

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 August 2024

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

Decision (including any steps ordered)

1. The complainant has requested information from the Financial Conduct Authority (the FCA) relating to how a specific human rights complaint has been handled.
2. The FCA has refused to confirm or deny that it holds this information under section 40(5B)(a)(i) of FOIA, as it believes that to do so would disclose personal data, and that this disclosure would contravene data protection legislation. The complainant is of the view that the FCA could provide information on procedural and policy aspects of how it deals with human rights complaints without disclosing personal data.
3. The Commissioner is satisfied the FCA obtained the correct objective reading of the request and the Commissioner requires no further action.

Request and response

4. On 17 January 2024, the complainant submitted the following request for information to the FCA:

“On [date redacted] (Human Rights Day), a formal human rights complaint was submitted to the FCA Chairman via email. Unfortunately, receipt of this complaint was not acknowledged, even after sending a chaser email a month later to both the Chair and the Executive Casework Unit via email on [date redacted].

Usually, receipt of a complaint submitted to the regulator's [sic] is to be acknowledged within 5 business days as per guidance published in the Complaints Scheme (although I accept that a human rights complaint may not fall within the Complaints Scheme it is my belief that it is generally good practice to acknowledge receipt of correspondence and complaints typically within 2-5 business days).

Please can you provided [sic] all recorded information, including but not limited to, emails and / or any other notes which demonstrates how the aforementioned formal human rights complaint to the FCA has been progressed internally since submission on [date redacted] including any reasons as to why no acknowledgement of receipt of the complaint was not provided to the complainant."

5. The FCA responded on 9 February 2024. It refused to confirm or deny whether it held this information under section 40(5B)(a)(i) of FOIA, as it believed that doing so would disclose personal data, and that the disclosure would contravene data protection legislation.
6. The complainant sent the following response to the FCA on 9 February 2024:

"Please review this decision, as I believe the exemption has been applied wrongly. Please note that I am not requesting personal information of any individual(s).

For the avoidance of doubt, I am seeking any information - including but not limited to, emails, notes and other documents - that provides insight into the FCA's thought process and decision making in relation to the formal human rights complaint raised against them on [date redacted] and how that complaint had been progressed internally since its submission e.g. was the complaint forwarded from the FCA Chair / Private Secretary / Executive Casework Unit to other individuals/teams/departments for analysis, insight, advice or guidance on how to respond, or indeed whether or not to respond, to provide an acknowledgement of receipt, or even to investigate the complaint in the first instance etc.

All of this could be, and indeed should ought to be, available to disclose as part of a valid and legitimate FOIA request whilst simultaneously refraining from disclosing the personal data of the individual you refer to in question in your response.

Indeed, any personal data such as the name and/or email address of the individual can be redacted prior to disclosure. Similarly, any personal data such as name and/or email addresses of FCA personnel (below manager level) can also be redacted prior to disclosure.”

7. Following an internal review the FCA wrote to the complainant on 13 March 2024, maintaining its position.

Scope of the case

8. The complainant contacted the Commissioner on 17 March 2024 to complain about the way their request for information had been handled.

9. During the Commissioner’s investigation the complainant has clarified that the aim of their information request is to understand:

“the internal processes and decision-making procedures of the FCA concerning the handling of a formal human rights complaint – regardless of whether that was my own complaint or someone else’s. The intention was to gain insight into the procedural aspects, not to access personal data per se. This distinction is crucial as procedural information can often be disclosed without compromising personal data, particularly through redaction.”

10. In further correspondence with the Commissioner, the complainant clarified their complaint further, stating that:

“...my FOIA request sought to understand the overall process and policy framework that the FCA has in place to process a human rights complaint.”

and

“If necessary, I am willing to refine my request further to focus explicitly on the procedural and policy aspects, excluding any personal data, to align with the FOIA’s transparency objectives.”

11. The Commissioner considers that the scope of his investigation is to consider whether the FCA correctly interpreted the request. In particular, he will consider whether information relating to procedural and policy aspects of the way the FCA handles human rights complaints should have been considered as part of the information the complainant was requesting.

Reasons for decision

Section 1 - general right of access

12. 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.

13. Whether a person is “making a request for information” depends on whether the request meets the requirements of section 8 of FOIA.

Section 8 - request for information

14. Section 8(1) of FOIA defines a valid request for information under FOIA as a request which:

- (a) is in writing,
- (b) states the name of the applicant and an address for correspondence, and
- (c) describes the information requested.

15. If a request does not meet all of these requirements with respect to particular information, there is no obligation for a public authority to confirm or deny whether that information is held under section 1(1), or to issue a formal refusal notice under section 17.

16. In this case, the complainant’s request was in writing, and they provided an address for correspondence. Therefore, the only issue for the Commissioner to consider is whether the information that the complainant states they were seeking is described in the information requested.

17. The Commissioner considers that a request will meet the requirements of section 8(1)(c) if it contains a sufficient description of the recorded information that the requester is seeking. This description should allow the public authority to distinguish between the information being requested and any other recorded information it may hold. The public

authority must also be able to make an objective assessment of what information does and does not fall within the scope of the request.

18. Having considered the original wording of the request, the complainant has asked for all information on how the specific human rights complaint referred to in the request was progressed internally, including any reasons why the FCA did not acknowledge receipt of that particular request.
19. When requesting an internal review, the complainant again referred to any information that provided insight into the FCA's thought process and decision making in relation to the specific human rights complaint referred to in the request and asked questions about how that specific complaint had been handled by the FCA.
20. In the complainant's representations to the Commissioner, they stated that they are "seeking information about the FCA's internal processes and decision-making related to handling the human rights complaint, not personal data. Procedural information can be disclosed without revealing personal data and that redaction can adequately protect any personal details." The Commissioner understands this to mean information such as the FCA's policies and procedures for handling human rights requests.
21. The complainant also stated that "Procedural information about internal processes does not inherently constitute personal data. The FCA could provide information on their general policies and procedures for handling complaints, with specific personal details redacted, thereby fulfilling the transparency goals of the FOIA without violating data protection laws."
22. Based on the details above, the Commissioner does not consider that it was clear from the request that this was the information that the complainant was seeking. Instead, he considers that an objective reading of the request and follow up correspondence from the complainant is that it is focussed on obtaining information directly related to the handling of the specific human rights complaint. The Commissioner is therefore satisfied that the FCA correctly interpreted the request, and that it would not be reasonable to expect it to have interpreted the request in the way the complainant has subsequently described in their complaint to the Commissioner.
23. The Commissioner advises the complainant that if they wish to request copies of any internal processes the FCA has for handling human rights complaints, they may wish to request this information, making clear in the request that they are requesting copies of policies or procedures and not information directly related to a specific complaint.

Right of appeal

24. 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

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Pamela Clements
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