

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 January 2018

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

Decision (including any steps ordered)

1. The complainant has requested information from the Financial Ombudsman Service (FOS) about its structure and policies. FOS has refused to comply with the requests which it says are vexatious under section 14(1) of the FOIA.
2. The Commissioner's decision is that the complainant's requests can be categorised as vexatious under section 14(1) and FOS is not obliged to comply with them.
3. The Commissioner does not require FOS to take any steps.

Request and response

4. In correspondence to FOS dated 20 June 2017 and 29 June 2017, the complainant requested information in the following terms:

"1. Please provide any and all information held which if combined would constitute a full organisational chart showing all positions held within the organisation, i.e. the current version of the full list of job titles previously disclosed, combined with a full list of departments within the FOS showing their staffing levels by job title.

To assist you in this request, although I do not believe section 16 of the FOIA applies to the requester, I should like to assist by pointing out that your Payroll / finances department must have a full record of every employee, the department they work in or for in order to allocate costs and budgetary requirements etc.

2. Please provide the names of all employees, the position they hold and their email and telephone contact details for that position.

Again the Payroll / Finances department will have every employees name, job title or position and contact details already to hand.

As a final point, whilst I know it may be tempting to issue the standard section 40 exemption response in an attempt to claim that an employees name is personal and therefore exempt from disclosure I must specify that the section 40 exemption applies to personal and Private information i.e information not associated with their employment such as home address and contact details."

And

"7. Please identify any policy or procedure which details how an employee is to make themselves aware of any policy or procedure applicable to their duties within the FOS, detailing where any such policies may be found and how to access them."

And

"1. Please provide any policy or procedure within the FOS which allows any member of FOS staff to make a ruling on what they think a regulation should state rather than enforcing what it does state.

2. Please provide any policy or procedure which would allow an applicant to raise the issue of an ombudsman reaching a perverse decision in breach of the regulations specified, stating how this process is undertaken and who it needs to be addressed to.

3. Please provide any documentation in existence within the FOS which shows any attempt or indeed any application to have the provisions of DISP 2.7.2. of the FCA handbook re written to comply with Ombudsman [Named Individual] interpretation and or when that re written portion came into effect.

4. Please specify any disciplinary procedure or administrative action

which can be applied to address the actions of an Ombudsman which are shown to be perverse and in breach of the requirements of their position.

5. Please provide a copy of the contract of employment which would have been and/or is the current terms of reference for [Named Individual] employment withholding only those portions applying to financial remuneration if different from any other ombudsmans standard employment terms.

6. Please provide any policy or procedure which details the process for a member of the public to speak directly to the Chief Ombudsman [Named Individual] regarding the actions of the staff and indeed the organisation that she heads or indeed any means of bringing untoward behaviour by staff to the head of the FOS."

And

7. Please provide any details of any policy or procedure on how complaints regarding [Named Individual] handling of this matter can be raised and to whom they need to be addressed."

5. FOS responded on 7 July 2017. It refused to comply with the complainant's requests because it considered them to be vexatious under section 14(1) of the FOIA. FOS also confirmed that, in line with section 17(6) of the FOIA, it would not enter into further correspondence or respond to future requests from the complainant on the same or similar topics.
6. In response to further correspondence from the complainant, FOS confirmed on 11 July 2017 that, as it had applied section 17(6), it would not correspond further with him about his requests or carry out an internal review.

Scope of the case

7. The complainant contacted the Commissioner on 13 July 2017 to complain about the way his requests for information had been handled.
8. The Commissioner's investigation has focussed on whether the complainant's requests can be categorised as vexatious under section 14(1) of the FOIA.

