

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

### **Decision notice**

**Date:** 16 September 2022

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

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

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1. The complainant requested information from the Financial Ombudsman Service ("FOS") relating to solar panel installers and associated credit providers. FOS refused to comply with the request citing section 12 (cost limit) of FOIA.
2. The Commissioner's decision is that FOS was entitled to refuse to comply with the request in accordance with section 12(1) of FOIA. The Commissioner also finds that FOS failed to comply with its obligations under section 16 to offer advice and assistance, but it has since recognised this. Also, the Commissioner has found that FOS has breached both section 10 and section 17 of FOIA as a result of the delays in its response.
3. The Commissioner requires FOS to take the following steps to ensure compliance with the legislation.
  - provide advice and assistance to the complainant so that they can refine their request so that it falls within the cost limit.
4. 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 FOIA and may be dealt with as a contempt of court.

## Request and response

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5. On 22 July 2021, the complainant wrote to FOS and requested information in the following terms:

"Project Solar UK Limited is an installer of solar panels across the UK. It has completed thousands of domestic installations with many funded by consumer credit agreements.

I should be grateful if, pursuant to the Freedom of Information Act 2000, you would provide me with the following information for each of the last 5 years. I note that whilst FOS provides some specific information in relation to other areas (e.g. golf club insurance) and specific companies, there is no data specific to solar panel claims.

Accordingly, please provide the following information in relation to all solar panel complaints and separately, in relation to complaints about Project Solar.

1. The number of complaints received each year about Solar Panel companies?
2. What is the most complained about issue concerning solar panels?
3. How many complaints were found in favour of the customer?
4. Which solar panel company has been the most complained about each year?
5. How customers alleged the solar panels had been mis-sold?

Please provide this information for all solar panel companies and, separately, for complaints against Project Solar."

6. FOS partially responded on 16 November 2021. It provided some information within the scope of questions 1, 2 and 4 relating to solar panel companies, including complaints set up directly against Project Solar. It did not provide any information in relation to the complaints set up for the associated finance providers who are not actual solar panel installer companies and against whom the complaints are brought under the Consumer Credit Act in their trading capacity as finance and credit providers only.
7. FOS provided the outcome of its internal review on 11 February 2022. It provided additional information within the scope of questions 1, 2 and 4 relating to finance providers and solar panels and provided some information for questions 3 and 5. FOS now refused to comply with the remainder of the request for questions 3 and 5 as the cost of compliance would exceed the appropriate limit. FOS also explained that, due to the nature of the request, it was not possible to offer advice and assistance

which would enable the request to be brought within the appropriate limit.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 3 March 2022 to complain about the way their request for information had been handled.
11. The Commissioner considers the scope of this case to be to determine if FOS has correctly cited section 12(1) of FOIA in response to the request and whether FOS met its obligation to offer advice and assistance, under section 16 of FOIA.

## **Reasons for decision**

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### **Section 12 – cost of compliance**

12. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
13. Section 12(2) of FOIA states that even where section 12 applies, the public authority must still confirm whether it holds information – unless the estimated cost of determining whether information is held alone would exceed the appropriate limit. FOS relied on section 12(1) in this case.
14. The appropriate limit is set in the Fees Regulations at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for FOS is £450.
15. The Fees Regulations also specify that the cost of staff time devoted to complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for FOS.
16. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
  - determining whether the information is held;
  - locating the information, or a document containing it;

- retrieving the information, or a document containing it; and
  - extracting the information from a document containing it.
17. A public authority does not have to make a precise calculation of the costs of complying with a request; instead, only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency* EA/2007/0004, the Commissioner considers that any estimate must be “sensible, realistic and supported by cogent evidence”. The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
18. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.

**Would the cost of compliance exceed the appropriate limit?**

19. As is the practice in a case in which the public authority has informed the complainant that it holds the information, the Commissioner asked FOS to provide a detailed estimate of the cost of complying with the request.
20. In its explanations to the Commissioner, FOS stated that to determine whether the information is held, and then retrieve it, members of staff would need to manually review 6,400 individual case files. These vary in size and can contain large numbers of pages and documents; each of which would require examination to determine if it contained the relevant information to answer questions three and five of the FOIA request.
21. This manual search was necessary because FOS has only kept an informal record about solar panel cases, and it is this record that FOS has relied on to respond to the request and provide information related to questions one, two and four. Solar panel mis-selling complaints are not recorded as a separate category and therefore, the FOS recording systems are not configured to enable the information to be obtained easily by running key word searches or specific reports. The information could only be obtained by a manual review of individual complaint files.
22. FOS confirmed that the project lead had performed a sampling exercise previously and determined that it would take a minimum of one minute per complaint file to locate and retrieve the information needed to answer questions three and five. This equated to 60 files an hour at a cost of £25 per hour and therefore over 106 hours would be required to

check the 6,400 case files that may contain information. This far exceeded the appropriate limit for FOS as a public authority.

23. The Commissioner notes that, for FOS to comply with the request within the cost limit, the officer would have to review each complaint file within just over six seconds. The Commissioner believes that this is an unrealistic estimate.
24. The Commissioner considers that FOS estimated reasonably that it would exceed the £450 cost limit to respond to the request and that section 12(1) was engaged.

### **Section 16(1) – The duty to provide advice and assistance**

25. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice<sup>1</sup> in providing advice and assistance, it will have complied with section 16(1).
26. Where a public authority claims that section 12 of 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 FOIA.
27. FOS considered that two questions engaged section 12(1) of FOIA as follows:
  - "3. How many complaints were found in favour of the customer? And
  5. How customers alleged the solar panels had been mis-sold?"
28. The Commissioner notes that FOS stated the following in its reply to the complainant of 16 November 2021 as follows:

"However, given the time you have waited for us to respond to your request, we have decided as an exception, to provide a response to the remaining questions you have asked. We have also been provided with an estimate for questions 3 and 5 which we have provided below."

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<sup>1</sup> <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

29. FOS also provided information on the number of complaints received each year about solar panel set up against finance companies (question 1), details on the most complained about issue (question 2) and the details pertaining to most complained about business where solar panel complaints has been set up against finance providers in each year between 2016 and 2021 (question 4).
30. FOS stated in its reply of 9 September 2022 to the Commissioner that it had considered what advice and assistance it could provide that would answer the questions that engaged section 12(1) in order to be as helpful as possible and provided estimates based on a sampling exercise, informal records and information obtained from the project lead and this formed the basis of their reply.
31. It additionally stated the following:

“we recognise that under section 16, we also could have suggested that [they] refine [their] request for the information requested over a specific time period, and we will of course keep this in mind going forward.”
32. The Commissioner is therefore satisfied that although FOS attempted to provide further information in an effort to satisfy the complainant’s request, it failed to meet its obligations under section 16 of FOIA.

**Procedural matters**

33. Section 10(1) FOIA states that a public authority must respond to a request promptly and in any event not later than the twentieth working day following the date of receipt.
34. Section 17(5) states that a public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.
35. The request for information was made on 22 July 2021. The public authority responded with an initial response on 16 November 2021 and a refusal notice on 11 February 2022. As this was more than 20 working days after the request was made, the Commissioner finds that FOS breached both section 10(1) and 17(5) of FOIA.

## **Right of appeal**

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36. 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)

37. 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.

38. 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 .....**

**Claire Churchill**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**