IN THE FIRST-TIER TRIBUNAL

GENERAL REGULATORY CHAMBER

(INFORMATION RIGHTS)

Case No. EA/2010/0203

ON APPEAL FROM:
Information Commissioner
Decision Notice ref FS50300018
Dated 6 December 2010

Appellant: Jeffrey Lampert

Respondents: (1) Information Commissioner

(2) Financial Services Authority

Date of Tribunal telephone meeting: 24 May 2011

Date of decision: 7 June 2011

Before

HH Judge Shanks

Alison Lowton

Narendra Makanji

Representation:

Appellant:	In person
Information Commissioner:	Anneliese Blackwood
FSA:	Greg Choyce

Subject areas covered:

Freedom of Information Act 2000:

Whether information held s.1

Vexatious or repeated requests s.14

Personal data s.40

Cases referred to:

Durant v Financial Services Authority [2003] EWCA Civ 1746

Decision

For the reasons set out below the Tribunal decides that the decision notice dated 6 December 2010 is not in accordance with the law and substitutes the following notice for it.

Substituted decision notice

Public Authority: Financial Services Authority

Complainant: Jeffrey Lampert

Decision

For the reasons set out below, the Public Authority was not obliged to comply with the Complainant's request for information by reason of sections 14(1) and 14(2) of the Freedom of Information Act 2000. No action is required by the Public Authority.

HH Judge Shanks

7 June 2011

Reasons for Decision

Background facts

1. The Appellant, Jeffrey Lampert, was Chairman of a company called Heritage plc which went into insolvent liquidation in the mid 1990s. The company had a loan from Lloyds TSB which was guaranteed by Mr Lampert up to £500,000. The bank called on this guarantee and in due course obtained a substantial judgment against Mr Lampert and started bankruptcy proceedings against him in 2003. Mr Lampert maintains that there are several million pounds missing from the receivership of Heritage which he says means that his guarantee ought not to have been called on. He has been in dispute about this with the bank for many years.

2. On 7 June 2007 Mr Lampert's MP, Dr Rudi Vis, wrote to the FSA asking it to investigate the matter thoroughly and inform him to what extent the FSA considered it an example of a bank taking unfair and illegal advantage of a customer. An internal FSA memo to David Strachan dated 14 June 2007[1] states as follows:

> **[the letter] is the latest in a long-running correspondence … on behalf of his constituent Mr Jeff Lampert and concerns the actions of Lloyds TSB in the matter of the insolvency of Heritage plc in the mid 1990s …**

[1] Bundle B, tab 11, p2.

> **Previously, we have clearly stated that insolvency practice is not a matter for the FSA …**
>
> **I am seeking your guidance on how best to proceed:**
>
> **1. We can, of course, go back to him repeating our stance …**
>
> **2. We have the option of taking it to the Banking Sector Team …**
>
> **3. Alternatively … I could pursue this individual matter with [Lloyds TSB] so that we get both sides of the story … I realise we don't normally take up individual complaints, but there have been exceptions in the past.**

Mr Strachan and the writer of the memo agreed that they would adopt the third option and take the matter up with Lloyds TSB.

3. As shown by the documents at pp 3 to 25 of tab 11 in bundle B the FSA made some enquiries of Lloyds TSB and wrote back to Dr Vis on 6 August 2007 in these terms:

> **We have made further enquiries into this case and cannot conclude that Lloyds TSB has acted unfairly or in an illegal manner. The matter has been tested in the courts, which have found in the bank's favour on each occasion, and it seems that the bank ultimately suffered a loss of some £1 million on the winding up of Heritage plc. Furthermore, nothing arising from our review persuades us that there are systemic problems in respect of the dealings of banks with guarantors that would justify wider work by the FSA.**
>
> **In these circumstances we regard this matter as closed.**

4. On 13 August 2007 Dr Vis wrote to the FSA again in more detail saying that he considered "… it imperative that we work together to fully comprehend Lloyds TSB's actions, and the serious implications…". The letter ended:

> **All the bank has to do to demonstrate it has proper systems and controls in place is to provide all interested parties with a verifiable Statement of Account of all receipts against the debt of Heritage plc. Unless it is able to do so, I request you urgently take the appropriate and overdue action.**

> **As this matter has been with you for some months, please ensure you respond within two weeks…**

On 14 September 2007 the FSA wrote a holding letter to Dr Vis and on 26 September 2007 the Managing Director of the Retail Markets Division wrote to him in these terms:

> **I have reviewed our actions and have concluded that we have handled this case appropriately and that it is not proportionate for us to spend further time on it. We have nothing to add to our earlier correspondence with you and separately with Mr Lampert, and we regard the matter as closed. We will not, therefore, enter into further correspondence with you or Mr Lampert on these issues.**

In his letter of 13 August 2007 Dr Vis had also asked for disclosure of the FSA's files on the matter; the reply of 14 September 2007 stated that they could not be disclosed because of section 348 of the Financial Services and Markets Act 2000.

5. On 4 March 2008 Mr Lampert requested the FSA to supply him with "… copies of [their] files in regard to your investigation into Lloyds TSB Bank's guarantee procedure …". At some stage Mr Lampert was supplied with the documents at bundle B tab 11 pp 2 to 25 to which we refer above in response to that request; we understand from the FSA that before doing so they had obtained the consent of Lloyds TSB which meant that section 348 no longer prohibited their disclosure. On 11 November 2008 Dr Vis requested a copy of "… a report of the investigation instigated at [his request] by the FSA in June 2007…". The response to that was that there was no such information. Similar requests were made by Alan Keen MP and Dr Vis in November and December 2008 which received similar answers.

6. On 17 January 2009 Mr Lampert requested:

> **… all information held by the FSA in regard to [his] dispute with Heritage plc/Lloyds including documents [he] would have seen/have access to already, such as copies of the information [he was] provided in [his] FOI request [of 4 March 2008] and correspondence between [him] and Dr Vis MP and the FSA.**
>
> **… please incorporate in this request documents relating to … FSA correspondence about this matter with Alan Keen MP, the vice Chair of the APPG against Financial Exploitation.**

This request appears to have been worded the way it was after discussion between Mr Lampert and the FSA, who provided him with all the information previously supplied in order to be helpful and to close down the long running issues. Nevertheless, Mr Lampert complained to the Information Commissioner about their response to the request putting forward the view that the FSA held more information which they were withholding. The Commissioner found against him on that issue and found that the information requested comprised Mr Lampert's personal data and was therefore exempt from disclosure under section 40(1) of the Freedom of Information Act 2000 in any event.

7. In October or November 2009 Mr Lambert made an application under Civil Procedure Rule 31.17 against the FSA in the course of bankruptcy proceedings brought against him by Lloyds TSB in which he sought disclosure of documents held at all levels of the FSA relating to the memo of 14 June 2007 to which we refer in paragraph 2 above; the basis of the application was that this would assist him in defending the bankruptcy proceedings. In his judgment on the application given on 22 March 2010[2] Deputy Bankruptcy Registrar Briggs stated:

> **Mr Lampert has been before the Courts before in relation to this issue [ie Lloyds' failure to account properly for its recoveries and costs relating to Heritage plc]. Recourse sought by Mr Lampert through the Courts, [Banking Code Standards Board] and DTI have all been unsuccessful…**
>
> **… it is the case of the FSA on sworn evidence state that they have provided all the necessary information relating to the memo dated the 14th June 2007…**
>
> **The truth of the matter is that Mr Lampert simply does not trust what the FSA have said. He believes there are more documents and they should be disclosed … The evidence given by the FSA is sworn evidence by an employee of the FSA which on this application I accept …**
>
> **I therefore dismiss the application…**

[2] Bundle B tab 5; the judgment is apparently misdated 22 January 2010.

The request for information and the Commissioner's decision notice

8. The request with which this appeal is concerned was made on 13 January 2010. The parties have helpfully agreed on its scope for the purposes of the appeal: it is for documentation held by the FSA as at that date recording:

    (1) the outcome of any investigation into Lloyds TSB following the memo of 14 June 2007 and showing how, when, why and on whose instructions such an investigation was terminated;

    (2) the calculation of Lloyds TSB's loss;

    (3) as (1) in relation to any investigation which was referred to as "continuing" in the FSA's letter to the Commissioner of 23 September 2009.[3]

9. By a letter dated 9 February 2010 (which was confirmed on review) the FSA stated that they held information of the description requested but were not required to disclose it under section 14 of the 2000 Act because the request was repeated and vexatious. As well as the factual background we have set out above the letter noted the following points:

    (1) The FSA had also dealt with 15 written queries during the processing of the Mr Lampert's requests of 4 March 2008 and 30 January 2009;

    (2) Mr Lampert had been advised by the FSA in numerous telephone conversations that the FSA had not carried out an investigation following the memo of 14 June 2007;

    (3) Lord Turner, the FSA Chairman, had written to Dr Vis on 1 May 2009 stating that further correspondence and meetings on the issues raised by Mr Lampert would serve no useful purpose and that the staff had been instructed not to reply to further correspondence and to terminate any phone calls should he ring.

10. Mr Lampert complained to the Commissioner about the way his request had been dealt with and the Commissioner issued a decision notice dated 6 December 2010.

[3] Bundle B, tab 11, p27: see further reference to this letter at para 13(2) below.

The Commissioner accepted that the request was a repeat of the earlier request dated 17 January 2009 and concluded, as in that case, that any information falling within the scope of the request was the "personal data" of Mr Lampert. It followed that he found that the information requested was absolutely exempt from disclosure under section 40(1) of the 2000 Act. He did not make any finding about whether the FSA was entitled to rely on section 14.

The appeal

11. Mr Lampert has appealed against the Commissioner's decision notice. He maintains that there are still documents that the FSA has not disclosed to him and that the Commissioner was wrong to find that the requested information was covered by section 40(1). The FSA was joined to the appeal and a hearing held to resolve all issues.

12. The issues we have had to decide on the appeal are as follows:

    (1) The following factual issues:

        (a) whether the FSA carried out any investigation into Lloyds TSB following the memo of 14 June 2007 beyond the short inquiry which culminated in their letter to Dr Vis dated 6 August 2007;

        (b) whether the FSA held any document containing a "calculation of Lloyds TSB's losses";

        (c) whether briefing notes prepared for Lord Turner concerning a letter from Dr Vis on behalf of Mr Lampert (which are dated 30 April 2009 and which were seen by but not supplied to Mr Lampert sometime before his appeal) came within the terms of his request for information.

    (2) Whether the Commissioner was correct to conclude that the information requested by Mr Lampert on 13 January 2010 was exempt from disclosure under section 40(1);

(3) If not, whether the FSA could nevertheless rely on section 14 to refuse to comply with the request.

(1) Factual issues

13. The FSA has consistently maintained that they carried out no investigation into Lloyds TSB beyond the brief inquiry we have mentioned. As we record above in paragraph 7 the Bankruptcy Registrar has so found in a contested application. Nothing daunted, Mr Lampert still maintains that an investigation was carried out. He relies on a number of documents which he took the Tribunal through at the hearing. We considered all of these documents and we are quite satisfied on the balance of probabilities that there was indeed no investigation. In particular:

(1) There is an internal Treasury email dated 5 January 2010[4] which was disclosed to Mr Lampert in which an official states: "My involvement has been limited to one theme – explaining (ad nauseam) that HMT cannot TELL the FSA to release the results of their investigation into this case to Mr Lampert or his MP." We are satisfied that this is not evidence that an investigation was carried out by the FSA; it is clear that the official is assuming that that is so because it is what Mr Lampert has told him and he is merely expressing his view that the Treasury cannot force the FSA to disclose the result of any investigation that may have taken place;

(2) There is an FSA letter to the Information Commissioner dated 23 September 2009[5] which refers to an "investigation" which was continuing. Read properly in context it is clear that this is a reference to an investigation by the Commissioner himself into the FSA's compliance with one of Mr Lampert's requests for information and not to an investigation carried out by the FSA;

(3) Mr Lampert referred to the letter from Dr Vis to the FSA dated 13 August 2007[6] to which we refer above at paragraph 4; he said that he could not accept that the FSA did not carry out an investigation following that letter and that the Treasury would not have become involved if there had been no

[4] Bundle B, tab 9, p19
[5] Bundle B, tab 11, p27
[6] Bundle B, tab 13, p17

investigation. We have already referred at paragraph 4 above to the letter to Dr Vis dated 26 September 2007 which though not in the bundle was produced for us at the hearing; it is clear to us from the terms of that letter that the FSA did not take any further action in response to Dr Vis's letter of 13 August 2007 and the reliance on section 348 of the Financial Services and Markets Act 2000 is of no significance given that Dr Vis was asking to see copies of all the FSA's files connected with the matter. So far as the Treasury involvement is concerned it is clear that the explanation for this is that Mr Lampert himself or those acting on his behalf brought about this involvement.

(4) Mr Lampert also drew our attention to a number of letters responding to his requests for information where the FSA has said that it holds information answering to such request; read in context it is clear that none of these involve any admission that there are any documents going beyond those of which the Tribunal and Mr Lampert are already aware.

14. As to "the calculation of Lloyds TSB's losses", again the FSA say there is no such document. The only reference to any information about such losses is in a note dated 2 August 2007[7] which the FSA supplied to Mr Lampert long ago. This document is clearly a note of a telephone conversation between an FSA official and someone at Lloyds TSB; it records that Lloyds TSB told the FSA in the course of that conversation that there was "… still a shortfall of over £1m". There is no evidence that any document containing a calculation of Lloyds TSB's losses was supplied to or created by the FSA and we are quite satisfied that there is no such document.

15. As to the briefing notes to Lord Turner dated 30 April 2009 which the Tribunal members were shown in the course of the hearing, it is clear that they do not take the issue of whether there was an investigation any further and, as we told Mr Lampert, they are consistent with the case the FSA has been running all along. In the circumstances, we find that they do not come within the terms of the request for information.

[7] Bundle B, tab 11, p6.

(2) Section 40(1)

16. The Commissioner's position on this issue as set out in his decision notice was as follows:[8]

> **In the previous case the Commissioner had decided that the information was the personal data of [Mr Lampert] because it dealt with complaints he had made to, and other dealings he had had with, the [FSA] and because [he] was identifiable from that information. The Commissioner is satisfied that any information falling within the scope of the request which is the subject of this decision notice would also have been captured by [Mr Lampert's] previous request … and therefore the Commissioner must conclude that any information falling within the scope of the request of 13 January 2010 is the personal data of [Mr Lampert]. Consequently the Commissioner has decided that the requested information is exempt from disclosure under section 40(1) of the [Freedom of Information] Act.**

17. In the light of the guidance of the Court of Appeal in *Durant v FSA*[9] (a similar case to this one on the facts), we consider that the Commissioner was wrong to decide, in effect, that, merely because the information requested by Mr Lampert arose from complaints he made to (or other dealings he had with) the FSA, it constituted his personal data. Ms Blackwood for the Commissioner took the Tribunal through various documents which were accepted as coming within the terms of the request (at bundle B, tab 11, pp 2-26) and demonstrated that there was indeed information contained in them which may well have been Mr Lampert's personal data, for example his address, the fact he had given a guarantee to the bank, and his wife's name. However, there was other information contained therein which was clearly not his personal data and the terms of the request did not, as we have said, make it inevitable that all the information coming within the request would constitute his personal data. In those circumstances, we consider that it was not open to the Commissioner to decide that the information was exempt under section 40(1) in the

[8] Bundle A, tab 6, para 17.
[9] [2003] EWCA Civ 1746

way that he did and that he ought first to have considered whether the FSA were entitled to rely on section 14(1) or (2) of the 2000 Act.

