

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 December 2024

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

#### Decision (including any steps ordered)

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1. The complainant has requested a copy of a set of minutes. The above public authority ("the public authority") initially withheld some information before determining that it did not in fact hold the document being sought.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority does not hold the requested information.
3. The Commissioner does not require further steps to be taken.

#### Background

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4. In 2016, the public authority received a [report](#), ordered under section 166 of the Financial Services and Markets Act 2000, into the actions of Royal Bank of Scotland (RBS) and, in particular, its Global Restructuring Group. That report was prepared by an independent consultant.
5. The report was confidential. However, in February 2018, the House of Commons Treasury Select Committee demanded that the public authority either hand over a copy of the report, or publish it. The public authority handed over a copy of the report and the select committee used Parliamentary privilege to publish it.
6. The report looks at the way RBS dealt with small and medium sized enterprises. It describes its central conclusion as being that there was

"widespread inappropriate treatment of customers." The report cited numerous "case extracts" which looked at evidence drawn from particular cases involving specific firms.

7. This complaint and the request it is based on, relate to Case Extract 38, on page 246 of the report. It's full text reads:

'The customer was in the course of completing a development that would be utilised for a trading enterprise.

'WR<sup>1</sup> staff were given access to the file at a very early stage (i.e. within a few days of the file being transferred to GRG). The WR staff were involved in discussions with GRG staff, the independent valuer commissioned to assess the value of the property and the independent accountants who were undertaking an Independent Business Review. WR was in a position to influence the thoughts of key people before a decision had been reached as to the strategy to be adopted in this case, and in our view did so.

'To highlight this point a specific meeting was held between the valuer, GRG staff and WR staff 10 days after the account had been transferred to GRG. Minutes of the meeting recorded that the WR representative "*talked down*" the value given by the external valuer. The following is an extract from an email by the GRG staff member to his line manager immediately following this meeting: "*if it's down to me I would say let it remain shut, test the market and if offers are very low, then sell to WRRL [West Register]*"

'RBS subsequently decided not to support the customer who went into administration and West Register acquired the property.' [original emphasis]

## Request and response

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8. On 9 February 2024, the complainant wrote to the public authority and, referring to the quoted extract above, requested information in the following terms:

"All I am requesting now is the RBS bank minutes of the conference call meeting dated 17 June 2010 and it is detailed on the 3rd paragraph on case extract 38 page 246 it states the following:-

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<sup>1</sup> West Register was a subsidiary of RBS that owned property.

'Minutes of the meeting recorded that the WR representative "talked down" the value given by the external valuer.'

9. The public authority initially responded on 8 March 2024. It denied holding the requested information. It upheld this stance following an internal review.
10. However, after an intervention from the Sunday Times, the public authority changed its stance and issued a fresh response on 3 September 2024. It now stated that it did hold the requested information, but wished to rely on section 44 of FOIA (statutory prohibition) to withhold it.

### Scope of the case

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11. At the outset of his investigation, the Commissioner asked to see a copy of the withheld information – which the public authority provided.
12. Having reviewed the withheld information, the Commissioner took the view that the document did not fall within the scope of the request as it related to the **second** italicised quote from the case extract – whereas the request refers to the **first**.
13. Having reconsidered, the matter, the public authority reverted back to its original stance that it did not hold the document in question.

### Reasons for decision

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14. Where there is a dispute between the information a public authority says it holds and what a requester believes should be held, the Commissioner's role is to determine whether it is more likely than not that further information is held.

### The complainant's view

15. The complainant is not certain that the information is currently held by the public authority – though he is convinced that it did once exist.
16. The complainant has noted that it would be unusual for such a bold statement to have been included in such a report in quotes, if it represented the author's opinion rather than an actual document. He noted that a report such as this would have gone through several layers of fact-checking and would likely have been sent to RBS for comment. His view is that this phrase would have been removed (or at least marked as an opinion) had it not been based upon verifiable fact.

17. The way the text is presented in the report suggest that it was a direct quote from a document. The text was presented in italics – the same as the later quote, which is based on an actual document. Furthermore in the previous paragraph, the report's author had explicitly drawn a distinction between their findings of fact and their opinion.
18. In addition, the complainant states that the public authority spoke to the Serious Fraud Office about his case several years ago. He argues that the public authority would not have done so on the basis of the other evidence he is aware of. There would only be evidence of wrongdoing if a document of this, or very similar description, existed.
19. Finally, he notes that he has been told various times over several years by staff of the public authority – including its former chief executive – that the document was either held or had been provided to other bodies – including the Police.

### **The public authority's position**

20. The public authority explained that it had carried out searches of its online systems in April, May and June of 2024, as well as a further search in August. These searches had not identified any additional information beyond the email that it had previously withheld (but which does not fall within the scope of the request).
21. The public authority set out the search terms it had used (which included the phrase "talked down"). It noted that it had carried out a number of organisation-wide searches as well as a more focused search within the inbox of one staff member who had been involved in the original investigation.
22. When challenged by the Commissioner as to why the phrase "talked down" had been included in a report of this nature if it did not was not a direct quote of another document, the public authority explained that, to the best of its knowledge, although the phrase "talked down" had been placed in quotation marks in the report, the phrase had not been directly lifted from another document. Rather, it believed the quotation marks in this instance were used to indicate the phrase represented the author's informally-worded assessment of the evidence they had reviewed.

### **The Commissioner's view**

23. The Commissioner's role is to make a judgement based on the civil standard of "the balance of probabilities". In blunt terms, he is only required to be 51% sure that the information is not held in order to uphold the public authority's position.

24. The evidence in this case is not overwhelming. The Commissioner can understand why the complainant has formed the view that a document of this nature must once have existed – even if it is no longer held.
25. Given the nature of the way the information is described in the report and given the way in which a report of this nature is likely to be produced, the Commissioner considers that the public authority's suggested explanation – although plausible – is not especially persuasive.
26. Equally, the Commissioner recognises that the public authority is at a disadvantage when trying to prove a negative. It cannot prove beyond doubt that it does not hold the requested information unless it has searched every filing system and interviewed every employee (and ex-employee), just in case a piece of information has been mis-filed. That would be disproportionate and, if the public authority were to attempt it, would likely result in the request being refused on cost grounds.
27. The Commissioner has taken note of the searches the public authority has carried out to attempt to locate the information in question. These have been both reasonable and extensive.
28. The complainant was keen that the Commissioner should rule that the information did once exist – or at least, should not rule that it never existed.
29. This is not a question the Commissioner needs to resolve and so he declines to do so. He is only required to determine whether the public authority held the document at the time it responded to the request.
30. On the balance of probabilities, the Commissioner is satisfied that the public authority did not hold the document at the point it responded to the request.
31. Whether the public authority held the document at an earlier stage, or whether the document ever existed in the first place is a question he will leave open.

## Right of appeal

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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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**