

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 August 2016

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

Decision (including any steps ordered)

1. The complainant made a freedom of information request to the Financial Ombudsman Service (FoS) for information on the costs of its software licences. The FoS refused the request under the section 43 exemption (commercial interests). During the course of the Commissioner's investigation the FoS also applied section 12(1) on the grounds that the costs of complying with the request would exceed the appropriate limit.
2. The Commissioner's decision is that section 12(1) was correctly applied and she requires no steps to be taken.

Request and response

3. On 4 November 2015 the complainant made a freedom of information request to the FoS which asked for records regarding the costs of licensed software products. The request read as follows:

"RE: Freedom of information request – Software licences

Dear Information Rights Officer,

I would like records in relation to the cost of these licensed products."

4. This followed an earlier request where the complainant had asked the FoS for a list of the different software products it used.
5. The FoS responded to the request on 10 December 2015 when it explained that the information was exempt under section 43(2) (commercial interests) and the public interest in maintaining the exemption outweighed the public interest in disclosure.
6. The complainant subsequently asked the FoS to carry out an internal review of its handling of the request and it presented its findings on 29 February 2016. The review upheld the initial response to the request.

Scope of the case

7. On 30 March 2016 the complainant contacted the Commissioner to complain about the FoS' decision to refuse his request.
8. During the course of the Commissioner's investigation the FoS also applied section 12(1) to the complainant's request. Therefore, the Commissioner considers the scope of her investigation to be to consider whether section 43(2) and/or section 12(1) have been correctly applied.

Reasons for decision

Section 12(1) – Appropriate limit

9. Section 12(1) allows a public authority to refuse to comply with a request for information if the authority estimates that the cost of compliance would exceed the 'appropriate limit', as defined by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Regulations"). The appropriate limit for the FoS and public authorities outside of Central Government is £450.
10. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - determining whether the information is held;
 - locating the information, or a document which may contain the information;
 - retrieving the information, or a document which may contain the information; and
 - extracting the information from a document containing it.

11. In this case the FoS explained that there were 193 software products with a quantity of 131,131 purchased. The reason the cost of complying with the request would exceed the appropriate limit is because, the FoS has confirmed, the individual prices of these licenses are not stored in one place or on a spreadsheet. Therefore in order to find details of the individual prices for these licences the FoS would have to identify how much it pays the supplier and then divide this figure into the amount it pays for each licence and how much it has paid in other costs – such as annual maintenance, consultancy and support costs.
12. The FoS said that the only way it could find this information would be to conduct a manual search of its records by looking through contracts and invoices for each supplier. It went on to say that the contracts it had entered into for its licences were on differing terms and as an example explained that some were on perpetual terms that it may have bought up to 10 years ago, whilst others were bought annually. Therefore, the number of locations and documents it would have to search through would be extensive.
13. The FoS carried out a sample exercise to determine how long it would take to find the costs of all of the individual prices for these licences. It looked at 17 products and found that it took approximately 225 minutes to locate and extract the cost information. The Commissioner was provided with details of what searches the FoS carried out for each of these products and how long it took.
14. The sample suggests that it would take on average over 13 minutes to locate the cost of each product. Given that that there are 193 licences on the list of software products, the FoS estimates it would take 2,554 minutes (42 hours) to find all of the requested information.

$$225 / 17 \times 193 = 2554.4 \text{ minutes}$$

15. Forty two hours of staff time equates to £1050 when charged at the applicable rate of £25 per hour. Therefore, the FoS' estimate of the cost of complying with the request significantly exceeds the appropriate limit.
16. The Commissioner has considered this estimate and is satisfied that it is reasonable. Clearly the costs associated with the licences are held in such a way that is not a straightforward exercise to recover the information the complainant has asked for. There are a considerable number of products involved and the time that would be needed to undertake a manual search for the information is bound to be significant. Only relevant costs have been taken into account for the purposes of estimating the costs of complying with the request and the estimate is supported by a sampling exercise. For these reasons the

Commissioner has decided that section 12(1) has been correctly applied to the request.

17. The Commissioner has decided that the FoS does not have to comply with the request by virtue of its reliance on section 12(1). Therefore the Commissioner has not gone on to consider whether the section 43(2) exemption might also apply as well.

Right of appeal

18. 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

19. 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.
20. 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

Paul Warbrick
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF