

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 July 2017

Public Authority: Financial Ombudsman Service

Address: South Quay Plaza
183 Marsh Wall
London
E14 9SR

Decision (including any steps ordered)

1. The complainant has requested information relating to cases dealt with by a named employee of the Financial Ombudsman Service (FOS). At the request of the FOS the employee is referred to as 'employee A' in this notice.
2. The Commissioner's decision is that the FOS has correctly applied section 40 (2) of the FOIA to the withheld information.
3. The Commissioner does not require the public authority to take any steps.

Request and response

4. On 1 March 2017, the complainant wrote to the FOS and requested information in the following terms:

"1) I would like to know over the last seven years how many subsidence cases [redacted] has adjudicated over?"

2) Out of these, I would like to know how many [redacted] found in favour of the business and how many [redacted] found in favour of the consumer?"

3) Of the cases that [redacted] found in favour of the business, how many were escalated to be decided by an ombudsman?"

4) Of the ones that went before an ombudsman how many were upheld and how many were overturned?"

5. On 13 March 2017 the FOS responded and confirmed that the information was held but refused to provide it because it contains the personal data of employee A and cited section 40(1) of the FOIA to withhold the information. The complainant replied on the same day and said that he was unhappy with the FOS's response and that he doesn't think the exemption under section 40(1) applies as he had requested statistical information and not names or dates.
6. Following an internal review the FOS wrote to the complainant on 28 March 2017. It upheld its original position; but stated that there had been an error in its initial response and that it meant to apply section 40(2) by virtue of subsection 40(3)(a)(i) of the FOIA to withhold the requested information

Scope of the case

7. The complainant contacted the Commissioner on 28 March 2017 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of the case to be to determine if the FOS has correctly applied the exemption it has cited to the withheld information.

Reasons for decision

Section 40(2) – personal information of third parties

9. Section 40(2) of the FOIA provides that: -

"Any information to which a request for information relates is also exempt information if: -

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or second condition below is satisfied"

Section 40(3)(a)(i) provides that: -

“(a) in a case where the information falls within any of the paragraphs

(a) to (d) of the definition of ‘data’ in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene: -

(i) any of the data protection principles”

Is the withheld information personal data?

10. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
11. In this case the information withheld under section 40(2) by virtue of section 40(3)(a)(i) of the FOIA consists of: -
 - the number of cases processed by employee A,
 - the outcomes in those cases,
 - the number of those cases that were escalated to the Ombudsman, and
 - the Ombudsman’s decision.
12. The complainant has requested information about a specific named employee’s casework. Although the information itself, e.g. the statistics alone, cannot be classed as personal data, this information still relates to employee A in terms of their work and so is also biographical. In addition employee A is identifiable when that information is disclosed in this context. Therefore, the Commissioner considers the requested information to be personal data.

Would disclosure breach any of the Data Protection Principles?

13. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner’s considerations below have focused on the issue of fairness.
14. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential

consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

15. The complainant argues that they have requested statistical information and not personal data and in any event as employee A works in a 'commercial environment' they would have no expectation that this information would remain private. The Commissioner has perused a number of case decisions published on the FOS website. The Commissioner notes that these case decisions are signed off by an ombudsman and not by employees in a similar role to employee A and also that these employees are not named.
16. The FOS considers that disclosure of the requested information would breach the first data protection principle. When considering the first principle the FOS argued:
 - Employee A has not consented to the release of the information. The information is kept by their manager and shared with them. FOS argues that any individual whose personal data is held for this purpose does not reasonably expect it to be disclosed to the world at large under the FOIA.
 - Employee A is not a senior member of staff – and is less senior than the FOS ombudsmen who issue final decisions.
 - The opinions of employees in a similar role to that of employee A are not legally binding, so FOS considers that there is little public interest in the outcomes they reach and the number of complaints they have considered, when compared to ombudsmen's statistics.
 - The FOS does not publish the same level of information for other individual employees who are in a similar role to that of employee A, nor is this something its statistics can be compared against, for similar organisations in other sectors.
 - The publishing of this performance information in isolation may affect employee A's public life and reputation because consumers who bring complaints to FOS could unfairly judge their ability to deal with complaints.
17. The Commissioner's view is that, when considering what information individuals should reasonably expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the individual's public or private life. In this case the information

relates to the individual's public life and so the expectation of privacy is decreased.

18. However, the information is not made public about other employees in a similar role to employee A and therefore the Commissioner's view is that it would be unfair to publish this information about one individual.

Potential consequence of disclosure

19. Disclosure of the information is unlikely to be fair if it would have unjustified adverse effects on employee A. Although employees may generally regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life.
20. The FOS has argued that the disclosure of this information may have an adverse effect on employee A's public life and reputation. The Commissioner has considered the potential adverse effect of disclosure on employee A and their reputation and considers that this may cause unwarranted or unjustified damage or distress.

Legitimate interest in disclosure to the public

21. Given the importance of protecting an individual's personal data, in cases where section 40(2) of the FOIA has been cited, the Commissioner's 'default' position is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
22. In relation to the legitimate interest in the public knowing the information about employee A, the Commissioner notes the complainant's private interest in the information.
23. However, the Commissioner does not consider there to be any public interest in the release of the specific information about employee A. The FOS has explained that employee A's decisions are not legally binding, that ombudsmen and not employee A issues final decisions and that complainants can appeal a decision to an external ombudsman. Therefore, she considers there to be no public interest in the number of complaints considered by employee A when compared to the ombudsmen's statistics.
24. In making her decision the Commissioner has considered whether disclosure of the information would lead to a greater infringement of

the individual's legitimate right to privacy than is outweighed by the legitimate interest in disclosure. The Commissioner is not convinced there is any legitimate public interest in disclosure of employee A's work related information beyond the individual complainant's private interests in it.

25. The Commissioner therefore considers that disclosure of this information would be unfair and in breach of the first data protection principle. As such, section 40(2) of the FOIA is engaged and the information is therefore exempt from disclosure.

26. Right of appeal

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

27. 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.
28. 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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