

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 April 2014

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

Decision (including any steps ordered)

1. The complainant requested information about individuals employed by the Financial Ombudsman Service. The Financial Ombudsman Service withheld the information, citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so.
2. The Commissioner's decision is that the Financial Ombudsman Service has correctly applied this exemption and does not need to take any further action.

Request and response

3. On 11 July 2013 and as part of a wider information request, the complainant wrote to the Financial Ombudsman Service (FOS) and requested the following information:
 - 20 *Financial qualifications, financial institution membership, career background and complaint history of [Named Individual 1] ombudsman.*
 - 21 *Financial qualifications, financial institution membership, career background and complaint history of [Named Individual 2] - adjudicator.*
 - 22 *Name of the person, position and qualifications of the person(s) who peer reviewed the original adjudicator's decision to uphold my case against JDP.*

23 *The date [Named Individual 3] – adjudicator left the Financial Ombudsman Service and the reasons given why?*

4. FOS responded on 16 July 2013. It disclosed some information within the scope of the request (a link to its website where some information relating to Named Individual 1 is published) and refused to disclose the remainder, citing the exemption under section 40(2) of the FOIA (third person personal data).
5. Following an internal review, FOS wrote to the complainant on 6 January 2014. It upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner on 6 November 2013 to complain about the way their request for information had been handled.
7. The Commissioner has focussed his investigation on whether FOS correctly applied the exemption under section 40(2) to the complainant's request.

Reasons for decision

8. Section 40(2) of the FOIA says that information is exempt from disclosure if it is the personal data of a third party (ie someone other than the requester) and the conditions under either section 40(3) or 40(4) are also satisfied.
9. The Commissioner therefore first considered whether the requested information is the personal data of a third party.
10. The Data Protection Act (DPA) defines personal data as '*...data which relate to a living individual who can be identified... from those data and other information which is in the possession of...the data controller*'.
11. The Commissioner is satisfied that the individuals concerned could be identified if their financial qualifications, financial institution membership, career background, complaint history, name, position, leaving date and reason for leaving FOS were to be released, and that the requested information is therefore the personal data of the individuals concerned.
12. Having decided that the requested information is third party personal data, the Commissioner then turned his attention to the conditions under section 40(3).

13. The first condition under section 40(3)(a)(i) says that personal data is exempt from disclosure to a member of the public if doing so would contravene one of the data protection principles set out in Schedule 1 of the DPA. The Commissioner considered whether FOS was correct when it argued in its submission that disclosing the information would breach the first data protection principle: that personal data '*shall be processed fairly and lawfully...*'.
14. When considering whether disclosure would be unfair, and so breach the first principle, the Commissioner took three factors into account:
 - What reasonable expectation do the individuals have about what will happen to their personal data?
 - Have the individuals given their consent to disclosure?
 - What might be the likely consequences resulting from disclosure?
15. Assessing fairness however, also involves balancing the individuals' rights and freedoms against the legitimate interest in disclosure to the public. It may still be fair to disclose the information if there is an overriding legitimate interest in doing so. The Commissioner therefore also finally considered these interests.
16. Expectation: Whether an employee might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to the employee in their professional role or to them as individuals, the individual's seniority or whether they are in a public facing role.
17. The information in this case concerns individuals employed by FOS in professional roles of different levels of seniority. FOS accepts that there is likely to be some public interest in its ombudsmen – Named Individual 1's role – as they are senior staff members who make legally binding decisions. It therefore publishes background information about them on its website, to which the complainant was directed in relation to element 20 of their request.
18. FOS has argued that while Named Individual 1 would therefore expect that some of their personal information would be published, they would not expect the specific information the complainant has requested to be released. And FOS has argued that the remaining named individuals would not expect any of their personal information to be released because they are not in senior roles. The Commissioner is prepared to accept these arguments.
19. Consent: All the named individuals consented to FOS processing their personal information as part of its usual personnel procedures. In addition, and as explained at paragraph 17, Named Individual 1 has

consented to FOS publishing some background information about them on its website. FOS has told the Commissioner that Named Individual 1 has not, however, consented to further information about them being made publicly available, and that the remaining named individuals have not consented to any of their personal information being released to the world at large (which release under the FOIA potentially triggers).

20. Consequences of disclosure: Disclosure is unlikely to be fair if it would have unjustified adverse effects on the employees concerned. Although employees may regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life. If an authority wishes to claim that disclosure would be unfair because of the adverse consequences on the employees concerned, it must be able to put forward some justification for this claim.
21. FOS maintains that disclosing the requested information might have an adverse consequence, on Named Individual 1 in particular, as releasing the information requested about the individuals – without any context – could potentially damage their reputation.
22. FOS has told the Commissioner that all its staff members are fully trained in the product area they deal with and that their performance is monitored and evaluated. FOS argues that qualifications alone do not determine an individual's ability to deal with complaints. In the case of Named Individual 1, without a similar level of information being available about other ombudsmen in other sectors for comparison, consumers who bring complaints to FOS may therefore judge Named Individual 1's ability unfairly. The Commissioner considers that this possible consequence of disclosure is credible.
23. Legitimate interest in disclosure to the public: Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
24. As detailed in paragraph 17, FOS accepts there may be some interest in its ombudsmen and accordingly, publishes some background information about them on its website. However, it does not accept there is a wider

public interest in disclosing additional personal information about its senior staff, or any personal information about its less senior staff.

25. The Commissioner accepts that there is a legitimate interest in overall transparency in the way a public authority such as FOS conducts its business. However, there is no presumption that this should automatically take priority over personal privacy. The Commissioner judges each case on its merits.
26. In this case, the Commissioner is not convinced that the specific information requested, while of significant interest to the complainant, is of sufficient wider public interest to warrant overriding the protection of the third party personal data of those concerned.
27. Having considered FOS's submission and the views of the complainant he is satisfied that the complainant's arguments for disclosing the specific information in this case are not as compelling as those that FOS has put forward for protecting the individuals' personal data, namely:
 - the individuals' likely expectations about how their personal data will be managed, implicit in their roles as FOS employees;
 - the individuals' lack of consent to its release; and
 - the possible negative consequences to the individuals of releasing the information.
28. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the data subjects and that it would not be fair to disclose the requested information in this case. Consequently, the Commissioner considers that section 40(3)(a)(i) could be applied to this request, and that FOS is correct to withhold the information.
29. He did not therefore go on to consider any of the other conditions under section 40(3) or 40(4).

Right of appeal

30. 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

31. 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.
32. 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

Pamela Clements
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