

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 02 June 2014

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

### **Decision (including any steps ordered)**

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1. The complainant made a freedom of information request to the Financial Ombudsman Service (FOS) for an independent assessor's opinion issued in respect of a complaint made to the FOS. It refused the request under section 14(1) on the basis that it was vexatious.
2. The Commissioner has investigated the complaint and found that section 14(1) was correctly applied. The Commissioner requires no steps to be taken.

### **Request and response**

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3. The FOS responded to the request on 22 January 2014 when it explained that the request was being refused as it was considered to be vexatious within the meaning of section 14(1) of FOIA. In refusing the request it indicated that this request was believed to be part of a campaign by a group of individuals who were acting in concert and submitting requests for information using pseudonyms.
4. The FOS subsequently carried out an internal review of its handling of the complainant's request and presented its findings on 7 March 2014. The review upheld the initial decision to refuse the request under section 14(1). However it also said that the information was exempt under section 40(2) of FOIA as it was the personal data of a third party and disclosure would contravene the first data protection principle.

## Scope of the case

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5. On 23 January 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The Commissioner considers that the scope of his investigation is to decide whether section 14(1) and or section 40(2) were correctly applied to the requested information.

## Reasons for decision

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### Section 14(1) – vexatious requests

6. Section 14(1) provides that a public authority is not obliged to comply with a request for information if the request is vexatious. The Commissioner has recently issued guidance on his approach to deciding when a request can be considered vexatious.<sup>1</sup> This follows the decision of the Upper Tribunal in *Information Commissioner and Devon County Council v Dransfield*<sup>2</sup> which placed emphasis on the importance of adopting a holistic and broad approach to the determination of whether or not a request is vexatious.
7. The Commissioner's guidance 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.
12. The Commissioner has therefore considered the arguments put forward by the FOS 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

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<sup>1</sup>[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~/\\_/media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~/_/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

<sup>2</sup> Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC) (28 January 2013)

account wider factors such as the background and history of the request.

13. In this case the FOS has argued that it had good reason to believe that the complainant was either one individual or was acting in concert with other individuals who have submitted numerous requests in the past few months with the aim of causing disruption or annoyance to the Financial Ombudsman Service.
14. The FOS considers that the complainant is linked to a group of other named individuals who have made complaints to the FOS. In particular one individual whom the FOS believes can be linked to the complainant was the recipient of the independent assessor's opinion which was referred to in the request.
15. The FOS explained that in dealing with complaints and requests for information from the linked individuals it had encountered the following issues:
  - Unhappiness with the length of time it takes to resolve a complaint
  - Raising multiple service complaints at this service
  - An exceptional interest or concern with email security such as PGP security
  - Not accepting payments we have made to them during the course of resolving service complaints
  - Not receiving correspondence that we have sent to these individuals using their postal addresses originally supplied when they first submitted a financial complaint to us
  - The use of unusual characters in email addresses which are caught by our spam filters and which we have repeatedly asked them not to use
  - The use of various email addresses, all from the same domain name each time but unique to the individuals concerns. For example we have seen the use '...@trouser.dtdns.net' and '...@factory.org.suroot.com'
  - Sending encrypted attachments to emails which we are unable to open and being uncooperative when we ask them to send these attachments in another format

- Exceptional interest in how our IT systems work
  - Exceptional interest in our accounting/finance department, especially relating to the payment of compensation relating to service complaints. This stems from this group of individuals non acceptance of cheque payments which have been made out to them historically.
16. The FOS said that it then received a number of FOIA requests, mainly through the website 'whatdotheyknow.com' using various pseudonyms linked to the above grievances. It explained that its concern was that the individuals, while genuine individuals in their own right, have not been emailing them using multiple email addresses or making a number of the requests. Rather, it suggested that one individual or a few of the named individuals are acting in concert using the identities of the other genuine individuals.
17. As noted above, one of the individual's referred to by the FOS whose name has been used in the linked requests was the recipient of the independent assessor's opinion which was referred to in the complainant's request. Moreover, it is evident from the correspondence from the complainant that she has already seen the assessor's opinion which is the subject of the request. This alone suggests that the complainant is linked with one or more of the individuals named by the FOS. Taken together with the other concerns outlined by the FOS the Commissioner is satisfied that it is reasonable to conclude that the complainant's request can be linked with other requests made under the names of other individuals which have been identified by the FOS. The FOS has provided the Commissioner with a list of 51 requests which it considers can be linked to these individuals.

