

## **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. In four requests, the complainant requested particular communications and documents. The Financial Ombudsman Service (FOS) appeared to aggregate the requests, refusing to comply with them as to do so would exceed the appropriate cost/time limit provided at section 12(1) of the FOIA.
2. The Commissioner's decision is that FOS:
  - is correct to aggregate the requests and was entitled to rely on section 12(1) of the FOIA, and
  - offered the complainant adequate advice and assistance under section 16(1).
3. The Commissioner does not require FOS to take any steps.

#### **Request and response**

---

4. On 28 June 2017, the complainant wrote to FOS and requested information in the following terms:

*"This is a request under the freedom of information Act*

*1. In a communication dated 25th November 2015 timed 15:53:05 it is stated "I just wanted to confirm that your case has moved with me to a new specialist team focussing solely on cases such as yours. This is to ensure we reach consistent views on these cases."*

*A copy of this note is provided see below. [1] Please provide copy of all disclosable communications setting up this team and any communications that it has dealt with its conduct or processing of claims, or indication as to how it should deal with points arising or may arise during the consideration of claims. For the avoidance of doubt no document dealing with a specific case is requested.*

*2. In a document headed "Outgoing Call" dated Monday 10 October 2016 timed 11:37 pm it states "Ombudsman is aware and will issue as soon as possible. In the long term the process has been delayed by the FCA's decision to review DB redress."*

*Copy supplied see below*

*Please supply all FCA correspondence relating to this issue to or from the FOS or from FOS to the author of the note.*

*3. In a document dated 15.10.2015 timed at 11:36:54 the communication says "**WE** have been considering the issues associated with this case which are wide ranging – very carefully, that has taken a long time."*

*Copy supplied see below*

*Please supply all documentation (other than that of named parties) that were considered. State what were the issues considered.*

*4. In an undated document, it is stated "Asked for update. Explained that this issue was very high profile and was reliant on other external issues. Copy supplied. Please provide all documents disclosable in connection with the "other external issues." Please say why the issue was high profile and all documents relating to it*

*Copy supplied see below"*

5. FOS responded on 24 July 2017. It said that, in line with section 12 of the FOIA, it was not obliged to comply with the requests as to do so would exceed the appropriate cost/time limit. FOS pointed out to the complainant that some of the questions he had asked required commentary from FOS and, as it had no obligation to create new information, it would not be providing any commentary in response to some of his questions.

6. FOS provided an internal review on 18 August 2017. It upheld its original position and explained its considerations of what advice and assistance it could offer the complainant, in line with its obligation under section 16(1) of the FOIA. It noted that the complainant had submitted a refined request, which it was dealing with.

## **Scope of the case**

---

7. The complainant contacted the Commissioner on 25 July 2017 to complain about the way his requests for information had been handled.
8. The Commissioner asked the complainant to clarify which of his original four requests, submitted on 28 June 2017, he had refined. In response, the complainant said that he considers that FOS should comply with the original four requests as they have been expressed. He confirmed that he had nonetheless submitted a refined request to FOS and, the Commissioner understands, has subsequently submitted at least one further refined request.
9. The Commissioner considers that a refined request supersedes the original request and should be handled as a new request for information. The original request, and the public authority's response to it, can usually therefore be disregarded at that point.
10. In this case, the complainant prefers not to withdraw his original requests of 28 June 2017 and the Commissioner has been asked to investigate whether FOS was correct to refuse to comply with these requests, under section 12(1) of the FOIA.

## **Reasons for decision**

---

### **Section 12 – cost exceeds the appropriate limit**

11. 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 comply with the request in its entirety.
12. 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:

- determine whether it holds the information
  - locate the information, or a document which may contain the information
  - retrieve the information, or a document which may contain the information, and
  - extract the information from a document containing it.
13. In her guidance on section 12, the Commissioner notes that when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests if the conditions laid out in regulation 5 of the Fees Regulations can be satisfied. Those conditions require the requests to be:
- made by one person, or by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign;
  - made for the same or similar information; and
  - received by the public authority within any period of 60 consecutive working days.
14. Section 12(4) of the FOIA says that where two or more separate requests are made by one person to a public authority, providing certain conditions are met the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them. In other words, when a public authority is estimating whether the appropriate limit is likely to be exceeded, it can include the costs of complying with two or more requests - if the conditions at paragraph 13 are satisfied.
15. Therefore a public authority should ensure that each request can be aggregated in accordance with the conditions laid out in the Fees Regulations above. Any unrelated requests should be dealt with separately for the purposes of determining whether the appropriate limit is exceeded.
16. In its communications with the complainant and submission to the Commissioner, FOS had not specifically referred to section 12(4). It has, however, referred to the four requests throughout as 'the request' which suggested to the Commissioner that FOS aggregated the requests. During the Commissioner's investigation, FOS confirmed to

her that this was so and it also considered that, individually, complying with each of the request would exceed the cost limit.

17. Where a public authority claims that section 12 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.
18. In its submission to the Commissioner, FOS has provided a background to the request. It says that the complainant represents a consultancy that is representing a financial business on a number of complaints at its service. The communications and notes the complainant has referred to in his FOI request are conversations he has had with an individual case handler at FOS' service about a particular dispute it is currently looking into.
19. In its submission to the Commissioner, FOS has set out what searches it undertook and the volume of information it would need to search through.
20. The complainant asked for "*copies of all disclosable communications setting up this team*". Over the last few years FOS says it has made a number of changes to how it works and how it resolve cases. This has resulted in a number of individuals moving teams and departments.
21. The team the complainant refers to was established in 2015. In order to find out who would have been involved in the conversations, FOS has explained that it would need to search through the emails of a number of senior leaders as well as the individuals in the team, and also search the shared drives to see if there is any reference to the information requested.
22. FOS says it is unlikely that the phrase "*new team*" would have been used in conversations, so it would not be possible to search its systems using a specific word or phrase. As such FOS says it would need to manually look at all of the emails a number of individuals sent in this period.
23. The complainant also asked for "*any communications that it has dealing with its conduct or processing of claims, or indication as to how it should deal with points arising or may arise during the consideration of claims*", for communications about "*any other external issues*" and any communications about "*issues associated with this case are wide ranging*". FOS considers these requests to be very wide and could cover a range of communications. As such FOS does not believe it can identify any emails by searching for a single word or phrase. Because of this FOS

says it would need to search the mailboxes of the individuals in the team the complainant referred to in his request.

24. FOS has asked its IT department to carry out a search of each of the individuals in the team. In the last year alone, these individuals sent 28,819 emails.
25. Given the number of emails, FOS is satisfied that the time taken to search through each of these emails to see if they fall within the scope of the request would vastly exceed the appropriate time limit.
26. The complainant also asked for any "*FCA correspondence*" about the FCA's decision to review DB redress. FOS says this review was about pensions transfers so simply searching for '*DB*' or '*defined benefit*' would not necessarily capture all of the communications the complainant has requested. FOS asked its IT department to carry out a search of the individuals in the team of the note the complainant referred to, and for the word '*FCA*'. In the last year alone, this search brought back 8,360 emails.
27. FOS is again satisfied that searching through each of these emails would exceed the appropriate limit.
28. To explore whether FOS could identify whether it had the information requested, it says it asked its IT team to run a search of all emails with the search terms it identified. This search returned 441,890 emails. FOS considers that because the request is so wide-ranging it would need to do a manual search of those emails. If it used the entire 18 hours to review just those emails it would have to review 24,549 an hour or 409 emails a minute. This would clearly not be possible and so would exceed the appropriate limit.
29. The complainant considers that FOS should comply with any of the four requests that it can address within the time limit. He also considers that substantial costs and time can be saved if FOS was to speak to those who sent and received communications, with a view to identifying specific search terms, rather than simply to carry out a generalised computerised search.
30. The Commissioner notes these arguments but, as explained above, FOS has aggregated the four requests; it would exceed the appropriate limit to comply with at least two of the requests and therefore FOS is not obliged to comply with any of them.

31. The complainant has also argued that, with regard to:
- request 1, if there is a specialist team then it should be a simple task to provide the correspondence setting it up and its terms of reference
  - request 2, the documents requested are specific and the time frame is self-limiting as it must be around 10th October 2016
  - request 3, this again is time specific and should not take too long to ascertain
  - request 4, the question asked is simple and the documents are easily ascertainable from the author of the note.
32. The Commissioner has reviewed the four requests. She disagrees that it would be simple to provide the correspondence requested at request 1. This is because there are no obvious search terms that would quickly identify all or any relevant information. Consideration on setting up a new team may have been ongoing for some months, or even years, and involved a number of individuals.
33. With regards to requests 2 and 3, although the complainant refers to specific, dated, correspondence in these requests, the associated information that the complainant has requested is more broad and wide-ranging. Similarly with request 4, which is somewhat broad. It may be the case that if this particular request had been submitted on its own, FOS *may* have been able to comply with it within the cost and time limit. As it is, FOS has aggregated this request with the other three and says that, together, complying with these requests exceeds the appropriate limit.
34. Having considered FOS's submission, the Commissioner agrees that the four requests of 28 June 2017 are wide-ranging and that the time estimates that FOS has given are credible. In addition, the Commissioner considers that the requests can be aggregated. This is because, in line with the criteria at paragraph 13, the four requests in question were submitted by the same person, on the same day and are for information associated with the same matter; that is a particular dispute. The Commissioner is therefore satisfied that it would exceed the appropriate limit under section 12(4) of the FOIA to comply with the requests of 28 June 2017 as they are expressed.

## **Section 16 – advice and assistance**

35. In its submission, FOS confirmed that in its 24 July 2017 response it had considered whether it could provide any guidance as to how to refine the request by narrowing the scope. It had expressed the view that as it required a manual search of all emails and documents, it believed it unlikely that the request could be refined in a way to bring it within 18 hours. FOS invited the complainant to refine his request for information if he thought he could.
36. FOS says it then explained in its 18 August 2017 response after its internal review that the complainant may wish to limit the scope of his request by reducing it to a narrow timeframe – for example a six month period, and also by refining the type of information he was looking for – for example by asking FOS to search its email communications for a specific word or phrase.
37. As mentioned above, since this request the complainant has subsequently submitted refined requests on two occasions. The Commissioner is satisfied that FOS offered him adequate advice and assistance and complied with section 16 of the FOIA, with regards to the requests that are the subject of this notice.



## Right of appeal

---

38. 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](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**