

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

### **Decision notice**

**Date:** 25 May 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 information contained in his complaint files. The above public authority ("the public authority") has issued a response under SAR, but the complainant believes some may fall under FOIA.
2. The Commissioner's decision is that any information falling within the scope of the request is the complainant's own personal data and the public authority would thus be entitled to rely on section 40(1) of FOIA to withhold it.
3. The Commissioner does not require further steps to be taken.

#### **Background**

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4. On 4 November 2022, the complainant contacted the public authority and made a subject access request (SAR) in the following terms:  

"Please could I have a copy of any personal information the FOS holds about me? I would expect this to be any information relating to me held in case files associated with my name and email address. There is no need to include information that was included in previous subject access responses."
5. The complainant received an acknowledgement on 9 November 2022. That acknowledgement, which appears to be based on a standard template, stated that:

"Please note, that any documents or evidence contained on your casefile that don't include your personal data, will not be included. It is therefore likely that you may not receive some of the information you are requesting under a SAR."

## Request and response

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6. On 10 November 2022, the complainant wrote to the public authority and, referring to the passage outlined above, requested information in the following terms:

"in case there is actually anything else in the relevant files, I'd like to make a Freedom of Information request for all the information in any case files covered by the SAR. If my initial assumption is correct, then s40(1) would apply to the entire request, but if you do withhold anything from the SAR then it should be considered under FOI instead."

7. The public authority responded on 8 December 2022. It explained (correctly) that not all information contained within a complaint file would necessarily fall within the scope of a SAR. It did not state explicitly whether there was any information within the case files that was not covered by SAR, but it did state that:

"Request [sic] made under the Freedom of Information Act 2000 needs to be suitable for the public to see. Because of this, there is an exemption in the Act (section 40(1)) which means that personal data can't be released, this makes sure your personal data and others isn't made public. Therefore, we won't be providing you with your personal information under the Freedom of Information Act 2000 as it wouldn't be appropriate for us to do so. However, we hope the explanation of the two methods outlined above, which you can use to obtain your personal data, is helpful."

8. The complainant sought an internal review on 10 December 2022. He noted that the public authority had not explained whether in fact there was any information which fell within the scope of the request but was not his personal data.
9. Following an internal review the public authority wrote to the complainant on 19 December 2022. It simply stated that:

"I can confirm that documents that didn't contain your data were not included within the SAR."

## Scope of the case

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10. The complainant contacted the Commissioner on 9 April 2023 to complain about the way his request for information had been handled.
11. The Commissioner wrote to the public authority on 26 April 2023. He explained that the most pragmatic way forward was for the public authority to issue an unequivocal statement that it either did or did not hold information within the scope of the request that was not the complainant's own personal data.
12. The public authority issued a fresh response to the complainant on 10 May 2023. It confirmed that it did hold some additional information that had not been provided in its SAR response. It stated that this information comprised of:
  - the information of others and withheld under s.40(2) of the act,
  - duplicates of information, including emails that has already been provided
  - administrative IT system notifications which contain no material information.
13. The complainant was unwilling to withdraw the complaint on this basis, as he did not consider that the public authority had provided an adequate explanation of the remaining information it held.
14. The Commissioner therefore sought the withheld information from the public authority and will proceed straight to a decision notice.

## Reasons for decision

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15. Section 40(1) of FOIA allows a public authority to withhold information that is the personal data of the person requesting it. This is because a person can access their own personal data via a SAR without having to disclose it to the world at large – as is required for disclosure under FOIA.
16. The public authority provided the Commissioner with ten files, amounting to several hundred pages of information. It was not clear which information had previously been disclosed as a SAR and which had not.
17. However, the Commissioner has not seen anything within the files that was not the complainant's own personal data – it all related to the

complainant's contact with the public authority and the complaints he had submitted.

18. That is not to say that the complainant was entitled to receive all of the information that the public authority provided to the Commissioner. There are a number of reasons why a data controller may be entitled to withhold information from disclosure under SAR – this includes where the information is also the personal data of a third party. There will therefore inevitably be some information that the complainant is not entitled to receive either via FOIA or via SAR.
19. It is not the Commissioner's role, in a FOIA decision notice, to determine whether the public authority did or did not respond appropriately to the SAR. The complainant has already had an opportunity to bring a complaint under data protection legislation. The Commissioner is only required to determine, in this notice, whether the information falling within the scope of the request is or is not, the complainant's own personal data. If it is, it is exempt.
20. The Commissioner is satisfied that any information which did fall within the scope of the request would be the complainant's own personal data and therefore exempt from disclosure under section 40(1) of FOIA.

## **Other matters**

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21. The Commissioner notes that this long and somewhat disproportionate matter has arisen because of what appears to be template wording that the public authority uses in response to SARs.
22. The Commissioner wishes to stress that the wording used is perfectly correct in law – but it will not be relevant to every SAR response and, where it is not relevant, it has the potential to cause confusion and suspicion.
23. Dealing with requests for complaint files can be complicated because a complaint file can contain a mix of personal data and other information. The Commissioner has produced specific guidance on requests for such records.<sup>1</sup> The first stage in dealing with such a request is to establish exactly what the requester has asked for.

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<sup>1</sup> <https://ico.org.uk/media/for-organisations/documents/2021/2619040/s40-access-to-information-held-in-complaint-files-final-v-31.pdf>

24. If a requester asks simply for the contents of their complaint file, a public authority should first consider which of the information contained within the file would be the requester's personal data. It should then deal with this under SAR.
25. If, having done so, it finds that there is further information within the file that is not the requester's personal data, the public authority should **automatically** consider that information under FOIA (or, if applicable, the EIR) and respond in accordance with that legislation. A requester should not have to make separate requests for the information that is and is not, their personal data.
26. If a requester specifically asks for only their personal data, that is all the public authority needs to provide. If the public authority realises, either before, during, or after it processes the SAR that there is more information on the complaint file (which it is happy to disclose), it may wish to clarify, with the requester, whether they also want to be provided with that information too.
27. When providing a response to a "hybrid" request, a public authority should be clear as to which information has been provided under SAR and which under FOIA (or EIR) – particularly if any information has been withheld in full or in part.
28. However, indicating to a requester that there is further information to be sought – especially when this is not the case – seems likely to cause confusion and, as in this case, an unnecessary complaint.

## Right of appeal

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29. 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)

30. 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.
31. 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**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**