**Would complying with the request be likely to cause disproportionate or unjustified level of disruption, irritation or distress?**

18. The FOS said that whilst complying with the complainant's request on its own is not manifestly disruptive, it believed that the behaviour of this group of linked individuals causes significant disruption both to its general casework teams and its Information Rights department. It reiterated its concerns that the individuals who are making requests under FOIA and who are contacting them regarding financial complaints and service complaints are not who they purport to be.
19. It also argued that these individuals would be aware of how to obtain information from the Independent Assessor through their own experience and "having had an abundance of correspondence at this

service about their difficulties with receiving correspondence through the post”.

20. The FOS said that it did not consider that there was any benefit to the public or great public interest in providing the information sought in this request. It argued that the information was the personal data of an individual who had made a complaint to an independent body and that it did not consider that there was any public interest in disclosing this personal data to the world at large.
21. The FOS explained that this request is consistent with a pattern of behaviour exhibited by the named individuals who it considers are linked, not only in requesting similar information but with its service generally. It said that it had seen an unwillingness to cooperate with processes already put in place at the FOS and in particular with the Independent Assessor to obtain the information these individuals are seeking.
22. In summary, the FOS said that it considered that the list of requests it had provided to the Commissioner showed that there appeared to be a campaign by one or more individuals to make requests for information under FOIA in order to circumvent processes already in place. By making multiple requests and sometimes using pseudonyms it makes it difficult, it said, to maintain a consistent position when responding to the requests. It argued that dealing with the requests placed a burden on its resources especially at a time when it was receiving a high volume of requests for information.

**Does the purpose and value of the request justify the impact on the public authority?**

23. The FOS argued that the purpose of the request – to obtain information already accessible by other means – does not justify the impact of the request, nor the numerous linked and similar requests on the FOS.
24. The FOS said that in its view it was not unreasonable to conclude that the request is part of a continuation of behaviour and/or part of a campaign which is intended to cause unjustified disruption and irritation. In light of this, it did not consider that the public interest lies in diverting considerable resources away from its statutory functions in order to disclose the requested information. Neither did it believe that the level of disruption and irritation caused would be justified by the limited purpose and value of the request.

## **The Commissioner's view**

25. First of all, the Commissioner is mindful that the requested information is evidently already accessible to the complainant or else has been previously made available to her. This suggests that the request lacks a serious purpose. The Commissioner would agree with the FOS that the request would appear to be aimed at exposing what the complainant sees as inconsistencies in the approach taken by the FOS in its handling of financial complaints, rather than a genuine desire to access the requested information. In this sense the Commissioner would accept that the request, when seen in the context of the other linked requests identified by the FOS, is aimed at irritating or causing disruption to the FOS. The Commissioner has also taken into account the fact that there are processes to follow if a person disagrees with how their complaint to the FOS has been handled. In this case the request would appear to be aimed at testing the FOS. This amounts to an abuse of the FOIA process.
27. The FOS has identified 51 requests which it believes can be linked to the group of individuals of which the complainant is a part or else were made by one or more of the individuals using pseudonyms. In any event, it is clear that dealing with the complaint is likely to impose a burden of the FOS and would divert resources from its core functions.
28. In the Commissioner's view there is no overriding public interest which would justify the disruption and burden imposed on the FOS by answering this request and the other linked requests.
29. The Commissioner considers that the aggregated impact of dealing with requests from the linked individuals would cause an unjustified level of disruption and irritation. This, together with the lack of serious purpose or value means that the request can reasonably be characterised as vexatious. Therefore the Commissioner has decided that section 14(1) has been correctly applied.

## Right of appeal

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

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