

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 April 2024

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

Decision (including any steps ordered)

1. The complainant has requested assessment information from the Financial Conduct Authority ('FCA') which demonstrate the impacts of Stereotyping, Bias, Prejudice and Discrimination. The FCA relied on section 12 of FOIA (cost of compliance) to refuse the request.
2. The Commissioner's decision is that:
 - The FCA was entitled to rely on section 12(1) of FOIA when refusing this request for information.
 - The FCA complied with its section 16 obligation to offer advice and assistance.
3. The Commissioner does not require the FCA to take any further steps in this matter.

Request and response

4. On 1 July 2023, the complainant wrote to the FCA and requested information in the following terms:

"Please can you share details of the most recent (ideally from 2015 onwards) assessment(s) made, if any, by the Financial Conduct Authority of the direct and indirect impact(s) of (1) Stereotyping, (2) Bias, (3) Prejudice and (4) Discrimination in the UK's Financial Services Industry, providing quantifications (e.g. particularly impact upon GDP)

wherever feasible. In particular, the impact from each of these lenses (where known and/or discerned) is of interest:

- (A) Gender identity
- (B) Sex
- (C) Race
- (D) Ethnicity
- (E) Sexual orientation
- (F) Age
- (G) Family, relationship or marital status
- (H) Socioeconomic background
- (I) Religion or belief
- (J) Pregnancy and maternity
- (K) Disability
- (L) Educational background
- (M) Nationality

Please also share any known differences or disparities in the above between (i) England, (ii) Wales, (iii) Scotland and (iv) Northern Ireland.”

5. The FCA requested some additional clarification on 31 July 2023, the complainant responded on 4 August 2023 in the following terms:

“By this, I mean assessments, (scientific) research, analysis, work more generally etc. undertaken and/or commissioned by the FCA but also reasonably sourced assumptions made (e.g. using other, reliable and valid resources) where the assessments are not undertaken or commissioned by the FCA. The quantifications could be in the form of impact upon GDP through various channels but also, for example, quantifications such as employees, consumers and clients affected, assets under management or advisement for which this leads to implications (and quantified estimates of potential impact caused accordingly such as due to implications for investment decision-making), results/findings of surveys or investigations and other data sources available to the FCA, the types of financial services particularly affected (e.g. private equity, venture capital, retail banking, investment banking, asset management, hedge funds, alternative investment funds etc.), statistics relating to firms for which there are such implications, number of outcomes of FCA conduct investigations / enforcement actions where bias, stereotyping, prejudice, discrimination etc. played a factor for those who were investigated, the extent to which parts of the industry may be constrained/suffering (or benefit) as a result and more. Quantifications are welcomed but I would also welcome any non-quantified observations and findings.

By this, I mean the non-exhaustive list of different dimensions through which bias, stereotyping, prejudice and discrimination can be experienced in the UK's Financial Services Industry as listed in (A) - (M), some of which overlap with protected characteristics under The Equality Act. By 'known', I mean that which is known to the FCA either through its activities or through other sources (such as published academic research, resources and datasets) and by 'discerned', I mean the impact as is sought to be understood by the FCA (particularly where there are considerable uncertainties and complexities involved in any such discernment)."

6. The FCA responded on 5 September 2023. It stated that to comply with the request would exceed the cost limit under section 12.
7. The FCA provided its internal review on 20 February 2024 and upheld its application of section 12.

Scope of the case

8. The complainant contacted the Commissioner on 6 November 2023 to complain about the way their request for information had been handled. The complainant was not satisfied with the application of section 12.
9. The Commissioner considers that the scope of his investigation is to determine whether the FCA was entitled to rely on section 12 when refusing this request due to the cost/time limit.

Reasons for decision

Section 12 – cost of compliance

10. The following analysis covers whether complying with the request would have exceeded the appropriate limit.
11. Section 12 of FOIA states that: "Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."
12. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the 'Regulations') sets the appropriate limit at £450 for the FCA. Under these Regulations, a public authority can charge a maximum of £25 per hour for work undertaken to comply with a request. This equates to 18 hours work in accordance with the appropriate limit set out above.

13. A public authority is only required to provide a reasonable estimate or breakdown of costs and in putting together its estimate it can take the following processes into consideration:
 - (a) determining whether it holds the information,
 - (b) locating the information, or a document which may contain the information,
 - (c) retrieving the information, or a document which may contain the information, and
 - (d) extracting the information from a document containing it.
14. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit, in line with section 16 of FOIA.

The FCA's position

15. The FCA explained to the Commissioner that due to the broad criteria of the request, a wide search and analysis would be required. Records held across multiple repositories would need to be reviewed, in order to determine if all the requested information is held.
16. The FCA contacted colleagues who have supported various governance bodies and asked them to complete a keyword search for any records held from 2021 to date, which contain one or more of the following terms: stereotyping, bias, prejudice, discrimination.
17. The FCA informed the Commissioner that this search identified 1223 records. Each record would need to be checked, in order to determine whether any of the information fell into the scope of the request.
18. The FCA informed the Commissioner that, due to the variance in length and complexity across the records, it is not possible to provide an accurate estimate of the average time needed to review each document and determine whether it contains information within the scope of the request. However, based on a conservative approximation of 15 minutes per document, it estimated it would take over 300 hours to complete this exercise.
19. The FCA advised that it made this estimate by reviewing some of the documents located during the sampling exercise. The FCA confirmed that the document sizes ranged from 10 pages to 27 pages. The FCA believes it would take 15 minutes on average to review each document and determine whether any information within the scope of the request

is held. The FCA advised that if it were required to undertake the required work, where documents have more pages, the work required could be significantly larger.

20. The FCA explained that as the request specifically asks for information from 2015 onwards, further searches would also be required to locate any legacy records potentially held in its digital archives. It explained that this may result in the identification of a similar, or a larger number of additional archived records that would also need to be reviewed.
21. The FCA advised the Commissioner that the preliminary searches conducted did not factor in any pieces of work which might have been undertaken across the organisation, without any involvement from its governance bodies. These could include, for example, any exploratory assessments / research / preliminary analysis which colleagues across the FCA might have begun at any point in time and which, for a variety of reasons, might not have been referred to the FCA governance for formal consideration.
22. The FCA concluded that to identify all records and to conclusively determine which of them fall within the scope of the request, would exceed the appropriate cost/time limit.

The Commissioner's position

23. The Commissioner is satisfied that complying with this request would exceed the appropriate limit.
24. The Commissioner is satisfied that the FCA used appropriate key words to locate information which may fall into the scope of the request when conducting its sampling exercise. Due to the broad scope of the request, the Commissioner is also satisfied that the FCA has provided a reasonable estimate of the work and time that would be required to comply with the request. The FCA did clarify to the Commissioner that "we have established that we hold some information which comes within scope of the request" so section 12(1) is the appropriate sub-section of 12.
25. Complying with the request would therefore exceed the cost limit by a significant margin and so the FCA was entitled to rely on section 12(1) of FOIA to refuse the request.

Procedural matters

Section 16 – advice and assistance

26. Section 16 of FOIA requires public authorities to provide reasonable advice and assistance to those making, or wishing to make, information requests.
27. When a public authority refuses a request because the cost of compliance exceeds the appropriate limit, it should explain, to the requester, how they could refine their request such that it would fall within that limit. In rare cases, it will be appropriate for the public authority to explain to the requester why their request cannot be meaningfully refined.
28. In this case, the FCA informed the requester that due to the volume of potentially relevant information which would need to be reviewed, it was unable to suggest any meaningful way in which the request could be refined.
29. The Commissioner is satisfied that the FCA did comply with section 16 of FOIA when dealing with this request by explaining due to the volume of potential information it had located, it was unable to provide any meaningful advice and assistance.

Other matters

30. The Commissioner would like to remind the FCA that internal reviews should be completed within 40 working days as a form of good practice. In the circumstances of this case, the FCA failed to provide its internal review within 40 working days, demonstrating poor practice.

Right of appeal

31. 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

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Michael Lea
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF