

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 February 2024

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

Decision (including any steps ordered)

1. The complainant has requested information relating to a complaint. The Financial Ombudsman Service ("the public authority") handled the request as a subject access request ('SAR').
2. The Commissioner's decision is that the public authority was correct to handle the request as a SAR and the majority of the information is therefore exempt under section 40(1) of FOIA. The remainder is exempt under section 21 (information reasonably accessible to applicant via other means) or section 40(2) (personal information).
3. The Commissioner does not require further steps.

Request and response

4. On 23 May 2023 the complainant wrote to the public authority and requested:

"I have asked for specific personal sensitive information not a general SAR. The material sought is regarding [Redacted] communications with RBS regarding sensitive personal data he has stated was provided to him by RBS, for complaint, your ref : PNX-4234923-F8V1 Complaint about The Royal Bank of Scotland Plc. [Redacted] (Investigator) promised in writing to provide the communications but failed to do so...

...I note [Redacted] sent some documentation for direct access by Egress on 27 April 2023. However, it does not provide the communications to RBS by [Redacted] or from RBS Containing apparent personal sensitive data. [Redacted] promised in writing to provide these,; please review the relevant correspondence."

5. The public authority responded on 30 May 2023, acknowledging the request under the Data Protection Act 2018. It confirmed it would comply with the SAR within one calendar month.

6. The complainant requested an internal review on 30 May 2023 and clarified:

"To clarify, I stated I was requesting specific sensitive personal data, which is accessible via the Data Protection act, as also any information that was part public record due to the deliberations of the Financial Ombudsman... For the avoidance of doubt I have made a formal request for:

1. All communications with RBS which created the table purporting to be sensitive personal data, which was designed by your colleague [Redacted]. He promised to let me have this information, described as that which informed the table shared with me but it was never received. Please view the correspondence. This sensitive personal data is requested via the Data Protection Act

2. Any information only releasable under Freedom of information legislation regarding this matter "the RBS" complaint, [Redacted's] communications and designed data table which has been subject to adjudication by the Financial Ombudsman (for completeness this covers any material that is possibly held as public record)."

7. The public authority provided its internal review outcome on 28 June 2023. It upheld its previous position, that it was correct to deal with the request as a SAR and a response had been provided to the complainant.

Scope of the case

8. The complainant contacted the Commissioner on 31 January 2024 to complain about the way their request for information had been handled. They didn't raise any specific concerns, except that the public authority 'has denied a Freedom of Information request' regarding a case referred to it.
9. The Commissioner considers that the scope of his investigation is to consider how the public authority handled this request.

Reasons for decision

Section 40 (personal information)

10. Section 1(1)(b) of FOIA outlines a public authority's obligation provide a copy of requested information to the requestor. There are, however, exemptions.
11. Section 40(1) of FOIA states that information which is the personal data of the requester is exempt from disclosure under FOIA. This is because there is a separate legislation under which individuals can request their own personal data, the Data Protection Act 2018 ('the DPA'); this is what is known as a subject access request.
12. The aim of the public authority is to settle complaints between consumers and business that offer financial services. In this instance, the complainant is the consumer and the Royal Bank of Scotland ('RBS') is the business.
13. The Commissioner understands that the complainant requested information relating to their complaint prior to 23 May 2023 and explained:

"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."
14. If information is the requestor's own personal data it will be exempt from disclosure under section 40(1) of FOIA. According to section 2(2) of the Data Protection Act 2018 ('DPA'), personal data is:

"any information relating to an identified or identifiable living individual."
15. The complainant is requesting information relating to a complaint they made, about RBS, to the public authority. The Commissioner is satisfied

that the complainant will be identifiable from that information and it clearly relates to them. By the complainant's own admission, they are requesting their own personal data.

16. Section 40(1) is absolute; there is no access to the requestor's own personal data through FOIA because there is a separate piece of legislation for this purpose – the DPA.
17. It's for the public authority to determine, in the first instance, which information access regime(s) is likely to be most generous to the requestor and deal with the request via that route. In this case, the public authority was correct to handle the request under the DPA and it follows that the majority of the requested information is exempt under section 40(1) of FOIA.

Information not covered by section 40(1)

18. In its internal review outcome, the public authority explained to the complainant that:

"I have reviewed the information that was not disclosed to you in your subject access request, and I have found that this information constitutes the following types of data:

- the information of others
- duplicates of information that has already been provided to you
- administrative/IT system notifications which contain no material information
- Our organisation's guidance on how to access our online secure document."

19. Looking at the request, the complainant is requesting communications between the public authority and RBS, in relation to the complaint. The public authority has confirmed it's not withheld any material information, just internal processes and notifications. Therefore, in relation to the last two bullet points, the Commissioner is satisfied this information wouldn't fall within the scope of the request.
20. Turning to the second bullet point, the public authority has withheld 'duplicate' information 'that has already been provided' to the complainant.
21. Section 21 states that information is exempt from disclosure under FOIA if it's accessible to the requester by other means. Section 21 is an absolute exemption.

22. The Commissioner considers that its reasonable for a public authority to assume that information is reasonably accessible to the requestor until it becomes aware of any evidence to the contrary. Since the information in question 'has already been provided' to the complainant (presumably as part of the SAR), the Commissioner is satisfied that it is reasonably accessible to the complainant and therefore section 21 is engaged.
23. The Commissioner isn't convinced that the complainant is actually seeking the disclosure of personal data as part of their request. However, for completeness and turning to the first bullet point, the Commissioner has previously dealt with a case¹ where the public authority withheld third party information from a complaint file under section 40(2) of FOIA.
24. Paragraphs 29-53 of FS50842145² explain why third party information can be withheld in such circumstances and the Commissioner considers this is the case here.
25. To the extent that any of the personal data being withheld belongs to the staff of the public authority, the Commissioner is also satisfied that this can be withheld.
26. In order for personal data to be disclosed under section 40(2) of FOIA, its disclosure of the information must be necessary to meet the legitimate interest that the request represents.
27. If the complainant has any issues or concerns about how any staff (whose identity they would know, as a result of dealing with their complaint) they can raise an internal complaint with the public authority, rather than have personal data disclosed to the world at large under FOIA.
28. The Commissioner is satisfied that FOS is entitled to rely on section 40(2) of FOIA to withhold the third party personal data within scope of the request.

Procedural matters

29. The public authority was correct to handle this request under the DPA18 and not FOIA. The Commissioner can deal with any related concern
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¹ [FS50842145 \(ico.org.uk\)](https://ico.org.uk/cases/fs50842145)

about the handling of the SAR but it will be dealt with by his Public Advice and Data Protection Complaints Service.

30. The complainant went on to insist that a response be provided under FOIA, which the public authority did.
31. In providing its response under FOIA the public authority correctly cited section 40(1) and 40(2). However, it failed to cite section 21 and therefore breached the requirements of section 17 (refusal of request) which states that, when claiming information is exempt from disclosure, the relevant exemption must be cited.

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

Alice Gradwell
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