the case

14. The complainant contacted the Commissioner on 11 June 2013 to complain about the way her request for information had been handled. In particular, the FOS's decision to withhold the Knowledge and Information Toolkit in its entirety under sections 36(2)(c), 40(2), 31(1)(a) and 21(1) of the FOIA.

Chronology

15. On 17 September 2013 the Commissioner wrote to the FOS and requested an annotated copy of the Knowledge and Information Toolkit showing which exemptions had been applied and to which parts together with further information regarding the qualified person's opinion.
16. The FOS responded by telephone on 25 September 2013 stating that it would take a considerable amount of time and effort to review and annotate the Knowledge and Information Toolkit showing which exemptions applied and to which parts. It therefore suggested that it provide a representative sample of the Knowledge and Information Toolkit together with a copy of the complete index. The Commissioner responded on 25 September stating that this was acceptable.

17. On 25 October 2013 the FOS provided the Commissioner with the complete index for the Knowledge and Information Toolkit together with 7 annotated notes from it and the qualified person's reasonable opinion.
18. In its response dated 25 October 2013 the FOS pointed out that the Knowledge and Information Toolkit consisted of 131 notes and added that there was an ongoing project to review its content and migrate as much information as possible from it to its online technical resource. It said that this was an ambitious task and whilst well advanced, it was going to take several months to complete in view of its complexity and volume and the number of departments involved.
19. Having re-visited the request following the Commissioner's intervention, the FOS also stated that, in addition to the exemptions already cited, it also wished to rely on section 14(1) of the FOIA. This was because the value or purpose of the request was not (in its opinion) sufficient to outweigh the grossly oppressive burden placed on its limited resources by complying with it.
20. The FOS explained that the grossly oppressive burden was due to the time and effort it would take to review and annotate the Knowledge and Information Toolkit which it estimated to be somewhere in the region of 156 hours. This was calculated on the basis that it took 6 hours to review and annotate 7 notes and therefore to complete the task for the remaining 124 notes would take an additional 150 hours.
21. On 25 November 2013 the Commissioner made the complainant aware that the FOS was now relying upon section 14(1) of the FOIA in addition to the exemptions cited in its internal review response and asked her whether she still wanted to pursue her complaint.
22. The complainant responded the same day stating that she did not believe her request was vexatious and said that disclosure of the complete Knowledge and Information Toolkit would allow complainants to decide whether a particular concern fell within the FOS's investigation scope and if so whether it was likely to be upheld or not.
23. On 26 November 2013 the Commissioner wrote to the FOS again to request further clarification as to how it arrived at its estimate of 6 hours to review and annotate 7 of the 131 notes making up the Knowledge and Information Toolkit.
24. The FOS responded on 11 December 2013 and said it stood by original its estimate of 156 hours to review and annotate the Knowledge and Information Toolkit. It reiterated its view that the task was a substantial one placing an oppressive burden on its limited resources.

25. On the 8 May 2014 the Commissioner informed the complainant that the FOS was maintaining its position in this matter and asked her whether she still wishes to continue with the complaint.
26. On 9 May 2014 the complainant confirmed that she wished to continue with her complaint and on 15 May the Commissioner wrote to the FOS requesting a complete copy of the Knowledge and Information Toolkit.
27. On 10 June 2014 the Commissioner received a large box containing a complete copy of the Knowledge and Information Toolkit.

Reasons for decision

28. The FOS has applied the section 14(1) of the FOIA in addition to the exemptions under sections 21(1), 31(1) and 40(2) to justify its decision to withhold the requested information in its entirety. The Commissioner will now consider each section in turn.

