

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 September 2023

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

Decision (including any steps ordered)

1. The complainant has requested copies of internal guidance notes. The above public authority ("the public authority") originally relied on section 12 (cost) to refuse the request but later relied on section 14 of FOIA (vexatious).
2. The Commissioner's decision is that the public authority was entitled to rely on section 14 of FOIA to refuse the request.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 14 May 2023, the complainant wrote to the public authority and, referring to a previous response, in which he had been provided with the titles of the public authority's internal guidance notes, requested copies of 656 of these notes. He also asked the public authority provide summaries of a further 302 notes "in the interest of saving time and cost".
5. The public authority responded on 9 June 2023. It relied on section 12 of FOIA to refuse the request. It upheld this position following an internal review.

Scope of the case

6. At the outset of his investigation, the Commissioner wrote to the public authority, asking it to set out further details of its estimate of the burden of complying.
7. He noted that the responses to date had indicated that the public authority may have been considering time spent redacting material – which cannot be included in an estimate for the purposes of section 12 of FOIA. However, given that the estimated burden with redactions was so substantial, he asked the public authority whether in fact section 14 would be engaged.
8. The public authority provided a further submission to the Commissioner on 7 September 2023. It agreed that it would need a substantial amount of time to redact material, but also argued that section 12 would be engaged in its own right because of the time needed to extract the requested information.
9. For reasons that are set out below, the Commissioner is satisfied that the public authority would have needed to consider exempt material, had it attempted to comply with the request. For that reason he has looked at section 14 of FOIA first. If he finds that section 14 is not engaged he will go on to consider whether complying with the request would have exceeded the cost limit.

Reasons for decision

10. Section 14 of FOIA allows a public authority to refuse a request that is vexatious. A vexatious request is one that imposes a disproportionate burden – including where that burden is grossly oppressive.
11. In order to demonstrate that a request would impose a grossly oppressive burden, a public authority must be able to show, not only that a very large volume of material falls within the scope of the request, but that, within that material will be a significant quantity of exempt information that cannot easily be identified, or extracted, or both.
12. The public authority noted that the complainant had asked for complete copies of a total of 656 internal guidance notes and summaries of a further 302. It explained that, even if it were to provide full copies of all 958 notes (it anticipated that providing each note would be quicker than attempting to produce summaries) it would take well in excess of 100 hours of staff time. This estimate was based on an exercise its

Knowledge Services team had carried out recently that involved moving a large amount of similar content manually.

13. The public authority also noted that, within the guidance notes, there was a reasonable likelihood that some of the information might fall under one or more of the following exemptions and would need removing:
 - Section 40(2) – details of staff contacts or authors
 - Section 31(1)(a) – information relating to money laundering or fraud
 - Section 31(1)(c) – information which might allow complainants to “game” its complaints process
 - Section 36(2)(c) – same as above
 - Section 43 – commercially sensitive information

The Commissioner’s view

14. The Commissioner considers that this request would be grossly oppressive.
15. The fact that information may be stored digitally does not necessarily mean that it must be easily capable of being converted into a format that is suitable for disclosure. The time required will depend on the format in which the records are held.
16. An intranet page, for example, is not in a format that can be disclosed to anyone who does not have access to the public authority’s intranet. The information on that page would therefore need to be transferred into another format that could be provided to the complainant. Whilst the public authority could, in theory, publish the page on its external website, the publication process could take longer than the “copy and paste” approach.
17. The request encompasses a very large number of these internal guidance notes. The Commissioner accepts that these notes are likely to vary in length and therefore the time need to review each one will also vary. However, given the scope of the task at hand, even a relatively small amount of time per note will very quickly translate into a large amount of time overall. In this case the Commissioner notes that every additional minute spent per note adds an additional 16 hours to the total time needed to deal with every note.

18. The Commissioner recognises that the public authority would have to withhold some information. Although some exemptions would more obviously need to be checked for than others (there is a high likelihood of small amounts of personal data being present and, given the public authority's functions, information about fraud or money-laundering), he recognises that each individual note would need to be checked so as to confirm that it did not contain sensitive information.
19. The public authority has estimated a figure in excess of 100 hours to extract and compile the information, as well as check for redactions. Given that this estimate is based on a similar transfer of information exercise, the Commissioner accepts that this is a robust estimate – though he notes that, even if it were halved, the burden would still be very considerable.
20. The Commissioner also recognises that the public authority is not a particularly large organisation and therefore complying with the request would likely have caused significant diversion of resources from its core functions (given that the request would have needed to have been complied with within 20 working days).
21. Finally the Commissioner has considered the overall value of the request – which he considers to be low.
22. Some of the internal guidance may have a value, but it is difficult to see why guidance on how the public authority operates its internal case management software (for example) would carry substantial public interest.
23. Given that the public authority has disclosed the titles of the various guidance notes, the Commissioner considers that it would be reasonable to have expected the complainant to have submitted a request for information that was more clearly focused on those notes most likely to contain whatever it is he is particularly interested in. Instead the complainant has submitted an extremely broad request, with no apparent focus and little consideration for the work that dealing with such a request would require. The Commissioner also notes that the complainant accepted that he “may or may not” be interested in the contents of some of the documents, but requested them anyway.
24. Whilst the complainant did provide a list of topics that he **wasn't** interested in, the Commissioner considers that, were the public authority to attempt to use it to narrow down the scope of the request it would actually increase the burden. Not only would the public authority need to spend **more** time deciding whether each note was or was not exclusively concerned with one or more of the topics on the list (as

opposed to simply providing them regardless). It would likely also have to spend time justifying its decision for each note.

25. The Commissioner is therefore satisfied that the request engages section 14 of FOIA because it would have imposed a grossly oppressive burden.

Other matters

26. In seeking an internal review, the complainant argued that the public authority should disclose several guidance notes to him because of "the time I have waited and because the failure to disclose them is delaying the resolution of other important matters."
27. The Commissioner notes that, where a public authority considers that either section 12 or section 14 applies to all or part of a request, it is not obliged to comply with any part of that request, or disclose any information. Any "delay" was caused by the complainant's failure to submit a request with more reasonable, focused, parameters.

Right of appeal

28. 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

29. 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.
30. 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
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Information Commissioner's Office
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