

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 October 2022

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

Decision (including any steps ordered)

1. The complainant made a request for information relating to the Connaught Income Fund Series 1. The Financial Conduct Authority (FCA) refused to comply with the request under section 12 FOIA.
2. The Commissioner considers that the FCA was correct to apply section 12(1) FOIA in this case and complied with its obligations under section 16 FOIA.
3. The Commissioner requires no steps to be taken.

Request and response

4. The complainant made the following information request to the FCA on 15 December 2021:

"Please disclose all information you hold about meetings, emails and other interactions between the Financial Conduct Authority (including the Financial Services Authority) and Her Majesty's Treasury (together, 'the parties') in relation to The Connaught Income Fund Series 1 (including The Guaranteed Low-Risk Income Fund Series 1) and the individuals and entities associated with its operation (together, 'the Fund'), including but not limited to:

1. The dates of any meetings (whether in-person or virtual) and names of participants

2. The minutes, file notes and other documentation relating to the above meetings
3. Emails and other correspondence between the parties regarding the Fund"
5. On 28 January 2022 the FCA responded to the request. It refused to comply with the request under section 12 FOIA as it said it would exceed the cost limit to do so.
6. On 28 January 2022 the complainant asked the FCA to carry out an internal review. On 25 March 2022 the FCA provided the complainant with the result of the review it had carried out, it upheld its application of section 12 FOIA.

Reasons for decision

Section 12

7. Section 12(1) of the FOIA states that:

'Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit'.
8. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations') at £450 for a public authority such as the FCA. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12 effectively imposes a time limit of 18 hours for the FCA.
9. In estimating whether complying with a request would exceed the appropriate limit, regulation 4(3) of the Fees Regulations states that a public authority can only take into account the costs it reasonably expects to incur in:
 - Determining whether it holds the information;
 - 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.
10. A public authority need not make a precise calculation of the costs of complying with a request, and only an estimate is required. However, it must be a reasonable estimate. The Commissioner considers that any

estimate must be 'sensible, realistic and supported by cogent evidence'.

11. Section 12 is not subject to a public interest test. Therefore, if complying with the request would exceed the cost limit then there is no requirement under the FOIA to consider whether, despite this being the case, there is a public interest in the disclosure of the information.
12. FCA explained that the current request covers a 12-year period from when the fund was created in 2008 to December 2020 when the Independent Review was published. It undertook a preliminary analysis of the documents on its systems using relevant search terms and the records potentially held by year for this request are as follows:

April 2010 – March 2011 – 1
April 2011 – March 2012 – 69
April 2012 – March 2013 – 144
April 2013 – March 2014 – 503
April 2014 – March 2015 – 1598
April 2015 – March 2016 – 29
April 2016 – March 2017 – 15
April 2017 – March 2018 – 0
April 2018 – March 2019 – 2
April 2019 – March 2020 – 5
April 2020 – March 2021 – 49
13. The FCA would then need to review each of the 2415 records to determine whether it holds the required information. Even only allowing 1 minute per document would exceed over 40 hours work.
14. In its internal review the FCA provided a more detailed explanation of further searches that would be required to ensure all interactions with the Treasury on this subject were captured.
15. In his letter of complaint to the Commissioner, the complainant has offered to make payment, should his request exceed the £450 cost limit to enable the FCA to comply with his request. The FCA is under no obligation to accept such an offer. If the cost limit is exceeded under section 12 FOIA it is not obliged to comply with a request. The complainant has also presented public interest arguments in relation to his request. As explained at paragraph 10 above, section 12 FOIA is not subject to a public interest test and therefore these arguments are not relevant considerations.
16. Given the time period of this request and the number of documents which would require review to determine what information is held, the

Commissioner is satisfied that it would exceed the cost limit under section 12(1) FOIA to comply.

Section 16

17. Where a request exceeds the cost limit under section 12 FOIA, a public authority has a duty under section 16 FOIA to provide advice and assistance as to whether a request could be refined. In this case FCA confirmed that it would be able to review approximately 720 documents within the cost limit and said that the complainant could specify particular years with this in mind. It also said that the complainant could refine the request further by providing details of specific documents, meetings, subject matter or specific individuals from the FCA or HMT who were involved in or attended these meetings.
18. The Commissioner is satisfied that the FCA complied with its obligations under section 16 FOIA.

Right of appeal

19. 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

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

20. 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.
21. 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.....

Gemma Garvey
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Cheshire
SK9 5AF