

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

### **Decision notice**

**Date:** 23 April 2015

**Public Authority:** Financial Ombudsman Service  
**Address:** South Quay Plaza  
183 Marsh Wall  
London  
E14 9SR

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

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1. The complainant has requested information relating to any ombudsman or adjudicator having been dismissed or cautioned for a variety of reasons.
2. The Commissioner's decision is that the Financial Ombudsman Service has correctly cited section 14(1) in response to the request.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### **Background**

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4. At the time of making the request the complainant had brought two financial complaints to FOS which had been resolved by a final decision of an ombudsman in 2013. The complainant was not happy with the outcome reached by the ombudsman and has made four complaints about the service he received from FOS. These have been addressed by an Independent Assessor.
5. As of April 2014 the complainant had submitted a further 48 separate complaints which he believed had not been taken into account by the ombudsman when considering his original complaint about one financial business.

## **Request and response**

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6. The full request is detailed in an annex at the end of this decision notice.
7. FOS responded on 21 August 2014. It refused to provide the requested information and cited section 14(1) as its basis for doing so. FOS subsequently declined to carry out an internal review.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 20 November 2014 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case to be to determine if FOS has correctly cited section 14(1) in response to the request.

## **Reasons for decision**

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10. Section 14(1) of the FOIA states that:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious."*

11. The FOIA does not define the term vexatious, but it was discussed before the Upper Tribunal in the case of Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (AAC), (28 January 2013).
12. In this case the Upper Tribunal defined a vexatious request as one that is *"manifestly unjustified, inappropriate or improper use of a formal procedure."* The Tribunal made it clear that the decision of whether a request is vexatious must be based on the circumstances surrounding the request.
13. In the Dransfield case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public authority and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) harassment or distress of and to staff.
14. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the "importance of adopting a holistic and broad approach to the determination of whether

a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).

15. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests<sup>1</sup>. The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.
16. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the purpose and value of the request. He considers there is in effect a balancing exercise to be undertaken, weighing the evidence of the request's impact on the authority against its purpose and value.
17. FOS explained that the complainant's history of financial complaints is separate from his requests for information. It therefore considered it was important to highlight this with regard to the context of the requests. FOS further explained that the complainant has made further complaints about staff.
18. FOS stated it had provided formal responses to the complainant on 15 occasions between 23 July 2013 and 23 July 2014. Some of these requests were multiple requests although these were treated as one request if they were in one email. The Commissioner has been provided with copies of these requests.
  - 23 - 26 July 2013 – 6 requests
  - 21 August 2013 – 3 requests
  - 26 September 2013 – 1 request
  - 27 September 2013 – 1 request

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/1198/dealing-with-vexatious-requests.pdf>

- 26 October 2013 – 1 request
  - 26 October 2013 – 1 request
  - 25 November 2013 – 3 requests
  - 28 November 2013 – 1 request
  - 10 January 2014 – 12 requests
  - 27 January 2014 – 6 requests
  - 10 February 2014 – 11 requests
  - 27 February 2014 – 3 requests
  - 9 June 2014 – 11 requests
  - 22 July 2014 – 35 requests
19. FOS has also provided evidence that the complainant stated an intention to submit a total of 236 individual complaints relating to the incident which was the cause of his original complaint in 2013.

**Burden on the authority**

20. In March 2014 FOS informed the complainant that it had applied section 12(1) of the FOIA to his requests and aggregated requests he had made in a 60 day period. FOS explained to the complainant why this was, and that should further requests be submitted they may also be caught within that exemption. The complainant waited until 60 days had passed and then submitted 11 questions followed by a further 35 questions.
21. Furthermore, the complainant has also submitted the requests repeatedly yet where possible FOS has still tried to respond to each request.

**Motive of requester**

22. FOS explained that in February the complainant submitted a number of requests (FOS ref: FOI 751) which he had previously requested under FOI 695 and went on to repeat in FOI 945 and again in FOI 1009. FOS considered that the nature and substance of the last request is representative of the complainant's persistence in making similar requests and remaining unhappy with any response provided to him.
23. The Commissioner has reviewed all the information and it appears to him that the complainant is motivated by the fact that his original

complaints were not upheld and his belief that he has been treated unfairly.

### **Value or purpose of request**

24. FOS has provided evidence of the frequency of the requests made as can be seen at paragraph 18. The responses provided to the complainant then often generate further or repetitive requests.
25. It is clear that the complainant is trying to uncover some evidence of wrong-doing or collusion by FOS staff with the organisations it deals with. The Commissioner has no reason to believe that the complainant's suspicions are founded on anything other than his personal opinion.

### **Harassment or distress of and to staff**

26. FOS explained that the complainant has expressed to staff in the casework department as well as to the Independent Assessor that he believes the final decisions on his complaints were inaccurate. He considers that the fact that the same ombudsman considered both of his original complaints is indicative of some sort of bias or victimisation. He also appears to follow a thread of 'corruption' 'wrongdoing' and 'incompetence'.
27. FOS has provided the Commissioner with copies of a significant amount of correspondence it has had with the complainant. It is clear that there is an underlying theme in that the complainant believes there has been some wrong-doing when his complaints have been dealt with.
28. The nature of the requests often imply potential conflicts of interests of staff, for example, requesting a copy of the gifts and hospitality register or what social events have been attended by staff.
29. The requests also ask for confirmation of things such as "*whether it is normal for Ombudsmen to publicise such inaccurate versions of complaints*". It is clear that this type of request or question, based on an opinion or belief by the complainant that complaints were inaccurate is unlikely to generate any 'information held' by a public authority.

### **Conclusion**

30. The Commissioner is satisfied that the wider context and history to the request shows a long standing issue which has been thoroughly investigated on more than one occasion. It would therefore appear that the complainant is trying to reopen issues that have already been addressed.

31. He is also satisfied that this request is a continuation of an obsessive campaign and that provision of the requested information will not resolve the issue of the complainant's dissatisfaction with FOS. To comply with the request is likely to have a detrimental effect upon FOS as it could lead to further communication from the complainant.
32. The Commissioner notes the hostile tone of the complainant's correspondence and the persistent requests to FOS. He considers this to be an inappropriate use of the FOIA. He considers that the complainant is using the legislation as a means to vent his anger at FOS's decision.
33. The Commissioner therefore finds that this request can be considered as vexatious and that FOS is correct to apply section 14(1) of the FOIA in this case.

## Right of appeal

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34. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

35. 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.
36. 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 .....**

**Pamela Clements**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## Annex

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37. On 23 July 2014, the complainant wrote to the Financial Ombudsman Service (FOS) and requested information in the following terms:
- i. Including the probationary period has an Ombudsman ever been dismissed for incompetence?*
  - ii. Including the probationary period has an Ombudsman ever been dismissed for corruption?*
  - iii. Including the probationary period has an Ombudsman ever been dismissed for wrong doing?*
  - iv. Excluding the probationary period has an Ombudsman ever been cautioned for incompetence?*
  - v. Excluding the probationary period has an Ombudsman ever been cautioned for corruption?*
  - vi. Excluding the probationary period has an Ombudsman ever been cautioned for wrong doing?*
  - vii. Including the probationary period has an Ombudsman ever been cautioned for incompetence?*
  - viii. Including the probationary period has an Ombudsman ever been cautioned for corruption?*
  - ix. Including the probationary period has an Ombudsman ever been cautioned for wrong doing?*
  - x. Excluding the probationary period has an Ombudsman ever been given a written warning for incompetence?*
  - xi. Excluding the probationary period has an Ombudsman ever been given a written warning for corruption?*
  - xii. Excluding the probationary period has an Ombudsman ever been given a written warning for wrong doing?*
  - xiii. Including the probationary period has an Ombudsman ever been given a written warning for incompetence?*
  - xiv. Including the probationary period has an Ombudsman ever been given a written warning for corruption?*

- xv. *Including the probationary period has an Ombudsman ever been given a written warning for wrong doing*
- xvi. *Excluding the probationary period has an Adjudicator ever been dismissed for incompetence?*
- xvii. *Excluding the probationary period has an Adjudicator ever been dismissed for corruption?*
- xviii. *Excluding the probationary period has an Adjudicator ever been dismissed for wrong doing?*
- xix. *Including the probationary period has an Adjudicator ever been dismissed for incompetence?*
- xx. *Including the probationary period has an Adjudicator ever been dismissed for corruption?*
- xxi. *Including the probationary period has an Adjudicator ever been dismissed for wrong doing?*
- xxii. *Excluding the probationary period has an Adjudicator ever been cautioned for incompetence?*
- xxiii. *Excluding the probationary period has an Adjudicator ever been cautioned for corruption?*
- xxiv. *Excluding the probationary period has an Adjudicator ever been cautioned for wrong doing?*
- xxv. *Including the probationary period has an Adjudicator ever been cautioned for incompetence?*
- xxvi. *Including the probationary period has an Ombudsman ever been cautioned for corruption?*
- xxvii. *Including the probationary period has an Adjudicator ever been cautioned for wrong doing*
- xxviii. *Excluding the probationary period has an Adjudicator ever been given a written warning for incompetence?*
- xxix. *Excluding the probationary period has an Adjudicator ever been given a written warning for corruption?*
- xxx. *Excluding the probationary period has an Adjudicator ever been given a written warning for wrong doing?*

- xxxi. Including the probationary period has an Adjudicator ever been given a written warning for incompetence?*
- xxxii. Including the probationary period has an Adjudicator ever been given a written warning for corruption?*
- xxxiii. Including the probationary period has an Adjudicator ever been given a written warning for wrong doing?*
- xxxiv. How many Ombudsmen have there been at the FOS?*
- xxxv. How may Adjudicators have there been at the FOS?*