Section 14 – Vexatious Requests

29. Section 14 (1) of FOIA states that a public authority is not obliged to comply with a request for information if it is vexatious.
30. The term “vexatious” is not defined within FOIA. However, it has been considered in the recent case of *The Information Commissioner and Devon County Council vs Mr Alan Dransfield (GIA/3037/2011)*³ which concluded that the term could be defined as “*manifestly unjustified, inappropriate or improper use of a formal procedure*”.
31. The *Dransfield* case identified four factors that are likely to be present in vexatious requests, although it did note that this list is not intended to be exhaustive or a formulaic checklist:
 - the burden imposed by the request (on the public authority and its staff)
 - the motive of the requester

³ <http://www.osscsc.gov.uk/Aspx/view.aspx?id=3680>
[http://www.osscsc.gov.uk/judgmentfiles/j3680/\[2013\]%20AACR%2028ws.doc](http://www.osscsc.gov.uk/judgmentfiles/j3680/[2013]%20AACR%2028ws.doc)

- harassment or distress caused to staff
 - the value or serious purpose of the request
32. The Tribunal urged that anyone considering whether a request could be considered vexatious should take a broad "holistic" approach to consider any other factors that are relevant to the request. It also confirmed that a single factor could be appropriate to refuse a request if the weight of evidence for it was sufficient.
33. In its responses to the complainant the FOS applied factors very similar to those listed above in order to illustrate why it felt it was correct to refuse the request as vexatious.

Burden imposed by request

34. The Commissioner's guidance states that: "a request which would not normally be regarded as vexatious in isolation may assume that quality once considered in context. An example would be an individual placing a significant strain on an authority's resources by submitting a long and frequent series of requests, and the most recent request, although not obviously vexatious in itself, is contributing to that aggregated burden."
35. The guidance also states that a requester's past pattern of behaviour may also be a relevant consideration. For instance, if an authority's experience of dealing with his previous requests suggests that he is unlikely to be satisfied with any response and will submit further follow-up correspondence, then this evidence could strengthen any argument that responding to the current request will impose a disproportionate burden on the authority. The Commissioner has weighed the evidence put forward by the FOS in this case against his guidance.
36. The request being investigated by the Commissioner which is the subject of this Decision Notice is the second one submitted to the FOS on 19 April 2013 for a complete copy of its Knowledge and Information Toolkit.
37. The FOS has provided the Commissioner with a complete and un-redacted copy of the Knowledge and Information Toolkit which it has pointed out comprises of 131 notes on a variety of topics running to in excess of 1,500 pages. It has also provided the Commissioner with a redacted copy of 7 of the notes which it explained took 6 hours to review. Based on this actual calculation it estimated that to review the remaining 124 notes (comprising of 1,493 pages) to see which exemptions under the FOIA applied would take an additional 150 hours, making a total for the complete exercise of 156 hours. The FOS has argued that this exercise would be a substantial task and one which would place a grossly oppressive burden on its limited resources.

38. To gain a better understanding as to the magnitude and difficulty of the exercise the Commissioner invited to the FOS to explain how easy it would be to isolate the exempt from the non-exempt information. For example, he asked whether it would be necessary for it to view each and every note in the Knowledge and Information Toolkit. He also asked for the FOS's further arguments as to why it believed the complete exercise would place an excessive burden on its resources.
39. The FOS responded by giving the following reasons why it considered that to review the remaining 124 notes in the Knowledge and Information Toolkit would place a grossly oppressive burden on its limited resources;
 - a. Its Information Rights Department did not possess sufficient resources and technical expertise to be able to review the remaining 124 notes unaided, whilst still meeting its statutory obligations to other requestors.
 - b. It suggested that a partial solution to the above problem might be to involve senior colleagues from its casework departments, who were technical experts in their own areas. However, this would divert attention away from the primary aspects of their roles and the FOS's statutory aim to resolve cases quickly and informally at a time when it was receiving an ever-growing number of complaints.
 - c. In any event, it said that the information rights team (consisting of two full-time officers) would still need to exercise oversight of the review and ensure that any exemptions were applied reasonably and in accordance with the provisions of the FOIA, which coupled with its existing workload would not be achievable. The FOS said that it would be almost inevitable that it would miss multiple statutory deadlines by solely focusing on the complainant's request.
 - d. Finally, it added that the FOS was already proactively reviewing the Knowledge and Information Toolkit as part of a project to migrate as much information as possible to the online technical resource on its website. The FOS pointed out that a considerable amount of time and resources had already gone into this project and the most efficient use of its resources would be to allow this project to run its course.

Motive of the requestor

40. The complainant has made it clear in her correspondence with the Commissioner that her motive for requesting the entire Knowledge and

Information Toolkit is to enable complainants to decide whether a particular concern falls within the FOS's jurisdiction and if so whether it's likely to be upheld or not.

