

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 June 2016

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

Decision (including any steps ordered)

1. The complainant has requested from the Financial Ombudsman Service (FOS) information about referrals to FOS from non-disabled and disabled complainants, and complaints that have been upheld and not upheld. FOS says that it is not obliged to comply with the request under section 12(1) of the FOIA because to do so would exceed the appropriate cost/time limit.
2. The Commissioner's decision is that to comply with the request would exceed the appropriate limit and that FOS has correctly applied section 12(1) to the request. He also finds that FOS met its obligation under section 16 to offer advice and assistance with regards to the request. The Commissioner does not require FOS to take any steps.

Request and response

3. On 9 November 2015, the complainant wrote to FOS and requested information in the following terms:

"1. We are making an FOIA request any agency record that will show records of referral to the Public Authority: Financial Ombudsman Service legal department, [Staff Member 1], [Staff Member 2], [Staff Member 3] or others of NON-DISABLED complainants from 2010.

2. We are making an FOIA request of any agency record that will show records of referral to the Public Authority: Financial Ombudsman Service legal department, [Staff Member 1], [Staff Member 2], [Staff Member 3] or others of DISABLED complainants from 2010.

3. A summary will be sufficient to include dates and status e.g. disability or protected characteristics to both requests.

4. A breakdown of complaints upheld and not upheld related to the two categories as per question 2."

4. FOS responded on 8 December 2015. It said that it is not obliged to comply with the request under section 12 of the FOIA because to do so would exceed the appropriate cost/time limit.
5. Following an internal review FOS wrote to the complainant on 2 February 2016. It upheld its original position.

Scope of the case

6. The complainant contacted the Commissioner on 3 February 2016 to complain about the way his request for information had been handled. He is dissatisfied with FOS's application of section 12(1) to his request. The Commissioner has focussed his investigation on this matter and whether FOS met its obligation under section 16 to offer advice and assistance.

Reasons for decision

Section 12 – appropriate limit

7. Section 12(1) of the FOIA allows a public authority to refuse to deal with a request where it estimates that it would exceed the appropriate limit to:
 - either comply with the request in its entirety, or
 - confirm or deny whether the requested information is held.
8. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can charge a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to FOS. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
 - (a) determine whether it holds the information

- (b) locate the information, or a document which may contain the information
 - (c) retrieve the information, or a document which may contain the information, and
 - (d) extract the information from a document containing it.
9. Where a public authority claims that section 12(1) of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit – in line with section 16 of the FOIA.
 10. To determine whether FOS applied section 12 and section 16 of the FOIA correctly, the Commissioner has considered FOS's correspondence with the complainant, and the submission it provided to him as part of his investigation.
 11. In its response to the complainant of 8 December 2015, FOS said that its legal team receive correspondence from a variety of sources – either individuals writing directly to the legal department or via its case handling staff members. It explained that its legal team does not separately record whether the correspondence was received from individuals who consider themselves to have registered disabilities or otherwise.
 12. The complainant has queried whether referrals would be held by FOS's case handling team and not its legal team. The Commissioner's understanding is that the situation described above also applies to FOS's case handling team. He notes too that the complainant's request specifically refers to information held by FOS's legal department.
 13. Because it does not record whether correspondents consider themselves to have a disability or otherwise, the legal team (and/or case handling team) would have to manually consult every piece of correspondence relating to a referral that they have received in order to provide the complainant with the exact information he is seeking; that is, to confirm how many individuals had a disability or not, and then to search for the outcome of their complaints about the service FOS provides.
 14. FOS told the complainant that as this search would be manual, because there is no automated way in which it is able to carry out such a search, the cost of this process would exceed the 'appropriate limit' set out in section 12 of the FOIA.
 15. With regard to its obligation under section 16, FOS said it was unable to advise the complainant how he could refine the request so that it could carry out a search for the information he has requested. FOS suggested that he could narrow the time limit but, given the volume of

correspondence it would have to review, it was unable to guarantee that this search would not also exceed the appropriate limit.

16. In addition, its internal review explained that when a consumer brings a complaint to its service, FOS does not ask the consumer to disclose if he or she has a disability or any other protected characteristic under the Equality Act. FOS said that its complaint form asks consumers to advise it if there are any reasonable adjustments FOS can make for them. If the consumer advises FOS that there are some adjustments it can make, such as large print or correspondence in another language, FOS marks this on the consumer's individual case.
17. FOS said that it publishes information in its annual review about the kinds of consumers who use the ombudsman service. This includes demographic and socio-economic details as well as information about consumer diversity. Its annual review also contains an overview of the work FOS does to champion equality and diversity. FOS confirmed that championing equality and diversity is an essential part of how it provides its service to all its customers.
18. By way of background, in its submission to him, FOS has told the Commissioner that the complainant's request was born out of a complaint he made to its service that it had not complied with making reasonable adjustments in the way it communicates with him. This was part of wider correspondence it had with the complainant and other concerns he has raised about how FOS has handled his financial complaints.
19. FOS went on to repeat the explanation it has provided to the complainant. Namely, that its searching ability is limited first, by the way in which a 'referral' can be made to its legal team. Second, not all the 'records' which could hold information within the scope of the request are searchable by any automated or electronic methods, which could make a search easier.
20. FOS explained that when it was considering the request, it understood it to be broken down into the following components:
 - Records of referrals
 - Since 2010
 - Made by both disabled and non-disabled consumers
 - A summary of the issues, dates and 'status'
 - A breakdown of the complaints by whether they were upheld or not upheld, of referrals made by disabled consumers.
21. The complainant has not suggested to the Commissioner that FOS has misinterpreted his request.

22. FOS told the Commissioner that it considers there are a number of reasons why it believes the complainant's request is too wide for it to fulfil within the statutory time limit.
23. FOS says its legal team is there to support the legal needs of its service as a whole. Part of the team's work is to receive and respond to queries from case handling colleagues, who have received correspondence from consumers with financial complaints.
24. The legal team primarily receives queries by email from colleagues internally but may also receive correspondence relating to legal action from consumers directly. A search for all 'records of referrals' would include all such correspondence, be it directly or indirectly received from a consumer, and regardless of whether it relates to actual, prospective or threats of legal action.
25. FOS said it had spoken to its legal team and it confirmed that this team does not hold separate records or filing systems pertaining to allegations made about its service and relating to equality monitoring or reasonable adjustments. The reason for this is that whilst FOS staff may refer queries to its legal team about this particular issue, it is not always necessary for the legal team to issue a formal response.
26. FOS also said that the complainant's request encompasses all records of these types of referrals and therefore the volume of correspondence it would need to consider is much wider than any correspondence requiring just formal action.
27. In its internal review, FOS had told the complainant that it would not necessarily know whether a consumer is able bodied or had different needs. Therefore, even if it was able to distinguish an exhaustive record of all referrals made to its legal team about equality monitoring, it would not necessarily be able to identify disabled consumers from this.
28. According to FOS, the only way it could identify disabled consumers would be to look into the complainant's file for each relevant query or referral, to see if a disability or otherwise has been noted in either the consumer complaint form or any other correspondence it has received. FOS confirmed that this would be a manual process as it does not record disabilities or requests for reasonable adjustments in a way that makes this information easy to retrieve.
29. FOS's legal department estimates it receives 3,300 referrals a year into its centralised mailbox. This does not include any informal referrals received over the telephone or sent directly to any of the members of the team. Over a five year period, it would therefore receive

approximately 15,000 referrals. In the previous month, FOS says it had received 275 referrals alone.

30. FOS has told the Commissioner that it has carried out sampling exercises for information held on complaint files previously and estimates that it can search 12 case files per hour. It would have to look through the referrals received by the legal team and manually search complaint files to begin to ascertain whether the consumer had told them they were or were not disabled.
31. This means that within the 18 hours provided by section 12(1) of the FOIA, FOS could only search 216 referrals. It is therefore satisfied that to find all the information that could fall within the scope of the complainant's request would exceed the time limit under section 12(1).
32. FOS also explained its position regarding its obligation under section 16 of the FOIA to offer advice and assistance. It confirmed that it had advised the complainant that he could refine his request but could not guarantee that the refined request would be successful. FOS told the Commissioner that the difficulty is that the type of information the complainant is seeking is not in, nor is it required to be in, a set format or automated filing system which would make it easily distinguishable or retrievable. FOS considers that refining his request to a one month period is unlikely to be satisfactory for the complainant as he is clearly looking for information over a longer period of time; FOS presumes to spot a trend of some sort.
33. Having considered the evidence provided to him, the Commissioner accepts that, if held, FOS does not hold the requested information in such a way that it can be easily located, retrieved and extracted from the volume of referral correspondence involved – in excess of 15,000 items. He notes that FOS has also told him that it is not required to hold this information in a particular format. The Commissioner is satisfied that FOS has demonstrated that it would exceed the appropriate limit to comply with this request and has correctly applied section 12(1) to it.

Right of appeal

34. 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

35. 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.
36. 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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