

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 May 2015

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 about a named insurance company. During the course of the Commissioner's investigation the complainant narrowed the scope of his request to six particular documents he believed the Financial Conduct Authority (FCA) would hold. The FCA identified one document and an accompanying letter which fell within the scope of the refined request. Although it has not yet done so it said it was happy to disclose the document subject to a number of redactions under section 40(2) - third party personal data and section 44 – statutory prohibition on disclosure. In respect of the other documents requested the FCA informed the Commissioner that the information was either not held or did not fall within the scope of the request as originally phrased.
2. The Commissioner's decision is that Financial Conduct Authority (FCA) can rely on sections 40(2) and 44 to withhold information from the one document and accompanying letter it has identified. However it is required to provide the rest of the information from those documents. The Commissioner is satisfied that the FCA does not hold the other information that has been requested or that it was not captured by the request as originally phrased.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the 'Written Notice' giving permission for the sale of Cardrow Insurance Ltd to Cardrow Ltd, together with the

accompanying letter, except for the information the Commissioner has identified as being exempt under sections 40(2) and 44.

4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.
5. As from the 1 April 2013 the Financial Services Authority was succeeded by the FCA. References in this decision to the FCA are also to its predecessor the Financial Services Authority.

Request and response

6. On 31 October 2014, the complainant wrote to the Financial Conduct Authority (FCA) and requested information in the following terms:

"I want information on Cardrow Insurance Ltd

You got a request from this company on 28 October 2008 for the sale of that company to Cardrow Ltd, you gave that permission on 19 December 2008. It changed its name to Cardrow Insurance Ltd on the 18 March 2009.

You had informed me that you sent permission on 19 December 2008 for Cardrow Insurance Ltd to be sold to Cardrow Ltd. The trouble with this is the company was not registered when you gave it permission nor was it registered with Companies House, so Westminster Motor Insurance Association Ltd, which had been sold to Tradex on 26 February 2008, was not able to change its name to Cardrow Insurance Ltd on 27 March as you have claimed, so a member of your staff has created a false ID."

7. On 21 November 2014 the FCA responded. It refused the request under section 14(2), on the basis that it had previously complied with an identical or substantially similar request.
8. After conducting an internal review the FCA revised its position. It wrote to the complainant on 23 February 2015 and informed him that it was still relying on section 14(2) in respect of any information it had provided in response to an earlier request. That request, which the FCA dealt with under its reference number FOI2806 and responded to on the 12 March 2013, also concerned the sale of Cardrow Insurance Ltd to Cardrow Ltd.

9. The FCA informed the complainant that it was relying on the exemptions provided by section 32, court records, and section 44, statutory prohibitions, to withhold the remaining information.
10. Following the internal review the complainant contacted the Commissioner and was advised that before the Commissioner could investigate his complaint he would need to provide a complete and accurate copy of the information he had requested. The complainant responded on 27 February 2015. He provided the Commissioner with a copy of a document containing a six part request and which he described as being a copy of the request he made on the 31 October 2014. However this did not correspond with the request as contained in the correspondence from the FCA and which is set out in paragraph 6 above. On 10 March 2015 the Commissioner rang the complainant to clarify what request he had made on the 31 October 2014 and what his outstanding concerns were.
11. The complainant confirmed that the request he had made on the 31 October 2014 was as set out at paragraph 6. He explained that he had not actually submitted the six part request. However the complainant believed the FCA would hold the documents detailed in that six part request and explained that he was particularly interested in accessing that information. The Commissioner's initial view was that the request he had actually made on the 31 October 2014 was broad enough to capture the information described in the six part request. It was therefore agreed that the Commissioner's investigation would focus solely on the information identified in the six part request. The complainant was made aware that the Commissioner's investigation may have to consider whether the FCA held the six documents he had identified as well the exemptions cited. The complainant agreed that he was happy with this approach.
12. The particular information that the complainant identified of being of particular interest in his six part request is as follows:
 - A copy of the permission granted by the FCA for the sale of Cardrow Insurance Ltd to Cardrow Ltd, showing the company registration number.
 - A copy of the permission under change of ownership relating to the sale of Westminster Motor Insurance Association Ltd to Tradex, showing the company registration number.
 - A copy of the permission granted for the sale of Westminster Motor Insurance Association Ltd to Charles Taylor by Santam UK Ltd, showing the company registration number.

- A copy of the permission for Westminster Motor Insurance Association Ltd to change its name to Cardrow Insurance Ltd, showing the company registration number.
- A copy of the permission for Cardrow Ltd to change its name to Cardrow Insurance Ltd, showing the company registration number.
- A copy of the permission granted by what was then the FSA for the sale of Westminster Motor Insurance Association Ltd to Santam Ltd of South Africa in 2003, showing the company registration number.

The Commissioner wrote to the FCA on 12 March 2015. This was the first occasion on which the FCA had been made aware of the complainant's particular interest in these documents.

Scope of the case

13. The matters to be decided are whether the FCA holds the information identified by the complainant as being of particular interest to him and if so whether any of the exemptions cited by the FCA applied. In addition it became apparent during the course of the investigation that the FCA had not considered the sixth element of the complainant's request as it did not believe the information fell within the scope of the request as originally phrased.

Reasons for decision

Document 1 - A copy of the permission granted by the FCA for the sale of Cardrow Insurance Ltd to Cardrow Ltd, showing the company registration number.

14. Individuals and companies that sell insurance are regulated by the FCA under the Financial Services and Markets Act 2000 (FSMA). Under section 178 of the FSMA any person wishing to acquire or increase control in an FCA regulated firm has to first seek approval from the FCA.
15. The FCA has explained that it does not use the Company House registration number when processing permissions for a change of control. Therefore applying a narrow reading of the complainant's request it could be argued that the information is not held. However FCA readily accepted that it did hold a copy of the permission it granted in respect of the sale of Cardrow Insurance Ltd to Cardrow Ltd albeit that

the approval document contained the FCA's own reference number rather than the Companies House registration number. The FCA has provided the Commissioner with a copy of that document, headed 'Written Notice', together with a copy of the FCA's covering letter to the firm involved.

16. Although this element of the request seeks information on the sale of Cardrow Insurance Ltd to Cardrow Ltd the actual documents refer to the sale of Westminster Motor Insurance Association Ltd to Cardrow Ltd. The FCA has explained that Westminster Motor Insurance Association Ltd and Cardrow Insurance Ltd are one and the same. The permission for the change of control was granted in December 2008. Westminster Motor Insurance Association Ltd later changed its name to Cardrow Insurance Ltd in March 2009. However Westminster Motor Insurance Association Ltd and Cardrow Insurance Ltd are the same legal entity with the same registration number at Companies House. The Commissioner is therefore satisfied that the FCA has correctly identified the documents described in this element of the request.
17. The FCA has said that it is happy to disclose a copy of the permission and covering letter subject to a number of redactions. The redactions were made under section 40(2) – third party personal data and section 44 – statutory prohibition on disclosure.

Section 40(2) – personal data

18. So far as is relevant to this complaint, section 40(2) states that the personal data of someone other than the applicant is exempt if its disclosure to a member of a public would breach any of the data protection principles set out in the Data Protection Act 1998 (DPA).
19. The exemption has been applied to the names and contact numbers of junior members of the FCA's staff who were involved in processing the approval of the sale. This information is clearly the personal data of the individuals involved as it both identifies them and relates to them.
20. Initially the FCA also applied it to the name of the financial director of one of the companies involved. However during a phone conversation with the Commissioner, the FCA said that this name would be equally exempt under section 44. The Commissioner considers it more appropriate to consider disclosure of the name of the financial director under that exemption.
21. In respect of the names of its own staff the FCA has argued that disclosing the information would breach the first data protection principle of the DPA. The first principle states that the processing of

personal data shall be fair and lawful, and in particular shall not be processed unless one of the conditions in Schedule 2 of that Act is met.

22. When considering the first principle the Commissioner's approach is to start by looking at whether the disclosure would be fair. This in turn depends on a number of factors including the possible consequences of disclosure on the individual concerned, that person's reasonable expectations as to how their information would be used and to whom it would be disclosed, weighed against the public's legitimate interest in having access to the information. Often these factors are interrelated, for example someone would not expect their personal data to be disclosed if the disclosure would have a detrimental impact on them. Similarly if someone knew the public had a right to know certain information about them, they would understand and expect it to be disclosed.
23. The FCA's argument is that individuals whose names appear on the approval document and covering letter are relatively junior members of staff. As such they would have no expectation that their names and roles within the organisation would be revealed to the world at large.
24. The FCA has not made any arguments in respect of whether disclosing the names would be detrimental to the staff involved, however the Commissioner considers such disclosure could be disproportionately intrusive and potentially disruptive if they were directly contacted without calls being directed by the FCA through the most appropriate channels.
25. The Commissioner has also considered whether there are any legitimate interests in the public having access to this information. The names and contact details of the individuals would obviously be available to those who they dealt with in the course of carrying their job roles. This would also ensure a level of accountability. However the Commissioner can see no reason to make their names more widely available. The Commissioner therefore accepts that these staff would not reasonably expect their names to be disclosed to the public. The Commissioner is satisfied that the disclosing the names would be unfair and therefore breach the first data protection principle. The names and contact numbers of junior members of staff are exempt under section 40(2).

