

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2023

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

Decision (including any steps ordered)

1. The complainant has requested correspondences between the Financial Ombudsman Service (the FOS) and Halifax regarding a complaint. FOS relied on section 40(1) of FOIA to withhold the information for it would be the complainant's own personal data.
2. The Commissioner's decision is that FOS was entitled to rely on section 40(1) to withhold the requested information.
3. The Commissioner does not require any further steps

Request and response

4. On 6 February 2022, the complainant wrote to the FOS and requested information in the following terms:

"I request under the Freedom of Information Act, an electronic copy of the exchange of communications between Halifax and Financial Ombudsman in relation to my complaint (case reference redacted)."
5. The FOS responded on 18 February 2022. It stated that it did hold information within the scope of the request and provided this to the complainant.
6. Following an internal review the FOS wrote to the complainant on 23 February 2022. It stated that it had provided all the information within the scope of the request.

Scope of the case

7. The complainant contacted the Commissioner on 11 April 2022 to complain about the way his request for information had been handled.
8. The FOS advised the Commissioner that it now wishes to rely on section 40(1) Personal Information, to withhold the requested information.
9. The Commissioner considers to what extent the requested information would be the complainant's own personal data and therefore whether the FOS is entitled to withhold the request information under section 40(1) of FOIA.

Reasons for decision

Section 40 personal information

10. Section 40(1) of FOIA provides that any information to which a request for information relates is exempt information if it constitutes personal data of which the requester is the data subject.

Is the information personal data?

11. Section 3(2) of the DPA defines personal data as: "any information relating to an identified or identifiable living individual".
12. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
13. 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.
14. 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.
15. In this case the complainant has requested correspondence relating to a specific service complaint, which, in their correspondence to the Commissioner, the complainant states is "in relation to my complaint".
16. Therefore the Commissioner considers that every part of the request in some way or other links back to the complainant. As such, any

information FOS held, within the scope of the request, could only have been created in relation to the complainant's service complaint.

17. As there is no route to a requester's own personal data under FOIA, if the complainant is unhappy with the information received, they should challenge any exemption from disclosure under SAR.
18. Section 40(1) is an absolute exemption and there is no requirement for the Commissioner to consider the balance of public interest. Nor is he required to consider whether or not the complainant would be happy to have his personal data published to the world at large. If the exemption applies, the information is not available via FOIA

The Commissioner's Conclusion

19. The Commissioner therefore finds that section 40(1) of FOIA is engaged in respect of the withheld information.

Other matters

20. The Commissioner would like to remind the FOS that if a Public Authority receives a complaint which seeks to challenge the outcome of your initial response, then this should be treated as a request for Internal Review.
21. Although under the Freedom of Information Act 2000, a public authority is not legally required to provide a Internal Review it is considered good practice. Internal Reviews should be conducted within 20 working days, but within a maximum of 40 working days.
22. In this matter the complainant clearly demonstrated their dissatisfaction with the response provided by the FOS, yet the FOS didn't conduct an Internal Review within 40 working days.
23. Furthermore, when the Commissioner advises that the FOS had one final chance to clarify its position, it failed to provide a full submission. The FOS further advised the complainant that if they were dissatisfied with their revised response, they could then request an additional Internal Review. This added a further delay to the request and went against the steps set out by the Commissioner.

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.

Signed

Catherine Fletcher
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Wycliffe House
Water Lane
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SK9 5AF