

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2023

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

Decision (including any steps ordered)

1. The complainant has requested information from the Financial Ombudsman Service (“the public authority”) regarding processes and rules used for specific complaints or requests. The public authority provided some information in relation to the request, however, it denied holding any further information.
2. The Commissioner’s decision is that on the balance of probabilities, the public authority does not hold any further information in relation to the request and as such, the public authority has complied with its obligations under section 1(1) of FOIA. However, the Commissioner finds that the public authority breached section 10 of FOIA, as it provided information outside of the 20 working day timeframe.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 29 May 2023, the complainant wrote to the public authority and requested information in the following terms:

"I am writing to request information under the Freedom of Information Act 2000. Please may you provide me with:

- Process and relevant rules followed by the FOS when a complaint is made alleging that the investigator / Ombudsman was unfairly biased and not impartial.
 - Process and relevant rules followed when a complainant requests to reopen a complaint after withdrawing it."
5. The public authority responded on 21 June 2023. It stated that the service complaints process that is followed is available online, and explained that each complaint would follow the same process. The public authority also provided links to information on the website, explaining the second point of the request.
 6. Following an internal review the public authority wrote to the complainant on 4 July 2023. It stated that it was satisfied that the information held within the scope of the request had been provided.
 7. During the Commissioner's investigation, he asked the public authority to consider the interpretation of the request; he asked for the public authority to consider if there are any internal policies and procedures that could be provided to the complainant.

Scope of the case

8. The complainant contacted the Commissioner on 25 July 2023, to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of this case is to determine, if on the balance of probabilities, the public authority holds any further information in relation to the request.

Reasons for decision

Section 1 – information held/not held

10. Section 1 of the FOIA states that any person making a request for information is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request and, if that is the case, to have that information communicated to him.
11. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information

that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.

12. In other words, in order to determine such complaints, the Commissioner must decide whether on the balance of probabilities a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
13. The public authority has explained to the Commissioner that its Content and Policy team advised that the service complaint process is outlined on its website and as such, is considered available to the complainant.
14. The public authority explained that it provides general guidance for its staff, however, it is unable to provide specific guidance on every eventuality with regards to investigations and case handling administration.
15. The Commissioner asked the public authority to consider if any of the internal materials could be released publicly, as he considered that the complainant was asking for internal policies and procedures, rather than how complaints are handled generally.
16. The public authority reviewed the Commissioner's interpretation of the request and determined that it also agreed with this.
17. The public authority explained that it has various internal materials for staff to use, for many situations and although it did not consider that some of these materials fall within the scope of the request, it has provided them to the complainant.
18. The public authority also advised that there are no formal rules for service complaints, although they may wish to see the Independent Assessor's terms of reference, which are already available on its website.
19. The public authority explained that for the some of the information, it was sharing internal policies and procedures, but was removing names of the authors, co-authors and approvers for personal data reasons.
20. The public authority went on to advise that there are no specific rules for when a complainant asks for a complaint to be re-opened after withdrawing a complaint. It added that, there are rules relating to when a complaint may be withdrawn. These rules are contained within the documents provided to the complainant and it also provided a link to the FCA handbook (which has been provided to the complainant), where the rules are contained.

21. The complainant has explained to the Commissioner that they want the process and relevant rules followed by the public authority when a complaint is made alleging that the investigator/Ombudsman was unfairly biased and not impartial. They added that the public authority's website states that the independent assessor can investigate complaints relating to impartiality.
22. The public authority explained that complaints concerning unfair bias, may fall to be dealt with under the service complaint process. It added that in some instances a different approach may be more appropriate.
23. The public authority went on to advise that some complaints will be escalated to an Independent Assessor. As detailed in paragraph 19, there are no formal rules for service complaints, but the Independent Assessor's terms of reference are available on its website.

The Commissioner's findings

24. The Commissioner has considered the complainant's concerns, along with the public authority's explanations for how much information is held in relation to the request.
25. It is the Commissioner's view that whilst the public authority did not originally interpret the request correctly, it has provided the information that it holds that falls within the request (when correctly interpreted) and also outside of the request.
26. The Commissioner understands the complainant's concerns regarding the information that they want. However, FOIA only looks at information that is held by a public authority. There is no requirement for further information to be created to respond to a request for information. A public authority cannot provide information that it does not hold.
27. The Commissioner is satisfied that the public authority has carried out adequate searches for information that relates to the request. It has also provided additional information, beyond the scope of the request, to help the complainant.
28. The Commissioner is therefore satisfied that on the balance of probabilities, the public authority does not hold any further information within the scope of the request and as such, has complied with section 1 of FOIA.

Procedural matters

Section 10 – time for compliance

29. Section 1(1) of FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

30. Section 10(1) of FOIA states that a public authority must comply with section 1(1) promptly and “not later than the twentieth working day following the date of receipt”.

31. From the evidence provided to the Commissioner, the public authority did not interpret the complainant’s request correctly and therefore, provided some information, within the scope of the request, outside of the 20 working day timeframe. The public authority therefore breached section 10(1) of FOIA

Right of appeal

32. 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

33. 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.
34. 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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