Section 44 – prohibition on disclosure.

26. Section 44 states that information is exempt if its disclosure is prohibited by or under any enactment.
27. The FCA carries out its statutory functions under the FSMA and section 348 of that Act creates a statutory prohibition on the disclosure of

confidential information which relates to the business or other affairs of any person (which includes a company such as Cardrow Insurance Ltd) if it was received by the FCA for the purpose or discharge of any of its functions under the FSMA. Potentially this is a very broad statutory prohibition which allows regulated bodies to provide the FCA with information, which may be commercially sensitive, safe in the knowledge that the FCA will not disclose that information to others. It is a criminal offence punishable by up to 3 months imprisonment for anyone to disclose information defined as being confidential by section 348 FSMA.

28. The permission for the sale and the accompanying letter were created by the FCA itself. Nevertheless the information that has been redacted from those documents was originally provided by the companies involved when seeking approval for the change in control. Therefore the Commissioner is satisfied that it constitutes information which was received by the FCA. As the FCA has a statutory duty, under section 178 of FSMA, to approve such changes, the Commissioner is also satisfied that the information was received by the FCA in order to discharge its functions under that Act. Therefore on the face of it the redacted information appears to be covered by the statutory prohibition.
29. However there are circumstances in which the statutory prohibition will not apply. For example the information cannot be regarded as confidential if it is already in the public domain. The FCA has advised the Commissioner that the redacted information is not already in the public domain. The information could also be disclosed if the person from whom it was received gave their consent. However at the time of the request no such consent had been provided. It has also been established at Tribunal (Norman Slann v ICO & FSA 11 July 2006 – EA/2005/0019) that the FCA is not required to seek consent in order to facilitate the disclosure of information under FOIA.
30. The Commissioner is therefore satisfied that the information which the FCA wishes to redact from the written approval notice and covering letter under section 44 of FOIA is protected by the statutory prohibition on disclosure provided by section 348 of the FSMA. It is therefore exempt from disclosure under section 44 of FOIA.
31. In summary the Commissioner finds that the information which they FCA wished to redact under sections 40(2) and 44 is exempt. The FCA has not applied any exemptions to the rest of the information contained in these documents and has advised the Commissioner that it is happy to release this residual information to the complainant. The Commissioner therefore requires the public authority FCA to do so.

Document 2 – A copy of the permission under change of ownership relating to the sale of Westminster Motor Insurance Association Ltd to Tradex, showing the company registration number.

32. The FCA has explained that it does not hold this information for the simple reason that there was no sale of Westminster Motor Insurance Association to Tradex. Instead Westminster Motor Insurance Association Ltd, which by that time had changed its name to Cardrow Insurance Ltd, transferred some of its business to Tradex Insurance Company Ltd. The transferred business consisted of the renewal rights of the insurance policies held by Westminster Motor Insurance Association Ltd. This transaction was subject to a report by the FCA and then approved by the High Court in October 2009. The FCA provided the Commissioner with a copy of the High Court judgement to substantiate its position.
33. The Commissioner is therefore satisfied that there was no sale of Westminster Motor Insurance Association Ltd to Tradex. It follows the requested information is not held.

Document 3 – A copy of the permission granted for the sale of Westminster Motor Insurance Association Ltd to Charles Taylor by Santam UK Ltd, showing the company registration number

34. The FCA has explained that this is the same as document 1, relating to the sale of Cardrow Insurance Ltd to Cardrow Ltd. The confusion has arisen by the various name changes of Westminster Motor Insurance Association Ltd/Cardrow Insurance Ltd together with those of its parent companies.
35. By 2008 Westminster Motor Insurance Association Ltd was owned by a company called Santam UK Ltd. Santam agreed to sell Westminster Motor Insurance Association Ltd to Cardrow Ltd in October 2008, subject to FCA approval, which was granted in December 2008.
36. Cardrow Ltd had previously been called CTC Two Ltd. It had changed its name to Cardrow Ltd in September 2008. CTC Two Ltd (and therefore Cardrow Ltd) were part of the Charles Taylor Group. Therefore the sale of Westminster Motor Insurance Association Ltd to Cardrow Ltd was in effect the sale of Westminster Motor Insurance Association Ltd to Charles Taylor. Later of course, following the sale, Westminster Motor Insurance Association changed its name to Cardrow Insurance Ltd. Therefore the end result was that Cardrow Insurance Ltd was owned by Cardrow Ltd. Only one company was ever sold, but there were changes to both the name of the company sold and the name of the company

which purchased the company. The purchasing company was itself part of the Charles Taylor Group.

37. The Commissioner is satisfied with this explanation and that the document described by the third element of the request is the same as that described in the first part. The Commissioner has already considered what information can be disclosed from that document and its accompanying letter.

Document 4 – A copy of the permission for Westminster Motor Insurance Association Ltd to Cardrow Insurance Ltd, showing the company registration.

38. The FCA has explained that there is no requirement for a regulated company to seek its permission when changing its name. It follows the FCA does not hold the requested information.
39. In order that the FCA could update its records Cardrow Insurance Ltd did provide the FCA with a copy of the relevant Certificate of Incorporation on Change of Name from Companies House. The FCA has provided the Commissioner with a copy of this certificate. The Commissioner is satisfied that it does not fall within the scope of the request. In any event any member of the public could obtain a copy of the certificate directly from Companies House, albeit that they may be expected to pay a fee. Therefore even if the information was captured by the request it would be exempt under section 21 of FOIA which provides that information is exempt if it is accessible to the applicant by other means. In this particular case the Commissioner knows that the complainant already has a copy of the Certificate of Incorporation as the complainant included a copy of it in his submissions.

Document 5 – A copy of the permission for Cardrow Ltd to change its name to Cardrow Insurance Ltd, showing the company registration number.

40. The FCA has informed the Commissioner that it is not aware of any such name change.
41. From the information provided by the FCA there is nothing to suggest that Cardrow Ltd did change its name to Cardrow Insurance Ltd. Rather the Commissioner understands that Cardrow Ltd owns Cardrow Insurance Ltd, but legally they are two separate legal entities.

42. In any event, as the FCA has previously explained in respect to document 4, companies are not obliged to seek its approval for changes in name.
43. The Commissioner is satisfied that the information sought in the fifth element of the request is not held.

Doc 6 – A copy of the permission granted, by what was then, the FSA for the sale of Westminster Motor Insurance Association Ltd to Santam Ltd of South Africa in 2003, showing the company registration number.

44. The FCA informed the Commissioner that it had not considered this element of the request as it did not believe it fell within the scope of the request as originally phrased on 31 October 2014
45. In his original request the complainant stated that he wanted information on Cardrow Insurance Ltd and went onto describe a number of changes in ownership and names involving several companies between 2008 and 2009. One of the companies referred to was Westminster Insurance association Ltd and there appears to be no dispute that that company ultimately changed its name to Cardrow Insurance Ltd. The Commissioner also understands that Cardrow Insurance Company and Westminster Motor Insurance Association Ltd are the same legal entity with the same registration number at Companies House.
46. Therefore it could be argued that a broad request for "... information on Cardrow Insurance Ltd." would capture all the information relating to the entire history of that company held by the FCA. However the Commissioner considers that the complainant narrowed the scope of his request by reference to particular events in 2008 and 2009. It is in effect an explanation of what information about Cardrow Insurance Ltd he is seeking.
47. The Commissioner is therefore satisfied that an objective reading of the request as presented to the FCA on 31 October 2014 does not reach back to the sale of Westminster Motor Insurance Association Ltd to Santam back in 2003.

Other matters

48. During the course of his investigation the FCA explained that it had been in correspondence with the complainant over a several years regarding

his concerns over the named insurance companies. It had tried to explain at length, both in writing and in telephone conversations, the responsibilities of the FCA, the key events in the history of Cardrow Insurance Company and the structure of the various companies involved.

49. This assistance was over that required under FOIA and was offered because the FCA recognises that the complexity of such matters can lead to misunderstandings and misinterpretations of information.
50. For avoidance of doubt, the FCA does not have any concerns over the named companies being able to lawfully carry on insurance business in the UK.

Right of appeal

51. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

52. 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.
53. 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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