

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 8 April 2014

**Public Authority:** The Financial Reporting Council Limited

**Address:** Aldwych House  
71-91 Aldwych  
London  
WC2B 4HN

#### Decision (including any steps ordered)

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1. The complainant has requested information from the Financial Reporting Council (the "FRC") in connection with the proposed Statement of Recommended Practice ("SORP") – Financial Statement of UK Authorised Funds.
2. The FRC withheld the information requested as it was outside the scope of the FOIA.
3. The Commissioner's decision is that the FRC is entitled to determine that the requested information was outside the scope of its responsibilities under FOIA.

#### Request and response

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4. On 19 November 2013, the complainant wrote to FRC and requested information in the following terms:
  - (i) *"A copy of ALL comments (except those in which confidentiality was not requested at the time of submission), in connection with the SORP detailed above. Should the FRC not have in its possession a copy of all comments made in connection with the proposed SORP, it should urgently request such information formally to the IMA as clearly specified within the SORP 2013 invitation to comment document in order for the FRC to fulfil its own stated code of practise."*
  - (ii) *A copy of any communications including any emails or meeting notes between the FRC and the IMA in connection with the SORP detailed*

*above since 1st January 2013 including any discussions whether internal or external on the accounting merits of the proposed SORP. The FRC stipulates that "An extant SORP must carry a statement by the FRC confirming, as appropriate, that the SORP does not appear to contain any fundamental points of principle that are unacceptable in the context of current accounting practice or to conflict with an accounting standard."*

*(iii) A copy of any documents, procedures or other information setting out the process by which a SORP can be legally challenged as alluded to by an email sent by the FRC Chief Executive dated 9th August 2013 to Alan Miller in which he states that "It is worth noting that legally a SORP cannot override a standard".*

5. The FRC responded on 16 December 2013. It stated that the FOIA does not apply to the information requested by the complainant and directed him to the Investment Management Association (IMA).
6. Following an internal review the FRC wrote to the complainant on the same day. It confirmed that on publication of the relevant SORP, it would provide the complainant with the information he requested.
7. On 21 January 2014 the FRC upheld its decision to withhold the information requested as it does not fall under the FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 23 January 2014 to complain about the way his request for information had been handled.
  9. Therefore the Commissioner has to consider whether the FRC correctly withheld the requested information based on the FRC's limited designation under the FOIA.
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## Reasons for decision

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### Section 5 Further power to designate public authorities

10. Section 1(1) of FOIA creates a general right of access to information held by public authorities. It states that:

*"Any person making a request for information to a public authority is entitled –*

*to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*if that is the case, to have that information communicated to him."*

11. Section 3 of FOIA states:

*"(1) In this Act "public authority" means—*

*(a) subject to section 4(4), anybody which, any other person who, or the holder of any office which—*

*(i) is listed in Schedule 1, or*

*(ii) is designated by order under section 5, or*

*(b) a publicly-owned company as defined by section 6."*

13. The Commissioner considers that section 3(1)(a)(ii) (designation by order under section 5) is relevant in this case.

14. Under section 5 of FOIA the Secretary of State can, by order, designate bodies as public authorities. These are bodies that appear to be exercising functions of a public nature or who are providing, under contract with a public authority, any service whose provision is a function of that authority. This is the means by which bodies that are not listed in Schedule 1, and cannot be added to that Schedule by order under section 4, are brought under the provisions of FOIA.

15. Section 7(5) of FOIA states:

*"An order under section 5(1)(a) must specify the functions of the public authority designated by the order with respect to which the designation is to have effect; and nothing in Parts I to V of this Act applies to information which is held by the authority but does not relate to the exercise of those functions".*

*The FRC's designation as a public authority*

Part 42 Companies Act 2006

16. The FRC is designated as a public authority under section 5 of the FOIA in relation to its exercise of those statutory functions delegated to it under Part 42 Companies Act 2006 (section 1252(3)) and the exercise of the functions pursuant to its appointment as the Independent Supervisor (section 1228(3)).
17. The main purposes of Part 42 of the Companies Act 2006 are:
  - (a) to secure that only persons who are properly supervised and appropriately qualified are appointed as statutory auditors, and
  - (b) to secure that audits by persons so appointed are carried out properly, with integrity and with a proper degree of independence.
18. The FRC's statutory responsibilities under Part 42 are:
  - independent oversight of the regulation of statutory auditors by the recognised supervisory and qualifying bodies;
  - independent supervision of Auditors General in respect of the exercise of their function as statutory auditors;
  - the regulation of auditors ("third country auditors") of companies outside the European Economic Area that have issued securities admitted to trading on UK regulated markets; and
  - the receipt of statutory change of auditor notifications from companies and statutory auditors in respect of "major audits".
19. The FRC explained how accounting and auditing are two different financial processes that each supply particular purposes for businesses. It clarified that in financial terms, accounting encompasses the day-to-day management of organisational finances. Auditing is an independent review of a business's accounting practices. It emphasised how Part 42 covers only auditing and auditors; not accounting.

20. The FRC added an explanation on the separate standards for accounting and auditing. It verified that accounting standards are aimed at companies and how they should be recording their activities. Auditing standards, it stated, are for auditors to ensure that, in reviewing how companies have recorded transactions and ensure that the correct policies have been applied and reported. However, Auditors may refer to accounting standards but these do not affect how they conduct themselves.
21. The Commissioner has also considered the decision notice FS50460892 which the FRC had argued appears relevant in this case. Whilst this is not exactly the same circumstances, a comparison may be drawn. The FRC explained how many people who request information under FOIA are reluctant to accept that the FRC designation as a public authority under the FOIA is limited in its scope to those duties delegated under Part 42 of Companies Act 2006.
22. The FRC stated its reason for referring to the decision notice was to demonstrate how clear the Commissioner's decision is that the designation of the FRC was limited to its statutory functions under Part 42 of the Companies Act 2006 and not its non-statutory activities related to accounting.
23. The FRC interpreted the complainant's request as being specifically in respect of responses to a consultation about an accounting SORP run by a third party and is not in relation to the practice of audit.
24. During the investigation, the FRC was advised that the Codes and Standards Committee of the FRC had met on 26 March 2014 to consider the endorsement of this SORP. It stated that it has raised further questions which will need to be addressed before it can be published. The planned date for publication, the FRC has confirmed will be at the end of April 2014.
25. In the Commissioner's view, he considers that the requested information regarding the FRC's functions in relation to SORPS, fall outside Part 42 Companies Act 2006 and it is not covered by the FOIA.
26. The Commissioner considers that the FRC was entitled to tell the complainant that such information is not within the scope of its designation under FOIA.

## Right of appeal

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27. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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 .....**

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