Harassment or distress to staff

41. The FOS has not advanced any specific arguments to suggest that the complainant's request has caused distress to members of its staff. However, it is possible that if it was to deal with it under the FOIA this would involve a substantial amount of work which given the wider context and history of this matter might be perceived by the FOS to be harassing.

Value or serious purpose of request

42. The FOS has argued that the purpose and value the complainant's request appears to be very limited. This is because in her first request submitted in January 2013 she asked for the note or section of the Knowledge and Information Toolkit that the adjudicator referred to when deciding whether her complaint was frivolous or vexatious. The FOS responded by stating that it did not hold this information but the basis for outcome of her complaint was clearly set out in the adjudicator's assessment and the Ombudsman's final decision. The FOS also provided her with a link to the FSA Handbook that its adjudicators are expected to refer to and pointed out that they were free to consult senior colleagues if they required further guidance. Taking this into account and the fact that the FOS has dismissed 11 of her complaints in the past as frivolous, explaining the reasons why on each occasion, it is unclear as to the value or purpose of her current request especially as it has advised her that the Knowledge and Information Toolkit does not contain any guidance in relation to frivolous or vexatious complaints.
43. The FOS has also pointed out to the complainant that its online technical resource, which is publicly available on its website, contains much of the information already in the Knowledge and Information Toolkit. Furthermore, it has directed her to its online consumer factsheets⁴ and the Ombudsman News⁵ which explains how it deals with complaints. The FOS believes that this information which it makes publically available on its website is sufficient to inform and educate the public and

⁴ <http://www.financial-ombudsman.org.uk/publications/factsheets/index.html>

⁵ <http://www.financial-ombudsman.org.uk/publications/ombudsman.htm>

organisations as to the type of complaints it handles and the likely outcomes.

44. The complainant on the other hand has argued that her request does have value and purpose because disclosure of the complete Knowledge and Information Toolkit would allow complainants to decide whether a particular concern fell within the FOS's investigation scope and if so whether it would be upheld.
45. The Commissioner accepts the arguments put forward by the FOS as to why the complainant's current request lacks significant value and purpose. He believes that the information the FOS makes publicly available through its website is sufficient to inform and educate the public and organisations alike as to the type of complaints it handles and likely outcomes. It does not believe that the disclosure of the complete Knowledge and Information Toolkit would add any great value to the information already publicly available.

Conclusion

46. After considering the arguments put forward by both the complainant and the FOS, together with the context in which the request was made and the evidence supplied, the Commissioner's decision is that the request is vexatious. The Commissioner accepts the evidence provided by the FOS that to comply with the complainant's request would cause a significant burden upon its limited resources in terms of the time and costs to review the entire Knowledge and Information Toolkit to decide which parts required redaction and under which FOIA exemptions.
47. Furthermore, the Commissioner has considered the complainant's motive for making her latest request and is not persuaded that it has any great value or purpose in the context and history of her dealings with the FOS in relation to the disclosure of the entire Knowledge and Information Toolkit. The Commissioner accepts that the information which the FOS makes publicly available on its website is sufficient to inform and educate the public and organisations as to the type of complaints it handles and the likely outcomes. This information includes its online technical resource (which makes reference to and includes a lot of the text taken from the Knowledge and Information Toolkit) its consumer factsheets and the Ombudsman News, all of which explain how the FOS deals with complaints. The Commissioner does not believe that disclosing the entire Knowledge and Information Toolkit will add any great value to the information already publicly available. Furthermore, any value of the complainant's request would not be sufficient to justify the impact on the FOS in responding to it in terms of the diversion of its resources.

48. The Commissioner believes it is reasonable for the FOS to take steps to limit the amount of resources it spends on the complainant's request. He therefore finds that section 14(1) of the FOIA does apply and the FOS was not obliged to comply with her request.

Sections 21(1), 31(1) and 40(2) of the FOIA

49. As the Commissioner is satisfied that section 14(1) has been properly applied in this case he has not gone on to consider the exemptions under sections 21(1), 31(1) and 40(2) of the FOIA.

Right of appeal

50. 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: GRC@hmcts.gsi.gov.uk

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

51. 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.

52. 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
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Wycliffe House
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SK9 5AF**