

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 July 2024

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

Decision (including any steps ordered)

1. The complainant has requested copies of agreements between financial services companies. The above public authority (“the public authority”) relied on section 44 of FOIA to withhold the information as disclosure would be prohibited by another piece of legislation.
2. The Commissioner’s decision is that the public authority is entitled to rely on section 44 of FOIA to withhold the requested information.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 4 December 2023, the complainant wrote to the public authority and requested information in the following terms:

“...What is required in respect of the following lenders, Lloyds Bank, Blackhorse, Barclays Bank and HSBC are details or copies of the following:-

1. A copy of the commercial agreement, redacted as necessary, between distributors and insurers in respect of percentage of gross written premium being earned in place as at 1st January 2005.
2. A copy of the commercial agreement between distributors and underwriter/insurers in respect of the resulting profit of the

unused premiums split between the underwriter/insurers and distributors.

3. Ditto in respect of the profit share arrangement in respect of investment income.
4. Ditto in respect of tax benefits on life business. In order to narrow the parameters, only typical agreements between the distributors/lenders above and underwriter/insurers need be disclosed, limited to one typical agreement for each of the parties concerned."
5. The public authority responded on 5 January 2024. It relied on section 44 of FOIA to withhold the information – a position it upheld following and internal review.

Reasons for decision

6. Section 44 of FOIA allows a public authority to withhold information if another law would prohibit that information from being published.
7. In this case the public authority has pointed to section 348 of the Financial Services and Markets Act 2000 as prohibiting disclosure.
8. Section 348 prevents the public authority from disclosing any information it receives, in the course of discharging its functions, that relates to the affairs of a particular business – unless that information has been made public already or unless the information is provided in a general form that makes it impossible to relate particular information to a particular business.
9. There are a small number of exceptions (such as when information needs to be shared with the courts, police or HMRC) but none would apply to publication.
10. The complainant has pointed to the importance of the information. He also pointed to the fact that some of these agreements – and particularly the lack of transparency around them - have been held by the courts to be unfair to consumers.
11. The complainant also argued that the information was already in the public domain as a result of a Competition Commission report from 2009 and that the documents themselves could be disclosed in redacted form.

The Commissioner's view

12. In the Commissioner's view, the requested information falls within the definition of "confidential information" in section 348 of the Financial Services and Markets Act.
13. The request seeks copies of commercial agreements that four named financial service companies have entered into. That is, information that relates to the business affairs of those named companies.
14. The only reason that these documents (and, hence, the information they contain) would have come into the public authority's possession would be if it had been obtained, by the public authority (or its predecessor organisations), during the exercise of its regulatory functions.
15. The information has clearly not been made public. Had that been the case, a request would have been unnecessary.
16. The information in the public domain that the complainant has pointed to is information that has been summarised in such a way as not to link any particular piece of information with any identifiable business.
17. To the extent that the public authority could summarise this information so as to avoid the prohibition (and the Commissioner notes that it would be under no obligation to do so), this has already been done by the Competition Commission.
18. The Commissioner appreciates that this information may have importance for a large number of people. Unfortunately, that is not something he is permitted to take into account.
19. Publication of the requested information would be prohibited by the Financial Services and Markets Act. The public authority was therefore entitled to rely on section 44 of FOIA.

Right of appeal

20. 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

21. 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.
22. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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