

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

### **Decision notice**

**Date:** 16 October 2023

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

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

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1. The complainant has requested a collections report from the Financial Ombudsman Service (FOS). The FOS refused to provide the information, explaining that it was the complainant's own personal data which cannot be provided under this legislation and citing section 40(1) of FOIA.
2. The Commissioner's decision is that the FOS was correct in citing the exemption because the requested information is the complainant's own personal data and therefore is absolutely exempt under FOIA.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 18 August 2023, the complainant wrote to the FOS after earlier correspondence and requested information in the following terms:  

"Further to my above email, I would like to once more ask if the Argos collections report can be provided?..."

In addition, I would like to apply my rights under the Freedom of

Information Act and request a copy of the report to be provided by the ombudsman service. If the report is withheld, I would like you to provide the details of exemptions you have applied to justify why the data will not be released.”

5. On 22 August 2023 the FOS responded explaining that it could not provide the requested information under the FOIA but was happy to share information to which the complainant was entitled under a subject access request.
6. On the same day the complainant clarified that they had only requested the collections report and made a subject access request. They also requested an internal review of the FOIA response.
7. On 12 September 2023 the FOS provided its internal review. The review maintained that the information was the complainant’s own personal data and could not be disclosed under the FOIA.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 22 August 2023 to complain about the way their request for information had been handled. At that point no internal review had been carried out. Later, the complainant was unhappy with the outcome of the review.
9. The Commissioner considers that the scope of his investigation is to decide if the FOS has cited section 40(1) of FOIA appropriately to the withheld information.

### **Reasons for decision**

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#### **Section 40(1) – personal information**

10. 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.
11. Section 3(2) of the Data Protection Act 2018 (“the DPA”) defines personal data as: “any information relating to an identified or identifiable living individual.”
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

13. Information which constitutes the personal data of the individual making an information request is exempt under FOIA by virtue of section 40(1). This is because the appropriate information access regime for accessing your own personal data is the DPA.
14. In view of the information being requested, the Commissioner firstly asked the FOS to provide the withheld information in order to ascertain if it was the requester(complainant)'s personal data. If so, it cannot be provided under FOIA.
15. Having been sent the withheld information, the Commissioner advised the complainant on 5 October 2023 that his opinion was that the information was their personal data which could not be obtained under FOIA. He suggested that the only route was via data protection legislation.
16. The complainant did not accept the Commissioner's view, even though they acknowledged that it could be their own personal data. They could not understand why, if that was the case, their attempts to "acquire the report have been fruitless".
17. As stated earlier, the Commissioner has seen the withheld information and is satisfied that it both relates to and identifies the complainant. He therefore considers the withheld information to be the complainant's personal data and therefore exempt from disclosure under section 40(1) of FOIA. It is an absolute exemption and not subject to the public interest test. The Commissioner does not need to consider whether or not the complainant is content to have their personal data published to the world at large. Though the Commissioner understands the complainant's desire to see this information, it can only be considered for disclosure as part of a subject access request. Once section 40(1) of FOIA applies there can be no further consideration.

## Right of appeal

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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 .....**

**Janine Gregory**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**