Reasons for decision

Section 14(1) – vexatious requests

9. Section 14(1) of the FOIA says that a public authority is not obliged to comply with a request for information if the request is vexatious.
10. The term 'vexatious' is not defined in the FOIA. The Commissioner has identified a number of 'indicators' which may be useful in identifying vexatious requests. These are set out in her published guidance on vexatious requests. In short they include:
 - Abusive or aggressive language
 - Burden on the authority
 - Personal grudges
 - Unreasonable persistence
 - Unfounded accusations
 - Intransigence
 - Frequent or overlapping requests
 - Deliberate intention to cause annoyance
11. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
12. The Commissioner's guidance suggests that if a request is not patently vexatious the key question the public authority must ask itself is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. In doing this the Commissioner considers that a public authority should weigh the impact of the request upon it and balance this against the purpose and value of the request.
13. Where relevant, public authorities also need to take into account wider factors such as the background and history of the request.
14. In its submission to the Commissioner, FOS has provided a background to the requests. FOS has explained that it was set up to resolve financial disputes that consumers and businesses are not able to resolve themselves. If a consumer is unhappy with the response from the business they can raise a complaint with its service. The complaint is allocated to one of its case handlers who will request information from both parties in order to arrive at what they consider to be a fair and reasonable opinion. If either party disagrees with the opinion reached they can ask for the case to be reviewed by one of its ombudsmen, appointed under statute, as the final stage of its process.

15. If a consumer is unhappy about the level of service provided he or she can raise a complaint with a manager and then with FOS' Independent Assessor who is appointed by the Board. The Independent Assessor's terms of reference mean her review is limited to the level of service FOS has provided – she is unable to look at the underlying merits of the complaint.
16. FOS says the complainant brought a complaint to its service in 2016 as he was unhappy with DAS' handling of two legal expenses insurance claims regarding his late father's estate. One of FOS' ombudsmen, who the complainant has named in his requests for information, looked into the complaint and concluded that the complainant's case was not one it was able to consider as the complainant did not have authority to bring the complaint on behalf of his late father's estate.
17. In May [2017], the complainant made a number of calls to FOS' reception and stakeholder team asking to speak to its chief ombudsman and chief executive as he was unhappy with the decision reached by the ombudsman. The ombudsman, the ombudsman manager and members of the team have all explained to the complainant that the ombudsman's decision is final and that no other ombudsman, no matter how senior, can overturn the decision – that the decision marks the end of FOS' process. The complainant has also complained to FOS' Independent Assessor about the level of service received, and has received a response.
18. FOS says that the complainant continued to make numerous calls to its service, so it let him know that it would not speak with him or communicate any further about his cases.
19. The complainant then made a FOI request on 22 May [2017] for a number of pieces of information including for all policies and procedures which refer to communications. FOS responded, applying section 12 of the FOIA (cost/time exceeds appropriate limit).
20. Following this request, the complainant made further FOI requests, which are the subject of this notice. FOS aggregated the requests together and, in its response of 7 July 2017, explained that it would not comply with these requests under section 14(1) as it considered the requests to be vexatious.
21. FOS has told the Commissioner that it appreciates that in answering any request it is inevitable that it will experience a certain level of disruption, but that it needs to be certain that this is not too great. It says answering long, frequent and interlinked requests for information places an enormous strain on its resources, so it had to think carefully about the complainant's requests for information.

22. When considering whether the complainant's requests were vexatious FOS says it weighed up the purpose and value of the requests against the impact and disruption it would have on the organisation. FOS also took into account the complainant's other communications with its service and considers his requests are a result of his general dissatisfaction with its service.

Would complying with the request be likely to cause disproportionate or unjustified level of disruption, irritation or distress?

23. FOS notes that the complainant has asked for 10 pieces of information, and most of them are about policies or procedures that relate to the decision made on his case – such as “*specify any disciplinary procedure or administrative action which can be applied to address the actions of an Ombudsman which are shown to be perverse and in breach of the requirements of their position*”. FOS is of the view that it is likely it does not hold a lot of the information that the complainant is asking for as it is so specific to the circumstances of his case. It does, however, hold wider policies such as a disciplinary policy. Similarly whilst FOS says it would not hold a copy of a policy about speaking to the chief ombudsman and chief executive, it does hold a policy about how to deal with challenging consumers.
24. The complainant also asked for a full list of job titles including the name, direct telephone number, email address, department and level of position of every member of staff at our service. FOS has confirmed it currently employs over 3,000 members of staff.
25. Taking into account what the complainant has requested, identifying whether it holds the information requested (or information that is wider but similar to what he has requested) would, FOS says, take a huge amount of time and would place an unnecessary burden on the ombudsman service – in particular its stakeholder team and HR team – especially given the limited purpose and value of the requests.
26. FOS says it does not feel that individuals should be able to use Freedom of Information requests to express grievances or prolong a complaint which has already been concluded. For these reasons it believes that the complainant's requests place a disproportionate burden on the ombudsman service. FOS also believes that the behaviour exhibited by the complainant, both with its general casework departments and with the stakeholder team, has caused significant disruption and will continue to do so if it was to comply with these requests.

Does the purpose and value of the request justify the impact on the public authority?

27. When considering these requests for information FOS says it has taken into account the wider context of the complainant's communications with its service. This includes general correspondence with the case handlers, complaining to its Independent Assessor, numerous telephone calls to reception and the stakeholder team, making five freedom of information requests and a subject access request.
28. FOS has told the Commissioner that the emotive language of the complainant's requests, such as "*perverse decision*" and the links between the requests and the complaint issues he has raised – such as questions about the ombudsman's interpretation of the rules, the ombudsman's employment background and details of how to speak directly to the chief ombudsman – make it clear that his requests for information stem from his unhappiness with FOS' service and that it has told him that it would no longer be able to correspond with him about his complaints.
29. Taking all of this into account, FOS therefore believes it is not unreasonable to conclude that these requests appear to be part of a continuation of behaviour that is intended to cause unjustified disruption to the ombudsman service. It therefore applied section 14(1) to the requests because it does not consider that the public interest lies in diverting its resources in order to disclose the information that has been requested. Nor does FOS believe that this level of disruption and irritation would be justified or warranted by the limited purpose and value of the requests.
30. As noted at paragraph 13, when considering whether a request is vexatious a public authority may also need to take into account wider factors such as the background and history of the request. The Commissioner considers the background to the request is very relevant here. From the evidence provided by FOS it appears to the Commissioner that the complainant has received a decision from FOS with which he disagrees. Over the course of a number of months he attempted to remain in communication with FOS about the matter; contacting, and having discussions with, members of FOS staff and submitting a complaint to the Independent Assessor. These contacts from the complainant have resulted in FOS confirming that it will no longer communicate with him further about his complaint case.
31. The complainant also appears to have attempted to keep the issue 'live' by submitting a series of FOI requests, including the 10 requests submitted on two dates in June 2017 that are the subject of this notice.

32. Having reviewed these requests, the Commissioner has noted the number of requests submitted over a short period of time; the breadth of some of the requests, such as request 1 for information on the entirety of FOS' staff, and the specificity of other of the requests, such as the request for any policy or procedure that allows any FOS staff to make a ruling on what they think a regulation should state, rather than enforcing what it does state.

33. The Commissioner is satisfied that the complainant is trying to use the FOI legislation for a purpose for which it was not intended. Despite his discussions with FOS staff and complaint to the Independent Assessor, and perhaps because of FOS' confirmation that it will not communicate with him further, it appears to the Commissioner that the complainant is now using the legislation to continue to express dissatisfaction with FOS' decision in his case and to cause FOS annoyance. Complying with the ten requests in question would be a burden to FOS and the Commissioner is satisfied that the burden would be disproportionate, as the requests have little or no value or purpose. The requests have met a number of the indicators of vexatiousness at paragraphs 10 and 11 and, on this occasion, the Commissioner therefore agrees with FOS that the requests can be categorised as vexatious under section 14(1) of the FOIA.

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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