

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 September 2022

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

Decision (including any steps ordered)

1. The complainant has requested copies of various documents. The Financial Conduct Authority ("the FCA") refused the request as vexatious.
2. The Commissioner's decision is that the request was vexatious and therefore the FCA was entitled to rely on section 14(1) of FOIA to refuse it. However it breached section 17(5) of FOIA as it failed to issue its refusal notice within 20 working days.
3. The Commissioner does not require further steps.

Request and response

4. On 4 August 2021, the complainant wrote to the FCA and requested information in the following terms:

"The ICO has asked me to crystallise my FOIA requests contained in the January 2019 letter which you received no later than 2 April 2019 but have not fulfilled. These have been repeated throughout ET proceedings, where progress has been made on gathering but not releasing the key material. As a result of my Master list sent to the FCA via Bevan Brittan on 23 July 2021, you now have around 10,000 records readily to hand.

"To test your reasons for not supplying the records, please supply a handful of records (further particulars in the June/October 2019 lists) as they all follow a pattern.

- a couple of the Harm metric workbooks, rather than all 1200+
- the 2014 version of the PRA stress tests (eventually published so not caught) shared with the FCA, probably in committee rooms C&D and all records related to the claimant's criticisms of that work in the meeting made to [redacted]
- the mid 2017 Wholesale House View papers (LIBOR),
- The claimant's main papers on securitisation waterfalls (FGTB)
- The claimant's main papers on peer-to-peer
- all EXCO/Board Risk Boxes authored by the Claimant (Fareham etc) or involving FGTB and peer-to-peer and
- the Claimant's peer-to-peer Insight article.

"Please identify the specific cells and bits of information you say contain confidential information in the FSMA s348 sense. Please identify why you say the information is not in the public interest.

"I say all the analysis is based on information available to market practitioners. In regards the Harm metrics, see documents C and D from 27 November 2020 and my note of 2-7 April 2021. In regards peer-to-peer, you should know that the platforms publish the information on loans, credit scores, defaults rates and pricing, so there is no confidential information in the FSMA s348 sense involved. Similarly, market practitioners have access to full details within the securitisation waterfalls. A consumer made the complaint about Fareham, so clearly could see the problem. All I have done is opened these Black Boxes so the FSA/FCA could see the contents. That act is not caught by FSMA s348.

"Across the 1300 records you have released to me on 31 March 2021, please specify which parts you agree fall under the FOIA, and if not why not. For example, you have already admitted that the CED papers are caught by thy FOIA request."

5. The FCA responded on 5 October 2021. It stated that it did not consider the request to be one which was valid.
6. Following an internal review the FCA wrote to the complainant on 10 January 2022. It now accepted that the request was valid (at least in

part), but it refused it as vexatious as the complainant was using FOIA as a means to broaden a parallel dispute between the parties that was already before the Employment Tribunal. The FCA also emphasised the burden of the request and the low public value of the requested information.

Scope of the case

7. The complainant contacted the Commissioner on 11 January 2022 to complain about the way his request for information had been handled.
8. As the Commissioner considers that he has sufficient evidence before him to make a decision, he has taken a proportionate approach to this complaint and has therefore not sought a formal submission from the FCA.
9. The scope of the complaint is to determine whether or not the request was vexatious.

Reasons for decision

10. Section 14(1) of FOIA allows a public authority to refuse a request that is vexatious. A vexatious request is defined as a "manifestly unjustified, inappropriate or improper use of a formal procedure."
11. The Commissioner considers that this request is an inappropriate use of the FOIA process and is therefore vexatious.
12. The chronology of the request makes clear that it is related to ongoing proceedings, involving both parties, at the Employment Tribunal. The Commissioner has not been given a comprehensive appraisal of those proceedings, but it is evident from the correspondence that has been provided that the complainant has been unsuccessful in accessing all the information he considers he needs to make his case.
13. The Commissioner is concerned that the complainant appears to be using FOIA as a means of circumventing the disclosure rules of the Employment Tribunal – that is an inappropriate use of the legislation. If the complainant believes he needs particular information in order to advance his case before the Tribunal, he can request this via the Tribunal's disclosure rules – which allow him to challenge any reluctance to disclose on the part of the FCA. Given that the Tribunal's disclosure rules are more weighted towards disclosure than FOIA (albeit that it is a different form of disclosure), the Commissioner considers it unlikely that

the complainant will be entitled to receive, via FOIA, any information that is not available via the Tribunal process.

14. The Commissioner is not persuaded that the request is of significant public value. These matters seem to be mainly of interest to the complainant and he should pursue them via the Employment Tribunal
15. The Commissioner is satisfied that the request is vexatious and therefore the FCA was entitled to rely on section 14(1) of FOIA to refuse it.

Procedural matters

16. Section 17(5) of FOIA requires a public authority refusing a request as vexatious to issue a refusal notice, within 20 working days, stating that fact.
17. In this case, the FCA failed to issue its refusal notice within 20 working days and therefore breached section 17(5) of FOIA.

Right of appeal

18. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF