

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 February 2016

Public Authority: The Bank of England
Address: Threadneedle Street
London
EC2R 8AH

Decision (including any steps ordered)

1. The complainant has requested information on an instruction by the Prudential Regulation Authority ('PRA'), a division of the Bank of England ('the Bank'), to the National Australia Bank ('NAB') regarding provision against potential losses related to legacy conduct costs.
2. The Commissioner's decision is that the Bank of England appropriately applied the exemption contained in section 44 of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 23 May 2015, the complainant wrote to the Bank of England and requested information in the following terms:

"Recently you instructed National Australia Bank to set aside the sum of £1.7 billion to meet the cost of compensating customers in respect of "losses related to legacy conduct costs".

<http://www.thisismoney.co.uk/money/markets/article-3072610/Aussie-bank-NAB-forced-set-aside-1-7bn-exit-bill-cover-future-fines-compensation-customers.html>

Will you please confirm: -

1. How much of this figure relates to the mis-selling of Tailored Business Loans.

2. How this figure was calculated.”
5. The Bank responded on behalf of the PRA on 23 June 2015. It refused to provide the requested information citing the exemption at section 44(1)(a) of the FOIA.
6. Following an internal review the Bank wrote to the complainant on 24 July 2015 upholding its initial response.

Scope of the case

7. The complainant contacted the Commissioner on 26 July 2015 to complain about the way his request for information had been handled. He explained his involvement with the 'NAB Customer Support Group' and the Group's campaigning to assist those affected and suffering losses. He explained his concern that the £1.7bn set aside by the PRA was insufficient and he was requesting information to assist the Group. The complainant considered that disclosure of the information is in the public interest.
8. The Commissioner considers that the scope of his investigation is to determine whether the Bank is entitled to rely on section 44(1) as a basis to refuse to provide the withheld information.

Reasons for decision

9. **Section 44 of FOIA** states that:

“(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

a) is prohibited by or under any enactment,”
10. Section 44(1)(a) is an absolute exemption and it is not subject to the public interest test.
11. In this case the Bank has cited the Financial Services and Markets Act 2000 ('FSMA') as the relevant enactment. Section 348 FSMA operates as a statutory bar to disclosure.
12. Section 348(1) states –

'Confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of-
(a) the person from whom the primary recipient obtained the information; and
(b) if different, the person to whom it relates.'

13. The requirements of the statutory bar are fulfilled by the following:

a. The Prudential Regulatory Authority (PRA) (Division of the Bank of England) is a **'primary recipient'**.

A primary recipient is defined at section 348(5) FSMA and includes the PRA in section 348(5)(aa).

b. The request is for **'confidential information'**.

14. The Commissioner considered the following questions when seeking to establish whether the requested information is 'confidential' –

- Does the information relate to the business or other affairs of any person?
- Was the information received by the primary recipient for the purposes of, or in the discharge of, its functions?
- Has the information already been made legitimately available to the public?
- Can the information be anonymised?

15. Section 348(2) FSMA describes confidential information as information which relates to the business or other affairs of any person and was received by the primary recipient for the purposes of, or in the discharge of, its functions and is not prevented from being confidential. A 'person' is not defined in the FSMA and therefore the usual legal interpretation of a person is adopted: any entity that is recognised as having legal personality to enter legal relations.

16. The requested information clearly relates to the business or other affairs of NAB and was – or relates to that - received by the PRA for the purposes of, or in the discharge of its functions. The PRA collects a great deal of information from firms as part of its supervisory functions and its powers under the Capital Requirement Regulations 2013.

17. To the extent that the precise content of the withheld information was not directly 'received' by the PRA from NAB, the Commissioner has taken account of the Information Tribunal [EA/2013/0098]. It has previously determined that the prohibition on disclosure extends to the

views of the public authority, considerations and other internally created information where the created information incorporates information received by the public authority from another party.

18. The Commissioner considers that the information will only have been legitimately made available where it has already been placed into the public domain without breaching the FSMA. There is no indication that this has occurred.
19. Section 348(4) of the FSMA additionally states that information cannot be confidential information if it can be summarised or so framed that it is not possible to ascertain from it information relating to any particular person. The Commissioner has determined that this cannot be a relevant consideration in this case because the direction of the request itself, which makes the NAB its subject, removes the possibility of making the information anonymous.
20. The Commissioner is satisfied that the requested information is confidential information pursuant to section 348(2) of the FSMA.
21. The PRA has confirmed to the Commissioner that there is no consent to disclosure from the 'person' providing information and to whom it relates.
22. The factors required by the statutory bar in the FSMA are therefore fulfilled, the PRA is a primary recipient and the information is confidential.
23. The Commissioner acknowledges the complainant's view that disclosure of the requested information is in the public interest. However, the public interest cannot be taken into account in the application of the exemption to disclosure in section 44 (1)(a). The Commissioner is satisfied that the exemption has been appropriately applied and consequently no other factors may be taken into account.
24. The Commissioner has determined that disclosure of the information is prohibited by the FSMA. Therefore FOIA section 44(1)(a) is engaged and the requested information appropriately withheld.

Right of appeal

25. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

26. 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.
27. 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

Alexander Ganotis
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