

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 April 2025

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

Decision (including any steps ordered)

1. The complainant has requested information from Financial Ombudsman Service Limited ("the FOS") relating to a complaint made to the FOS. The FOS has disclosed a small amount of information within the scope of the request but withheld the remainder of the requested information citing section 40(1) (personal data of which the applicant is the data subject) and section 40(2) (personal data of which the applicant is not the data subject) of FOIA as its bases for doing so.
2. The Commissioner's decision is that the FOS is entitled to rely on section 40(1) and 40(2) to withhold the information withheld on these bases.
3. The Commissioner does not require further steps.

Request and response

4. On 1 September 2024, the complainant wrote to the FOS and requested information in the following terms:

"As you are aware I represented [name redacted] and [name redacted] in connection with this complaint and in that capacity I now make a formal request under the Freedom of Information Act 2000 for the disclosure of all correspondence between the FOS and RSA in relation to the above complaint be it in written or audio recorded form."

5. The FOS responded on 6 September 2024. It refused the request under section 40(1) of FOIA (personal data of which the applicant is the data subject).
6. Following an internal review the FOS wrote to the complainant on 11 October 2024. It revised its position to withhold the requested information under section 40(2) (personal data of which the applicant is not the data subject).

Scope of the case

7. During the course of his investigation the Commissioner asked the FOS to confirm who it considers to be the applicant, the complainant or the two people named in the request. The FOS confirmed that it considers the two people named in the request to be the applicants and stated that its internal review should have maintained its reliance on section 40(1) to withhold the personal data of the two people named in the request as they are the applicants.
8. The Commissioner is satisfied that the request was clearly made on behalf of the two people named in the request and that they are therefore the applicants.
9. The FOS also identified some information within the information that it had withheld that should be disclosed. This information was disclosed to the complainant during the course of the Commissioner's investigation.
10. The FOS also identified some information within the withheld information which is the personal data of individuals other than the applicants. The FOS applied section 40(2) to this information.
11. Therefore, the FOS's final position is that the majority of the information that it has continued to withhold is the personal data of the applicants and therefore exempt from the disclosure under section 40(1), and that the remainder of the information that it has continued to withhold is the personal data of individuals other than the applicants. The FOS has withheld this information under section 40(2).
12. This notice therefore considers whether the FOS is entitled to rely on section 40(1) and 40(2) to withhold the information withheld on these bases.

Reasons for decision

Section 40(1) – personal data of which the applicant is the data subject

13. Section 40(1) of the FOIA provides that any information to which a request for information relates, is exempt information if it constitutes personal data of which the applicant is the data subject.
14. The Commissioner's guidance is clear that an applicant's own personal data should not be disclosed under FOIA or the EIR. Instead, public authorities should handle this aspect of the request as a subject access request (SAR) under the UK GDPR or the DPA, as applicable.
15. This reasoning covers why the Commissioner has determined that the information the FOS has withheld under section 40(1) is the applicants' own personal data and therefore, exempt from disclosure under section 40(1) of FOIA.
16. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual."
17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
19. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
20. The Commissioner has viewed a copy of the information that the FOS has withheld under section 40(1). As is to be expected, given the wording of the request, this information relates to the complaint made on behalf of the two people named in the request (the applicants) to the FOS. The Commissioner is satisfied that the withheld information relates to the applicants as the information has been used to inform decisions affecting them. The applicants are clearly identifiable as they are named in the request.
21. The Commissioner's conclusion is therefore that this information is the applicants' own personal data and it is exempt from disclosure under section 40(1) of FOIA.

22. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the public interest. He is also not required to consider whether or not the complainant would be content to have their personal data disclosed to the world at large

Section 40(2) – Personal information of an individual other than the applicant

23. Section 40(2) provides an exemption for information that is the personal data of an individual other than the applicant and where the disclosure of that personal data would be in breach of any of the data protection principles.
24. The FOS has relied on section 40(2) to withhold the following information:
- The name and contact details of members of staff at the FOS.
 - The names, reference to absence of and contact details of members of staff of the insurance company to which the FOS complaint related and their agents.
 - The name and contact details of the complainant, who was acting as the applicants' representative.
25. Section 3(2) of the Data Protection Act 2018 defines personal data as: "any information relating to an identified or identifiable living individual."
26. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
27. The Commissioner is satisfied that the withheld information is personal data as the information relates to and identifies these individuals.
28. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states: "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
29. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
30. The Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.

31. The FOS stated in its submissions to the Commissioner that it had not identified any legitimate interest that will be furthered by disclosure of this information. The Commissioner, however, considers that a legitimate interest is being pursued in making this request, that in further understanding how the complaint to the FOS was handled.
32. However, the Commissioner does not consider that the disclosure of the small amount of third-party personal data would meet this legitimate interest. As such, its disclosure is not necessary to meet that legitimate interest
33. The Commissioner's decision is therefore that this information is exempt from disclosure under section 40(2) of FOIA.

Other matters

34. Whilst the Commissioner cannot require a public authority to take action under the DPA via an FOIA decision notice, in view of his decision that some of the requested information is the personal data of the complainant, the FOS should consider providing a response to the complainant under the DPA in respect of the information they requested.

Right of appeal

35. 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

36. 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.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Victoria James
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF