

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2017

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 a list of the current directors and an up to date summary of the accounts of a particular company as well as all correspondence between the FCA and this particular company from 2014. The FCA confirmed that the list of current directors and a summary of the accounts was exempt from disclosure under section 21(1) FOIA as this information was already reasonably accessible to the complainant. It confirmed that the remaining requested information was not held under section 1(1)(a) FOIA.
2. The Commissioner considers that the FCA was correct to apply section 21(1) FOIA in this case that that it was correct to confirm that it does not hold any further information under section 1(1)(a) of the FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 11 July 2016 the complainant made the following request for information under the FOIA for:

"[named company]

I would like a list of the current directors and an up to date summary of the accounts. In addition to this all correspondence between the FCA and [named company] from 2014."

5. The FCA responded on 12 August 2016 and refused to provide the information requested in the first part of the request under section 21 FOIA as it said it was already reasonably accessible to the complainant. The FCA refused to confirm or deny whether the information requested in the second part of the request was held.
6. The FCA provided an internal review on 9 September 2016 in which it maintained the application of section 21 FOIA but denied that the information requested in the second part of the request was held.

Scope of the case

7. The complainant contacted the Commissioner on 12 September 2016 to complain about the way his request for information had been handled.
8. The Commissioner confirmed with the complainant that her investigation would look at whether the FCA was correct to apply section 21 FOIA to the first part of the request and whether it was correct when it said that it does not hold any further information under section 1(1)(a) FOIA.

Reasons for decision

Section 21

9. Section 21(1) provides that –

“Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

Section 21(2) provides that –

“For the purposes of subsection (1)-

- (a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and
- (b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.”

Section 21(3) provides that –

“For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.”

10. The FCA has confirmed to the Commissioner that the part of the request for the current directors and an up to date summary of the accounts is contained in the 2015 Annual Return and Accounts for the named company. It said that this is available in accordance with its publication scheme and for which it has publicised charges. It provided the Commissioner with links to the relevant webpages containing its publication scheme detailing what information can be provided and for what fee.
11. It confirmed that electronic documents are charged at £12 each, paper copies are £27 for the first 20 sheets and 60p per sheet thereafter and viewing information at FCA offices is £26.50 per society search. Therefore an electronic copy of the 2015 Annual Return and Accounts for the named company, which is available via the FCA's publication scheme, would be charged at a cost of £12 as per the publication scheme.
12. In this case, the information requested by the complainant is, “made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme” as per section 21(3) FOIA. The complainant is able to obtain this information on payment of the appropriate fee, it is therefore reasonably accessible to him under section 21(1) FOIA. This information is therefore absolutely exempt from disclosure under FOIA.

Section 1

13. Section 1(1)(a) of FOIA states that, “Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request”.
14. The FCA has confirmed to the complainant that it does not hold correspondence between the FCA and [named company] from 2014.
15. It has confirmed that it does not consider that the 2015 Annual Return and Accounts would be classed as correspondence (and anyway section 21 FOIA is applicable to this information).

16. The FCA has confirmed that it conducted appropriate searches for the requested information. It explained that it holds Mutuals Society information in only four places:
 - i. A hard-backed paper file for each society – it said that information was added to these files up to 18 September 2013. The request parameters post-date this time.
 - ii. FCA internal electronic records management system called Livelink. Every Society has its own file/folder and correspondence is added to it.
 - iii. MARs (the electronic system which underpins the Mutuals public register) contains only public documents and a case history.
 - iv. A shared email inbox to which any Society corresponds with the FCA.
17. The FCA confirmed that all of the above places were searched.
18. It went on that network email addresses were searched electronically using the Society name and the Society number and both are used in correspondence.
19. The FCA said that post September 2013, all information falling within the scope of this part of the request would be held electronically.
20. It said that information such as covering letters may have been held at some point, however the FCA's usual practice is to destroy covering letters which do not contain any substance eg. letters stating 'please find x y z attached'. It said that there is no evidence that anything else would have been destroyed other than covering letters.
21. Finally it said that there is a statutory obligation upon it to retain Annual Returns and Accounts, however this information has been dealt with separately to the more general part of the request for 'correspondence'.
22. Based upon the FCA's submissions, the Commissioner is satisfied that on the balance of probabilities, the requested correspondence is not held by the FCA under section 1(1)(a). This is because the FCA has searched all relevant places, has used appropriate search terms and has explained why covering letters possibly sent along with the Annual Returns and Accounts would not have been retained in accordance with FCA usual practice.

Right of appeal

23. 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

24. 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.
25. 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

Gemma Garvey
Senior Case Officer

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