(3) Section 14

18. Section 14(2) provides that a public authority which has previously complied with a request for information is not obliged to comply with a subsequent substantially similar request from the same person unless a reasonable interval has elapsed. As we record at paragraphs 5 and 6 above, the FSA supplied various documents to Mr Lampert following his request of 4 March 2008 and 17 January 2009. In the light of our findings of fact at paragraphs 13 and 14 above it is clear that the provision of those documents represented full compliance with the earlier requests. It is also clear that the request we are concerned with is a "substantially similar request" to those of 4 March 2008 and 17 January 2009. Again, given our finding of fact that there was no investigation going beyond the limited inquiry culminating in the letter dated 6 August 2007[10] and that Mr Lampert had been informed of that fact by the FSA, it is clear that a reasonable interval had not elapsed before the subsequent request. In these circumstances, we consider that the FSA were entitled to rely on section 14(2) in relation to the request we are concerned with and that the Commissioner ought to have so found.

19. Section 14(1) provides that a public authority is not obliged to comply with a request for information which is vexatious. It seems to us in the light of the history we have set out and our findings of fact that there is ample material here from which it could be found that Mr Lampert's request of 13 January 2010 was vexatious, in particular:

    (1) it was a repetition of earlier requests which had been complied with, as we have found in paragraph 18 above;

    (2) it was the final request in a series of at least six from Mr Lampert and MPs acting on his behalf covering essentially the same ground which the FSA had had to deal with;

    (3) one of the requests had already been taken unsuccessfully to the Commissioner;

[10] Bundle B, tab 11, p26.

(4) Mr Lampert was also in the course of pursuing the request by way of an application for disclosure from the court, which had been unsuccessful;

(5) all the requests related to facts going back to the mid-1990s which had been the subject of extensive litigation between Mr Lampert and Lloyds TSB;

(6) the request arose out of Mr Lampert's refusal to accept that the position was as repeatedly stated by the FSA (and as now found by this Tribunal), namely that the FSA had not carried out any investigation beyond the limited inquiry we have mentioned;

(7) as pointed out in the FSA's letter dated 9 February 2010 which we refer to at paragraph 9 above, the FSA had dealt 15 written queries in the course of dealing with his requests of 4 March 2008 and 30 January 2009 and Lord Turner had made clear to Dr Vis in his letter of 1 May 2009 that no useful purpose would be served by further communication with the FSA on the topic.

20. Mr Lampert denied that his request for information was vexatious. He said that obtaining information from the FSA was like "pulling a tooth" and that each time he had put in a further request exemptions previously relied on had dropped away and a little more information had been supplied and that he did not believe he had reached the end. He complained that the briefing notes to Lord Turner (dated 30 April 2009) had still not been supplied to him. He said the FSA did not come to the matter with clean hands and he was sure that further investigations must have been carried out following Dr Vis's letter of 13 August 2007[11]. We do not accept his description of the FSA's behaviour: we consider that they have been as helpful as they could be and that they have continued to communicate with Mr Lampert for some time longer than they perhaps needed to; the main piece of relevant information (ie bundle B, tab 11, pp2-25) was supplied following a request to Lloyds TSB by the FSA which they arguably need not have made. The Lord Turner briefing notes do not come within the terms of the request and in any event do not take matters any further at all. We have found as a fact that there were no further investigations.

[11] Bundle B, tab 13, p19.

21. In all the circumstances we consider that the request of 13 January 2010 was vexatious and that the FSA were entitled not to comply with it on that basis as well as on the basis of repetition. We therefore consider that the Commissioner ought to have found in his decision notice that they were entitled to rely on both sections 14(1) and 14(2) as they had maintained.

Disposal

22. For all those reasons we have decided that, although Mr Lampert was not entitled to any information in response to his request of 13 January 2010, the Information Commissioner's decision notice dated 6 December 2010 was not in accordance with the law and should be substituted with the notice set out above.

23. We hope that our findings will now bring an end to this matter at last.

24. Our decision is unanimous.

HH Judge Shanks

Dated 7 June 2011