

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 January 2014

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

Decision (including any steps ordered)

1. The complainant has requested information broadly concerning the nationalisation of Bradford and Bingley. This followed a number of previous requests of a substantially similar nature which the Financial Conduct Authority (FCA) had previously explained the information was not held. The request was refused by the FCA on the grounds that section 14(2) applied; that the request was a repeated request.
2. The Commissioner considers that the FCA's application of section 14(2) was correct. The Commissioner does not require any steps to be taken.

Request and response

3. For information, from 1 April 2013, the Financial Services Authority was succeeded by the FCA. There is a reference to the predecessor in the complainant's request.
4. On 6 June 2013, the complainant wrote to the FCA and requested information in the following terms:

"What advice was any department of the FSA giving in respect of B&B's financial viability during that period [1 August 2008 to 19 September 2008] and what input did it have in respect of reassuring statements used by the B&B board?"
5. The FCA responded on 3 July 2013. It stated that the request was repeated and therefore it applied section 14(2).

6. Following an internal review the FCA wrote to the complainant on 25 July 2013. It upheld its previous decision that section 14(2) applied.

Scope of the case

7. The complainant contacted the Commissioner on 5 August 2013 to complain about the way his request for information had been handled. The complainant believes that the FCA holds a copy of a telephone recording where reassurances were given to members of the public. The complainant therefore argues that the information is held.
8. The Commissioner notes that although the complainant believes the information is held, his investigation focused on whether the request was repeated.
9. The Commissioner has therefore had to consider whether the exemption in section 14(2) applies to the request or whether the FCA is under a duty to respond to the request.

Reasons for decision

10. Section 14(2) of the Act states that

"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 for that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request".

11. The FCA noted that since May 2012 the complainant had submitted eight separate requests, six of which were substantially similar to each other. These six requests concerned reassuring statements about the nationalisation of Bradford and Bingley by the FCA to members of the public.
12. 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.
13. The Commissioner has therefore considered each of these aspects in turn.

Are the requests made by the same person?

14. The Commissioner notes that all the requests were made by the same person.

Is the request identical or substantially similar to the previous requests?

15. The Commissioner considers that a request will be substantially similar to a previous request if a public authority would need to disclose substantially similar information to respond to all requests, even if the wording of the request is not identical.

16. In this case, the wording of the previous requests detailed in paragraph 15 is as follows:

- 28 May 2012 – On the 25/09/2008 B&B issued a press release agreed with the FSA and the Bank of England, just two working days before the nationalisation, stating it was well capitalised and fit for purpose. Please provide the FSA's records in respect of this statement.
- 4 March 2013 – On what date did officers of the FSA cease confirming the financial viability of B&B to members of the general public?

B&B issued a positive press release on the 25th September 2008, was this approved by the FSA?

- 20 March 2013 – Was the public statement issued by the Bradford and Bingley on 25 September 2013 approved by the FSA?
- 4 April 2013 – We have evidence that officers of the FSA were reassuring members of the public on the telephone during the w/e 21/09/2008 re the financial viability of B&B

Are you suggesting that the FSA had no knowledge of the B&B press release on the 25/09/2008?

- 19 April 2013 – Thank you for your reply in which you state that you have no records of reassuring the public during the weekend 21/09/08. Nevertheless there must be some records of reassuring comments to the public by the Consumer Contact Centre, please advise me when these ceased under the FOIA.
- 20 May 2013 – The FSA (FCA) appears to be stating that it has no records of reassuring the general public by the CCC in respect

of B&B for the six working days prior to the decision to nationalise B&B by Gordon Brown on the 26/09/08. Is this correct and if so was there any other FSA department which gave advice to the public in this matter during that period.

Did the CCC offer reassurance to the public regarding B&B's financial viability from early August 2008 after the successful completion of the rights issue to the 19/09/08?

17. The Commissioner appreciates that the wording of the above requests are not identical. However he understands that the information requested is of substantially similar nature. The Commissioner also understands that the FCA has fully considered the requests at paragraph 16 and it had confirmed on a number of times that it did not hold any information within the scope of these requests.

Has a reasonable interval elapsed since the previous request?

18. What constitutes a reasonable interval will depend on the circumstance of the case including how likely the information is to change, how often records are updated and any advice previously given to the requester.
19. In this case, other than the first request, all the subsequent requests were made within a small time period of each other and as the FCA has confirmed on a number of times the information is not held, the Commissioner considers that no reasonable interval has elapsed since the previous requests.
20. Taking into consideration the above, the Commissioner considers that the FCA correctly applied the exemption for repeated requests at section 14(2) of the FOIA

Right of appeal

21. 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

22. 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.
23. 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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