

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

### **Decision notice**

**Date:** 1 July 2020

**Public Authority:** Financial Conduct Authority  
**Address:** 12 Endeavour Square  
London  
E20 1JN

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

---

1. The complainant has requested information relating to loans for residential house purchases. The Financial Conduct Authority (FCA) disclosed the majority of the information but refused to provide the remaining requested information (the small numbers <5 ) citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so. The Commissioner's decision is that the FCA has incorrectly applied section 40(2) of FOIA to the withheld information.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - To disclose the withheld small numbers <5.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### **Request and response**

---

4. On 1 August 2017 the complainant made a 14-part request for information on different types of loans for residential house purchases for each quarter from 2005 to 2017:

*'Under the Freedom of Information Act, please could you provide me with information for each postcode area in the UK:*

- Total number of loans for residential house purchases*
- Total number of loans for residential house purchases for first time buyers*
- Total number of loans for residential house purchases for first time buyers that are at 90 to 95% LTV*
- Total number of loans for residential house purchases for first time buyers that are at 95% LTV or higher*
- Total number of loans for residential house purchases for all buyers that are at 90 to 95% LTV*
- Total number of loans for residential house purchases for all buyers that are at 95% LTV or higher*
- Total number of loans for residential house purchases for first time buyers that are at 4.5 times income or above*
- Total number of loans for residential house purchases for all buyers that are at 4.5 times income or above*
- Total number of loans for residential house purchases for first time buyers that are for terms of 30 years or more*
- Total number of loans for residential house purchases for all buyers that are for terms of 30 years or more*
- Total number of loans for residential house purchases for first time buyers that are for terms of 35 years or more*
- Total number of loans for residential house purchases for all buyers that are for terms of 35 years or more*
- Total number of loans for residential house purchases for first time buyers that are at 4.5 times income or above, at 90% or higher LTV, and for a term of 30 years or more.*
- Total number of loans for residential house purchases for all buyers that are at 4.5 times income or above, at 90% or higher LTV, and for a term of 30 years or more.*

*Please could you provide the information as of the end of Q4 in each of the years from 2005 to 2017.'*

5. On 8 September 2017 the FCA provided some information in a spreadsheet. It explained that it had previously provided some of the information from 2005 to 2015 so did not repeat that information. It withheld a small amount of information that may contain personal data *'where postcode districts exist with 5 or fewer sales'* and cited the exemption section 40(2) of the FOIA.
6. There followed an exchange of correspondence and on 5 July 2019 the FCA provided further and corrected information for questions 13 and 14 as extracted on 28 February 2019. Again, the FCA withheld a small amount of information that may contain personal data and cited the exemption section 40(2) of the FOIA.
7. On 5 July 2019, the complainant requested an internal review. She argued in some detail that the suppressed small numbers should be released as individuals could not be identified from the summarised data.
8. On 27 September 2019 the FCA provided the outcome of the internal review. It provided further information but continued to withhold a very small amount of information under section 40(2)(b) of the FOIA.

## **Background**

---

9. The FCA provided the following as a background.
10. Since the beginning of 2007, around 340 regulated mortgage lenders and administrators have been required to submit a Mortgage Lending and Administration Return (MLAR) each quarter, providing data on their mortgage lending activities.
11. The FCA and the Prudential Regulatory Authority (PRA) both have responsibility for the regulation of mortgage lenders and administrators, so this data publication is joint. Data is published every quarter and includes:
  - The outstanding value of all residential loans
  - Total gross advances by loan-to-value, income multiples and purpose of loan
  - Value of new commitments
  - Proportion of mortgage loans above Bank Rate
12. A commentary is also provided, which includes technical information on the MLAR as well as analysis of the findings. The FCA do not publish information by location or postcode.

## Scope of the case

---

13. The complainant contacted the Commissioner on 8 November 2019 to complain about the way the request for information had been handled. She argued that the suppressed small numbers should be released.
14. The Commissioner considers the scope of this case to be to determine if the FCA is entitled to rely on section 40(2) as a basis for refusing to provide the withheld information, that is the suppressed small numbers.

## Reasons for decision

---

### Section 40 Personal information

15. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
16. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data set out in Article 5 of the General Data Protection Regulation (GDPR) ('the DP principles').
17. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 (DPA). If it is not personal data then section 40 of FOIA cannot apply.
18. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

### ***Is the information personal data?***

19. Section 3(2) of the DPA defines personal data as:-

*"any information relating to an identified or identifiable living individual"*.

---

<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) of the Data Protection Act 2018

20. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
21. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
22. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
23. In this case, the FCA withheld the remaining small amount of data under section 40 (in response to Questions 3 to 8, and 13 to 14, only of the request) because it considered it to be personal data.
24. The Commissioner's guidance on what is personal data<sup>2</sup> states that if information 'relates to' an 'identifiable individual' it is 'personal data' regulated by the DPA.
25. The information in this case doesn't directly identify individuals. However, because the name of an individual is not known, it does not mean that an individual cannot be identified. The aforementioned guidance states the following:

'A question faced by many organisations, particularly those responding to Freedom of Information requests, is whether, in disclosing information that does not directly identify individuals, they are nevertheless disclosing personal data if there is a reasonable chance that those who may receive the data will be able to identify particular individuals.'

It also states:

'The starting point might be to look at what means are available to identify an individual and the extent to which such means are readily available. For example, if searching a public register or reverse directory would enable the individual to be identified from an address or telephone number, and this resource is likely to be used for this purpose, the address or telephone number data should be considered to be capable of identifying an individual.'

---

<sup>2</sup><https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf> & [https://ico.org.uk/media/for-organisations/documents/1549/determining\\_what\\_is\\_personal\\_data\\_quick\\_reference\\_guide.pdf](https://ico.org.uk/media/for-organisations/documents/1549/determining_what_is_personal_data_quick_reference_guide.pdf)

When considering identifiability it should be assumed that you are not looking just at the means reasonably likely to be used by the ordinary man in the street, but also the means that are likely to be used by a determined person with a particular reason to want to identify individuals. Examples would include investigative journalists, estranged partners, stalkers, or industrial spies.'

26. The FCA stated that it has suppressed the remaining small amount of data (small numbers <5) owing to the risk of reidentification. The FCA *'remain of the view that it is more than a remote possibility that a person with specialist skills and/or prior knowledge could reasonably identify any of the individuals concerned, particularly in light of other information that is generally available about house sales in particular locations e.g. from rightmove.co.uk, HMLR and the electoral register.'*
27. The FCA's *'concern is that the information comes from the mortgage lending statistics captured from the MLAR completed each quarter by those authorised to engage in mortgage lending or mortgage administration. While these firms will be familiar with our capturing this data (and publishing regular summaries), those who have taken out the mortgage would not expect disclosure of information relating to their mortgages (and almost certainly not aware of any disclosure of more detailed information by way of postcode / location).'*
28. The FCA stated that *'the suppressed information contains a detailed analysis of aggregated anonymised data concerning the length of mortgage (30 years or more); size (90-95% LTV or higher; 4.5 times income); or if the loan is a first-time buyer. The information is likely still to be current. Some of it is recent (data from 2017); and it relates to loans for residential house purchases. House purchases are long term investments so some, or even many, of the individuals in question are likely to be in the same location, perhaps even with the same mortgage. Therefore, the age of the data (when going back to 2005) does not reduce the reidentification risk as much as it might for other types of information.*

*The total pool of mortgages (Q1) is a few hundred in relation to several instances of the suppressed data, and the total number of first time mortgages (Q2) is a few hundred or even a few tens in several cases, from which it is easier to reidentify small groups of individuals (at or below 5) than if the total pool was in the thousands. The answers also overlap, for example, Q13 (first time buyers with a residential mortgage at least 4.5 times income, at least 90% LTV and for a term at least 30 years) is a subset of Q7, Q8, Q9, Q10 and Q14, making reidentification by a motivated intruder easier.'*

29. In summary, the FCA considered that the suppressed small numbers was the personal data of the individual mortgagors who could be

identified, indirectly, by reference to location data: *'we are not satisfied that the risk of reidentification is remote, bearing in mind the location data is an identifier and the suppressed small numbers can relate to a small underlying pool of data.'*

30. The Commissioner has viewed the withheld information. She notes that, for question 13, there are both large geographical areas such as Dumfries and Galloway (DG) and densely populated urban areas such as Bolton (BL), that had 1 or 2 or 3 or 4 or 5 loans in a year for the category of *'total number of loans for residential house purchases for first time buyers that are at 4.5 times income or above, at 90% or higher LTV, and for a term of 30 years or more.'*
31. The Commissioner accepts that these numbers relate to an identifier, location, but there is no specific postcode to relate the number to an individual address which would lead to the identification of the individuals themselves.
32. The Commissioner has also considered the available information from the website of 'Rightmove'. There is considerable information on the house itself such as current and previous sale prices, exact postcode location, images, floorplan and key features. Access to HM Land Registry and the electoral register may also provide the names of the residents to these houses that are, or have been, available for sale in recent years.
33. However, considering the 'motivated intruder' test the Commissioner is not satisfied that the FCA has demonstrated a connection between the house that was sold and clearly identified on these websites and how the residents paid for the residential house purchases. For example, it is not clear how a disclosure of a number (say '2') of loans to first time buyers in a particular year in Dumfries and Galloway relates to a particular address. A search on 'Rightmove' for the postcode DG2 (part of Dumfries and Galloway, DG) returns 79 properties for sale this year.
34. Although there is potentially a risk of self-identification in that a person may point to the suppressed number for a particular area in a particular year and decide that their loan was one of those few, it is not clear to the Commissioner how some-one else could link the number to an identifiable individual. There is no information in the list of loans relating to the specific location and the Commission is not satisfied that the FCA has demonstrated a connection with other websites that list residential house purchases by exact address.
35. The Commissioner considers that the information does relate to a living person but does not relate to a person who is identifiable. Therefore, the Commissioner is satisfied that the requested information in this case does not constitute personal data. As it is not personal data then section

40 of FOIA cannot apply and the Commissioner does not need to go on to determine whether disclosure would contravene any of the data protection principles.

36. In conclusion the Commissioner has decided that the FCA has failed to demonstrate that the exemption at section 40(2) is engaged.

## **Right of appeal**

---

37. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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**