Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 September 2014

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

Decision (including any steps ordered)

1. The complainant made a request on 24 February 2014 for an independent assessors review and opinion. The Financial Ombudsman Service (FOS) refused to comply with the request as it considered it to be vexatious under section 14 of the Freedom of Information Act (FOIA).

2. The Commissioner's decision is that the FOS has correctly applied section 14 FOIA in this case, it was not therefore obliged to comply with the request.

3. The Commissioner requires no steps to be taken.

Request and response

4. On 24 February 2014 the complainant made a request to the FOS for the following information:

"Could you please kindly reconsider the freedom of information request FOI 588? You may send the request by reply to ensure secured delivery."

The FOS explained that FOI 588 was submitted by the complainant using a pseudonym and that request was for the following information:

"Please disclose the independent assessors review and opinion sent to the FOS dated 10/07/2013."

5. On 17 April 2014 the FOS responded to the request made on 24 February 2014. It refused to comply with the request as it said it was vexatious under section 14 FOIA.

6. An internal review has not been carried out.

Scope of the case

7. The complainant contacted the Commissioner on 26 May 2014 to complain about the way his request for information had been handled.

8. The Commissioner has considered whether the FOS correctly applied section 14 FOIA in this case.

Reasons for decision

9. Section 14(1) FOIA provides that a public authority is not obliged to comply with a request if it is vexatious.

10. The Commissioner's guidance[1] on the application of section 14(1) FOIA refers to a recent Upper Tribunal decision[2] which establishes the concepts of 'proportionality' and 'justification' as central to any consideration of whether a request is vexatious.

11. The guidance suggests that the key question the 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

[1] http://www.ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

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

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. In this case the FOS has argued that it had good reason to believe that the complainant 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.

13. The FOS considers that the complainant is linked to a group of other named individuals who have made complaints to the FOS.

14. 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.

15. 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.

16. The FOS referred to a previous Decision Notice issued by the Commissioner under reference FS50534655, in which the Commissioner accepted the link between those individuals which are also relevant to this case. In that case the FOS 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. It was concluded that:

"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.

"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."

17. The Decision Notice issued under case reference FS50534655 can be accessed using the following link:

http://ico.org.uk/~/media/documents/decisionnotices/2014/fs_50534655.ashx

Intransigence

18. The guidance states that to show intransigence, the public authority must demonstrate that the requester takes an unreasonably entrenched position, rejecting attempts to assist and advise out of hand and shows no willingness to engage with the authority.

19. The Commissioner considers that given the length of time the complainant has been making requests for information regarding these issues, the fact that the complainant is acting in concert with other individuals as well as using pseudonyms and the number of requests made (in this case the FOS has referred to 52 requests made by the complainant along with the group of linked individuals acting concert), it has demonstrated that the complainant has taken an unreasonably entrenched position.

Frequent or overlapping requests

20. The guidance states that the public authority must demonstrate that the requester submits frequent correspondence about the same issue or sends in new requests before the public authority has had an

21. The Commissioner considers that due to the length of time the complainant has been making requests to the FOS regarding these issues and the number of requests made this demonstrates that the requests are frequent and overlapping.

No obvious intent to obtain information

22. The requester is abusing their rights of access to information by using the legislation as a means to vent their anger at a particular decision, or to harass and annoy the authority, for example, by requesting information which the authority knows them to possess already.

23. The FOS has explained that the complainant has asked for information which has previously been sent to him about the actions of the independent assessor. It said that taking into account the subject matter of the request, it is not unreasonable to conclude that it appears to be part of a pattern and continuation of behaviour which is intended to cause unjustified disruption to the FOS which significantly limits any purpose or value behind the request.

24. The Commissioner recognises that the intransigence and the frequency and overlapping nature of the requests outweighs any public interest in responding to the requests due to the drain on resources this would cause and the diversion from other functions and duties. He also considers that given the FOS has previously responded to this request, this significantly limits any serious purpose or value.

25. Taking this into account as well as the decision reached in case reference FS50534655, the Commissioner is satisfied that the request is vexatious and that section 14(1) has been applied correctly.

Right of appeal

26. 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: 0870739 5836
    Email: informationtribunal@hmcts.gsi.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.

28. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF