

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 March 2018

**Public Authority:** Financial Conduct Authority  
**Address:** 25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

#### **Decision (including any steps ordered)**

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1. The complainant has requested information from the Financial Conduct Authority ('the FCA') about its response to Subject Access Requests. The FCA has refused to comply with the requests under section 12(1) of the FOIA as it considers to do so would exceed the appropriate cost limit.
2. The Commissioner's decision is that the FCA:
  - is entitled to rely on section 12(1) to refuse to comply with the request; and
  - has offered the complainant adequate advice and assistance under section 16(1) of the FOIA.
3. The Commissioner does not require the FCA to take any steps to ensure compliance with the legislation.

#### **Request and response**

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4. On 27 June 2017 the complainant wrote to the FCA and requested information in the following terms:

*"[2] As one additional final element to my FOI request, I'd be grateful if you could please answer:*

*9. You say you have dealt with 375 SARs between 1 January 2013 and 15 May 2017. Of these 375 SARs, could you please confirm the number of times that an individual making a SAR has asked the FCA, when responding to it, to also share the information with a third party. You will note that in my own case when I submitted the SAR in question (in an email addressed to [Named Individual 1] dated 14 March 2016), I asked [Named Individual 1] and the FCA to also send its response to my MP, [Named Individual 2], and to Mr James Hurley at The Times. I understand that this may be information that you do not hold in a readily searchable format. However, as this only involves 375 SARs, I think this information should be easily obtainable, especially as I suspect that might be very rare that an individual has done this."*

5. The FCA responded on 25 July 2017, its reference FOI5224. It refused to comply with the request under section 12 of the FOIA as to do so would exceed the appropriate limit.
6. The complainant requested an internal review on 25 July 2017. The FCA provided a review on 24 August 2017. It maintained its original position.
7. On 25 August 2017 the complainant asked the FCA to review its position again. The FCA confirmed on 11 September 2017 that it maintained its position with regard to the complainant's request.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 20 September 2017 to complain about the way his request for information had been handled.
9. The Commissioner's investigation has focussed on the FCA's application of section 12(1) to the complainant's request and whether, under section 16(1), the FCA offered the complainant adequate advice and assistance.

## **Reasons for decision**

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

10. In its submission to the Commissioner, the FCA has confirmed that it holds the information that the complainant has requested but that it is unable to comply with the request as to do so would exceed 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 the FCA. 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. Where a public authority claims that section 12(1) 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(1) of the FOIA.
14. In its submission the FCA has referred to the internal review it provided to the complainant. In the review the FCA had explained that its Information Disclosure Team (IDT) responds to Data Protection Subject Access Requests (SARs). IDT had confirmed that the FCA had received 375 SARs during the period 1 January 2013 to 15 May 2017. However, the FCA held records relating to only 338 SARs as the remaining had previously been destroyed in accordance with the FCA's records management policy. In respect of the SARs it holds, the FCA confirmed that records for 176 are held in electronic format and the remaining 162 are held in paper format by the FCA's off-site storage handler.
15. The FCA has confirmed that the requested information is not recorded or held in a readily extractable format that would allow it to identify, locate, retrieve and extract information falling within the scope of the complainant's request, within the appropriate cost limit. In order to provide the information requested, the FCA says it would need to review all records for the 338 SARs it holds in order to identify the number of occasions on which it has been asked to share a response with a third party.
16. The FCA has explained to the Commissioner that the complainant had submitted a previous FOI request to it, which was given the reference

FOI5113. The request was in four parts and the first part asked how many times a particular wording had been included in a SAR response letter.

17. As part of its consideration of this part of the request (FOI5113), the FCA had initially considered it would take between one and three minutes to review each of the 338 SAR responses to identify whether the particular wording outlined in the request had been used.
18. While undertaking this exercise, it became apparent to the FCA that the initial time estimate of one to three minutes was inaccurate and, in practice, it took three to four minutes for each response letter to be reviewed. It then became clear that to comply with this part of the request would exceed the appropriate limit under section 12 of the FOIA. However, the FCA says it took a business decision to continue with its searches and to comply with this part of the request rather than cite section 12. The FCA says it is its experience of complying with FOI5113 that has informed its timing estimates in respect of the current request – FOI5114. It acknowledged that its previous approach also appears to have created the misapprehension that it is possible for all 338 SARs to be reviewed for additional information within the appropriate limit.
19. The FCA went on to provide answers to the specific questions the Commissioner put to it. First the FCA says that, to establish what information is held within the records for each of the 338 SARs that it holds, it would have to locate all relevant working papers to establish whether the data subject who submitted each of the SARs asked the FCA to provide a third party with a copy of its response. This would involve retrieving some 26 boxes of paper material from its off-site storage handler as well as reviewing the information it holds in electronic format.
20. The FCA has estimated that it would take five minutes to review the records held for each SAR to identify the specific information requested. Five minutes per SAR record gives the following:  $338 \times 5 \text{ minutes} = 1690 / 60 = 28 \text{ hours}$ . The FCA says a search of electronic information held using key words such as 'third party' would not be effective as a request by a data subject to forward its response to another person would not refer to that other person as 'third party' but would identify that person by name (eg '... please copy your reply to my MP' or a named journalist).
21. The FCA has emphasised that the above suggested figure of five minutes per record is a conservative one and that the current request is far more complex than the previous request on which the estimate is based. For the current request, all correspondence received would need

to be reviewed. For example the complainant asked the FCA's Retail Banking Director, rather than IDT, to send copies of the SAR response to his MP and The Times. FCA says it would therefore need to review all material received from data subjects, in addition to the original SAR, to make sure it captures all relevant information, and can obtain an accurate answer.

22. Therefore to review the entire body of the received correspondence held, in order to determine whether there are any references to third parties requiring a copy of the response, would take in excess of the three to four minutes it took to comply with FOI5113. This is because although the same search methodology would be followed, the required information would be embedded within the material held, rather than consistently appearing in the final paragraph of the FCA's final response in each case, as in FOI5113. By way of background, the FCA has also advised the Commissioner that the SARs in question vary in size; from 10 pages to several thousand pages of material. The FCA therefore says that it would take a minimum of five minutes for it to review each SAR to determine whether the requested information is held.
23. The FCA considered whether it would be possible to limit its searches to the final SAR response letter to establish whether it mentions that it has been copied to a third party. However, it considered that this approach would not provide a comprehensive response as it could not be certain whether a copy of a response had been sent to a third party under separate cover. In addition, its consideration of FOI5113 indicates to the FCA that to limit its search in this way would still exceed the appropriate limit under section 12.
24. The FCA has confirmed that it did not undertake a sampling exercise with regard to the current request as it has been able to base its estimates on its response to the previous request.
25. Finally, regarding its proposed method of gathering the requested information and whether this is the quickest method, the FCA has confirmed that it based its estimates on the time taken to identify relevant correspondence in order to respond to FOI5113. It once again confirmed that it does not record centrally whether a data subject has asked for a copy of a response to be issued to a third party. The FCA would therefore need to review manually the material it holds for each of the 338 SARs it holds in order to determine whether it holds the specific information the complainant has requested. In practice, when considering request FOI5113, the FCA says that it found that, other than the costs of retrieval from the off-site storage handler, there was no time difference between considering electronic and paper based information.

26. The Commissioner understands that request FOI5113 concerned a standard paragraph that the FCA includes at the end of all its responses to SARs. While the process might have been relatively straightforward, the FCA found that it nonetheless took a minimum of five minutes per SAR response to locate and retrieve the requested information in that case.
27. In the current case, the request is for more unusual information – namely, the number of times a data subject asked the FCA to copy its SAR response to a third party. The Commissioner considers that it would be a much less straightforward matter identifying the number of occasions when particular data subjects have made this request – if any other than the complainant did – within the material associated with 338 SAR records that the FCA holds. Such a request could be made at any point in a data subject's correspondence with the FCA and so the FCA would need to review all its correspondence with each data subject to see if it had been included. The Commissioner considers that the minimum five minute requirement to review each SAR record – those held electronically and those held on paper – is credible, and is likely to be an underestimate, given that some SAR records contain hundreds if not thousands of pages of material. She is therefore satisfied that the FCA's estimate of 28 hours to comply with the complainant's request is reasonable and that the FCA is entitled to rely on section 12(1) of the FOIA to refuse to comply with request.

### **Section 16 – duty to provide advice and assistance**

28. Section 16(1) says that a public authority has a duty to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
29. In its submission the FCA notes the qualifier '*so far as it would be reasonable to expect the authority to do so*'. It says that in this case it set out ways in which the request could be brought within the appropriate cost limit. The complainant then contacted the FCA on 25 August 2017 to express disappointment with its response and to raise queries about the information previously provided to him. However, the FCA has noted that the complainant did not take the opportunity to ask that his request be refined in any of the ways suggested.
30. The Commissioner notes that in its response the FCA had advised that it could not suggest any ways the request might be refined to bring complying with it within the cost limit. In its internal review, the FCA confirmed this position but advised that it may be possible for it to consider the request by narrowing the date range or by limiting its searches to records held in either an electronic or paper format (rather

than both). However, the FCA considered that narrowing the request in these ways would not provide the complainant with all the information he is seeking as it would only represent the position over the revised time period selected or in a limited quantity held. The complainant's requests suggests that he required information about SARs that covered the period from the FCA's creation (April 2013) to the date in May 2017. It therefore considered the request could not be meaningfully refined.

31. Having reviewed the request, the FCA's correspondence with the complainant and the FCA's submission, the Commissioner is satisfied that the FCA complied with its duty to offer advice and assistance so far as it was reasonable to do so, and has not breached section 16(1).

## **Right of appeal**

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32. 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)

33. 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.
34. 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**  
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