

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2024

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

Decision (including any steps ordered)

1. The complainant has requested information relating to Collateral UK Limited. The Financial Conduct Authority ("the FCA") disclosed information in response to the request.
2. The Commissioner's decision is that the FCA has fully complied with its obligations according to section 1 (general right of access to information) of FOIA. However, it breached section 10 (timescale for compliance).
3. The Commissioner does not require further steps.

Request and response

4. On 22 June 2024 the complainant wrote to the FCA and requested information in the following terms:

"Collateral (UK) Ltd

On 29/01/2018 C.... C..... of the FCA (I will not provide the full name for privacy reasons) changed the IP register.

One of the changes made was to change Collateral (UK) Ltd to Regal Pawnbroker Ltd.

Questions

- 1.** Who directed the changes to be made?
- 2.** Who authorised the changes to be made?

If multiple people were involved in the decision, authorisation and direction please name them all with the most senior first.

- 3.** Were FCA lawyers involved in the decision making? If so please supply their opinions.

The FCA has a statutory duty to maintain an accurate register (this includes the IP register as it existed). FSMA XXIII and regulation 56(9)(b) of the FSMA (Regulated Activities) Amendment (No. 2) Order 2013 (SI 2013/1881) refer.

As stated above the IP register was amended on 29/01/2018.
The FCA discovered the irregular entry on 23/11/2017 (FOI6297)
The FCA chief executive was informed of this irregular entry on 09/12/2017 (FOI8083)

Questions

- 4.** Why did the FCA leave the entry for Collateral UK Ltd in place for 67 days before making the changes when they knew that the existing entry was illegal?

- 5.** Why did the FCA knowingly break the law by allowing this illegal entry to remain on the IP register for these 67 days?"

The complainant didn't number the questions contained within their request. However, for ease the Commissioner has and highlighted them in bold.

5. The FCA responded on 23 July 2024, it disclosed information in response to all questions. In response to question 4, it outlined the action it had taken in response to Collateral UK Ltd and why.
6. The complainant requested an internal review on 24 July 2024. They complained that the information disclosed in response to questions 4

and 5 'fails to address the specifics of the questions but it also appears to distort the timeline of what actually happened.' They disputed the version of events that the FCA had given in response to question 4.

7. The FCA provided the outcome to its internal review on 20 September 2024. It upheld the response it had provided to questions 4 and 5 previously.

Scope of the case

8. The complainant has raised concerns about the information provided in response to questions 4 and 5, specifically that the FCA had 'dismissed' these questions entirely. They were also concerned with the FCA's timeliness in responding to the request.
9. So, the Commissioner will consider whether the FCA has fulfilled its obligations under section 1 and 10(1).

Reasons for decision

10. In cases where a dispute arises over the recorded information held by a public authority (or held on the public authority's behalf by another person) the Commissioner, following the outcome of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. This means that the Commissioner will determine whether it's likely, or unlikely, that the public authority has provided all information it holds in response to the request.
11. FOIA only applies to information that a public authority already holds in recorded form at the time of a request. It doesn't require a public authority to create information in order to fulfil a request. Ultimately, if a public authority doesn't hold a particular piece of information that a requestor has asked for, it can't provide it and it doesn't have to create it.
12. Questions 4 and 5 of the request ask the FCA to address two things: why the FCA took, or failed to take, specific action when it knew illegal activity was occurring and why, in doing so, it broke the law.

13. In response to question 4, the FCA explained that:

'It didn't immediately require the firm to cease business, because of the risk that an immediate cessation could cause a disorderly collapse, which would cause harm to customers (when (when it might have been possible to avoid such an outcome). When it became apparent that there was unlikely to be an agreed resolution to the dispute with the directors of the firm, the FCA took various actions, as described in the response, including amending the IP Register to display the correct details.'

14. Its response to question 5, it explained that it was:

'unable to comment on your interpretation of the FCA's legal obligations.'

15. The FCA explained that, whilst the responses it had provided in response to questions 4 and 5 had been informed by the recorded information, it hadn't identified any 'recorded information relevant to the assertions you make in your request, i.e., that we knew that the existing entry was illegal and knowingly broke the law by allowing this illegal entry to remain on the IP register.'

16. In order for a request to be valid, it must clearly describe the information being requested. Parts 4 and 5 do; in asking the FCA to justify why, in the complainant's view, it failed to take action when it knew illegal activity was occurring and, in doing so, broke the law itself.

17. It's not for the Commissioner to comment on this concern, it falls outside of his remit to do so. However, the Commissioner is satisfied that any recorded information wouldn't be held, and therefore can't be provided in response to these parts of the request. This is because the FCA is denying the allegations.

18. The complainant clearly disagrees. However, the FCA response doesn't 'fail to address the specifics', it clearly refutes the complainant's allegations and confirms no recorded information relevant to such allegations is held.

19. Furthermore, the complainant is concerned that the FCA's response 'distort the timeline of what actually happened'. Essentially, the complainant disbelieves the FCA's version of events but this is a concern about accuracy, which falls outside of the scope of FOIA and the Commissioner's remit to consider.

20. On the balance of probabilities, the Commissioner is satisfied that the FA has provided all of the information it holds in response to questions 4 and 5 of the request. The complainant's concerns are about accuracy, in that they dispute the information the FCA has given and its conduct. However, this falls outside the Commissioner's remit.
21. Section 10 of FOIA states that request must be complied with within 20 working days of receipt of the request. The FCA breached this timescale.

Other matters

22. The complainant also has concerns that:

"The wording used in the response has obviously been pre-agreed to portray the FCA's version of the events surrounding the collapse of Collateral...Whilst I can appreciate that the Communications and PR department of the FCA wish to control the narrative of the Collateral it is not their place to dictate how FOI's are answered as is obviously the case here."

23. The FCA confirmed in response that parts of their response "do repeat wording used in response to a previous request under FOIA, this is because the questions were considered as seeking the same information." The Commissioner considers this entirely reasonable.
24. There is no statutory requirement under FOIA to conduct an internal review outcome. However, it's best practice to do so. The Commissioner's guidance states this internal review outcome should be provided within twenty working days and this can be extended to forty working days in exceptional circumstances. The FCA failed to provide its internal review outcome within this timescale.

Right of appeal

25. 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

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

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