

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 September 2022

Public Authority: Financial Ombudsman Service
Address: Exchange Tower
London
E14 9SR

Decision (including any steps ordered)

1. The complainant requested information relating to correspondence supplied by the Financial Ombudsman ("FOS") to the Independent Assessor in relation to a service complaint. FOS relied on section 40(1) of FOIA to withhold the information for it would be the complainant's own personal data.
2. The Commissioner's decision is that FOS was entitled to rely on section 40(1) to withhold the requested information.
3. The Commissioner does not require any further steps.

Request and response

4. On 2 December 2021, the complainant made the following request for information under FOIA:

"Please provide the following information:
 1. Documents and communications sent or supplied by the FOS to the Independent Assessor in relation to her consideration of the Service Complaint concerning FOS Reference PNX-3768088-X0Y1.
 2. Any communications, notes or other documents exchanged, created or consulted by any FOS personnel in the course of the consideration and/or preparation by the FOS of its response to the Independent Assessor.
 3. Any documents known to any of the FOS personnel involved (in relation to the response to the Independent Assessor) which consider or comment upon whether the FOS DISP Rules 3.5.9 and/or 3.5.10 (permitting receipt of "confidential" evidence) are consistent with the obligation imposed by the ADR Regulations (as referred to in that Service Complaint) on ADR providers (such as the FOS) to provide a party on request the "evidence, documents and facts put forward by the other party to the dispute."
5. FOS responded on 4 January 2022 stating that it withheld the information under Section 40(1) and asked the complainant if they would like their request to be treated as a subject access request (SAR).
6. The complainant responded on the same day stating that they agreed with FOS that it should treat their correspondence, dated 2 December 2021 as a SAR but also sought an internal review stating that they asked for the personal data to be redacted.
7. FOS provided the complainant with its response to the internal review request on 22 February 2022 in which it maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 23 February 2022 to complain about the way their request for information had been handled.
9. On 23 August 2022, the Commissioner wrote to the complainant to ask for clarification regarding what further information the complainant believes they are entitled to, which has not already been provided as part of their SAR response.

10. The complainant requested that the Commissioner pursue their complaint as they believed that the response to their SAR did not contain any communications to or from the Independent Assessor.
11. Given his dual role as the regulator of data protection legislation, the Commissioner considers that he has sufficient experience and expertise to reach a decision in this case based on the request and responses. The Commissioner has therefore not sought further submissions from FOS.
12. The Commissioner considers the scope of his investigation is to determine the extent to which the requested information would be the complainant's own personal data and therefore whether FOS is entitled to withhold the requested information under section 40(1) of FOIA.

Reasons for decision

Section 40 personal information

13. Section 40(1) of FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.

Is the information personal data?

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

"any information relating to an identified or identifiable living individual".
15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. 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.
17. 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.
18. In this case the complainant has requested correspondence relating to a specific service complaint, which, in their correspondence to the Commissioner, the complainant states is "a complaint I had made to the FOS".

19. Therefore the Commissioner considers that every part of the request in some way or other links back to the complainant. As such, any information FOS held, within the scope of the request, could only have been created in relation to the complainant's service complaint.
20. The Commissioner is aware that the complainant states that "any personal data may be redacted from copies of documents supplied in response to this request", however this is not applicable here, for the exemption applied concerns the requestor's own personal data, not third-party data.
21. As there is no route to a requester's own personal data under FOIA, if the complainant is unhappy with the information received, they should challenge any exemption from disclosure under SAR.
22. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the balance of public interest. Nor is he required to consider whether or not the complainant would be happy to have his personal data published to the world at large. If the exemption applies, the information is not available via FOIA.

The Commissioner's Conclusion

23. The Commissioner therefore finds that section 40(1) of FOIA is engaged in respect of the withheld information.

Right of appeal

24. 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

25. 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.
26. 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

Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF