



**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBERS  
INFORMATION RIGHTS**

**EA/2011/0168**

**ON APPEAL FROM  
The Information Commissioner's Decision  
No FS50364249 dated 29 June 2011**

**Appellant:** Efifiom Edem  
**Respondent:** Information Commissioner  
**Second Respondent:** The Financial Services Authority  
**Date and place of hearing:** 27 January and 15 February 2012, at Field House  
**Date of decision:** 20 February 2012

**BEFORE**

**Ms Anisa Dhanji  
Judge**

**and**

**Mr John Randall and Dr Malcolm Clarke  
Panel Members**

**Representation:**

For the Appellant: in person  
For the Information Commissioner: No attendance  
For the Financial Services Authority: Mr Greg Choyce

**Subject matter**

FOIA section 1(1)(b) – whether the public authority has communicated the requested information.

**IN THE FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
INFORMATION RIGHTS**

**EA/2011/0168**

**REASONS FOR DECISION**

**Background**

1. This is an appeal by Mr. Efifiom Edem (the “Appellant”), against a Decision Notice issued by the Information Commissioner (the “Commissioner”), on 29 June 2011.
2. The appeal arises from a request for information made by the Appellant to the Financial Services Authority (“FSA”) on 22 April 2010, about information held by them as to the date on which certain companies had registered with the FSA, and the companies’ addresses.

**The Request for Information**

3. Specifically, the Appellant requested the following information:

*“I hereby lodge an FIA 2000 information request for the registration date (initial thru [sic] current) and address (initial thru [sic] current and date changed in each case) for the following firms during the period 16<sup>th</sup> July 1998 (DPA 1998 date) thru [sic] the date at the head of this email:*

1. *Prudential Banking plc.*
2. *Egg Banking plc.*
3. *Egg plc.*
4. *Prudential Five plc.*
5. *Prudential Five Limited.*

*Alternatively, I hereby request a paper copy of the register entries that contain the aforementioned information.”*

4. On 18 June 2010, the FSA provided what it said was all the information it held. The information was provided in the form of two schedules. The first was headed “Firm Name History” and contained information on Egg Banking Plc and Egg Plc. The second was headed “Firm Address History” and contained information on Egg Banking Plc. The FSA stated that it did not hold a “Firm Status Effective Date” (a description which corresponded to one of the headings on the schedule) for Prudential Banking plc., and that it did not hold the information the Appellant had requested on Prudential Five plc or Prudential Five Limited, but suggested that the Appellant could contact Companies House for that information.
5. On 24 June 2010, the Appellant requested an internal review of the FSA’s response and set out the following 11 points which he described as “anomalies” which he asked should be considered in the review.

- “1. The “Firm Address History” table for Egg plc is missing.*
  - 2. A brief description of each of the nine column names in the “Firm Name History” table is missing.*
  - 3. A brief description of “Registered Name”, “Registered” and “Authorised” in the “Firm Name History” table is missing.*
  - 4. According to Companies House, row1/column5 of the “Firm Name History” table should read “17 Sep 1996” not 7 Oct 1996”.*
  - 5. According to Companies House, row 3/column5 of the “Firm Name History” table should read “Prudential Mustang Ltd” not “Egg Plc”.*
  - 7. According to Companies House, row3/column6 of the “Firm Name History” table should read “02 May 2007” not “”.*
  - 8. Row4 of the “Firm Name History” table with inter alia row4/column2 and row4/column4 both set to “Egg Plc” and row4/column7 set to “Authorised” is missing.*
  - 9. According to Companies House, Egg plc changed its name to Prudential Five plc on 2<sup>nd</sup> May 2007.*
  - 10. According to Companies House, Prudential Five plc changed its name to Prudential Five Limited on 6<sup>th</sup> October 2007.*
  - 11. Row4 of the “Firm Address History” table for Egg Banking plc is inconsistent with row2, row3 and row5 thereof.”*
6. The FSA responded on 20 July 2010, addressing each of the 11 points in turn. In brief, the FSA stated as follows:
- Point 1. Egg plc was registered with the FSA, i.e. the name of the entity was noted on the FSA’s systems and allocated a Firm Reference Number (“FRN”). The Firm Address History schedule is limited to firms which are authorised to carry out regulated activities. Egg plc is not authorised and is therefore not listed.
  - Point 2. The FSA gave the following explanation of the terms used in the schedule headings:
    - FRN refers to FSA Firm Reference Number.
    - Firm Name refers to Current Registered Name.
    - Name Type refers to a registered name, trading name of a firm, etc.

Firm Name (2) refers to previous registered name that a firm may have used.

Firm Name Effective Date refers to the date on which the firm name/name change came into effect.

Firm Name End Date refers to the date the old firm name ceased to be effective.

Firm Status refers to the current status of a regulated firm.

Firm Status Effective Date refers to the date that a change in status (for example from registered to authorised) came into effect.

Firm Status End Date refers to the date that a change in status took place (e.g. the date when an authorised firm ceased to be authorised).

- Point 3: The FSA referred the Appellant to its answer to point 1 above.
  - Points 4 – 7: These points relate to information held by Companies House and the FSA considered therefore, that it was unable to comment on them.
  - Point 8: The FSA referred the Appellant to its answer to point 1 above.
  - Points 9 – 10: The FSA gave the same answer as in relation to points 4 - 7, above.
  - Point 11: The FSA accepted it had made an error on the schedule and provided the Appellant with a corrected schedule.
7. The Appellant took issue with certain of the FSA's responses to his 11 points. The FSA responded by providing the Appellant with further information in relation to points 1 and 3, in particular. They also stated that they had now provided the Appellant with as much information as they were able to.
8. The Appellant then contacted the FSA, requesting an internal review, and listed the points that he wanted considered during that review.
9. Following the review, the FSA provided further information in relation to point 1. It maintained, in relation to points 4 – 7 and 9 – 10, that it was unable to comment on information held by Companies House.

### **The Complaint to the Commissioner**

10. On 30 November 2010, the Appellant complained to the Commissioner under section 50 of the Freedom of Information Act 2000 ("FOIA").

11. The Commissioner issued a Decision Notice on 29 June 2011. He considered that points 4 -7 and 9 – 10 did not engage the FSA's obligations under FOIA. These points related to information held by Companies House. To the extent they related to information held by the FSA, they were not requests for information, but were requests for the FSA to alter the information it held. He also considered that the Appellant was treating point 11 as being closed and therefore did not investigate it further.
12. The Commissioner considered that the FSA had answered points 1 – 3 and 8. He also considered that the FSA's publication scheme met the requirements of sections 19 and 20 of FOIA.
13. The Commissioner found, however, that the FSA had failed to provide a response to the Appellant within 20 working days and therefore had been in breach of sections 1(1)(a) and 10(1) of FOIA. The Commissioner did not require any steps to be taken in respect of these breaches.

### **The Appeal to the Tribunal**

14. By a Notice of Appeal dated 27 July 2011, the Appellant appealed to the Tribunal against the Commissioner's Decision Notice.
15. At the Appellant's request, the Tribunal held an oral hearing. The Commissioner informed the Tribunal that he did not intend to attend. He considered that any questions in issue were matters of fact on which the FSA would be best placed to assist the Tribunal.
16. In advance of the hearing, the parties lodged an agreed bundle of documents. They were unable to reach agreement on the inclusion of certain documents which the Appellant wished to include in relation to his recruitment and employment by Egg Plc. Directions were made permitting the Appellant to lodge those documents by way of a separate bundle. The Appellant lodged a Skeleton Argument, but the other parties did not.
17. Prior to the hearing, the Appellant also made an application to the Tribunal to require the FSA to provide certain further documents. The FSA stated that it was not willing to provide those documents, because it did not consider them to be relevant, and also because it considered that the information would be exempt under section 44 of FOIA. The Tribunal considered that it would not be appropriate, as part of the pre-hearing exchange of documents, to order disclosure of potentially exempt information from the FSA. It was also not clear to the Tribunal what relevance the additional information would have to the appeal. The Appellant's application was refused, but he was told that he would have an opportunity, at the hearing, to renew his application.
18. Following the hearing on 27 January, further evidence was received from the FSA. The FSA stated that in light of a certain document which the Appellant had referred to at the hearing and which is contained in the bundle prepared for a different appeal between the same parties (EA/2011/0132), the FSA had conducted further inquiries to ensure that the information they had provided to the Appellant in relation to point 1 was correct. They remained satisfied that it was.

19. The Tribunal directed that the additional evidence and any submissions the parties wished to make on it be dealt with on 15 February 2012 when the Tribunal, comprising the same panel members, would be convening to hear the appeal in EA/2011/0132. The FSA was directed to bring to that hearing the documents referred to in paragraph 17 above. The FSA did so and with limited exception, copies of these documents were provided to the Appellant.
20. At the hearing on 15 February 2012, following the oral evidence, and further documents provided by the FSA, the Appellant confirmed that points 1, 2, 3 and 8 were also no longer in issue. Pursuant to Rule 17 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, and with the Tribunal's consent, the Appellant withdrew his appeal in relation to points 1, 2, 3 and 8. The Appellant had previously confirmed that point 11 was also no longer in issue
21. The Tribunal informed the Appellant that his appeal on the remaining points, being 5, 6, 7, 9 and 10, would be dismissed. He has, nevertheless, asked for his appeal on these points to be determined.
22. The Tribunal has heard evidence from Mr Ian Fitzgibbon and from Mr Daniel Thornton on behalf of the FSA. Given that the issues to be determined by the Tribunal have been considerably narrowed, their evidence is now of limited relevance, but we have summarised their evidence in the Appendix to this determination to provide a context for the remaining issues.

### **The Tribunal's Jurisdiction**

23. The scope of the Tribunal's jurisdiction in dealing with an appeal from a Decision Notice is set out in section 58(1) of FOIA. If the Tribunal considers that the Decision Notice is not in accordance with the law, or to the extent that it involved an exercise of discretion by the Commissioner, he ought to have exercised the discretion differently, the Tribunal must allow the appeal or substitute such other Notice as could have been served by the Commissioner. Otherwise, the Tribunal must dismiss the appeal.
24. Section 58(2) confirms that on an appeal, the Tribunal may review any finding of fact on which the Notice is based. In other words, the Tribunal may make different findings of fact from those made by the Commissioner, and indeed, as in this case, the Tribunal will often receive evidence that was not before the Commissioner.

### **The Legislative Framework**

25. Under section 1 of FOIA, any person who has made a request for information to a public authority is entitled to be informed if the public authority holds that information, and if it does, to be provided with that information.
26. The duty on a public authority to provide the information requested does not arise if the information sought is exempt under Part II of FOIA, or if certain other provisions apply. In the present case, however, the FSA does not rely on any exemptions.

## **Findings**

27. The Appellant's request for information which is the subject of this appeal is the request he made on 22 April 2010, as set out at paragraph 3, above. However, both the Commissioner and the FSA appear to have accepted that the 11 points that followed (as set out at paragraph 5, above), also come within the scope of his request, and all parties, including the Appellant have dealt with the appeal by reference to those 11 points. As already noted, the Appellant has accepted that in relation to his request, the only issues outstanding for the Tribunal to determine are in relation to points 4 - 7, and 9 - 10.
28. We agree with the Commissioner that these points do not engage the FSA's obligations under FOIA. They relate to information held by Companies House. To the extent that they relate to information held by the FSA, they were not requests for information, but were requests for the FSA to alter the information it held. To the extent that information held by the FSA is inaccurate or incomplete, the Tribunal has no jurisdiction in relation to the quality of information held by a public authority. In his Skeleton Argument, the Appellant also relies on what he says is a general duty on the FSA to provide the public with accurate, consistent and up to date information. Whether there is such a duty is not a matter for this Tribunal. The Tribunal can only require a public authority to provide such information as it holds. We therefore dismiss the Appellant's appeal in relation to points 4 - 7, and 9 - 10.
29. The Appellant's Grounds of Appeal raise certain other issues that are outside the Tribunal's jurisdiction or are entirely without merit. He takes issue, for example, with the FSA's failure to respond to his request within 20 working days. The FSA's failure in this regard is not in dispute and the Decision Notice records the Commissioner's finding that the FSA was in breach of section 10(1).
30. The Appellant also take issue with what he says are errors of fact in the Commissioner's Decision Notice. The errors identified by the Appellant are in no way material to the Commissioner's findings. In any event, we have reviewed his findings of fact.
31. To the extent the Appellant takes issue with the adequacy of the FSA's publication scheme, the FSA, like any other public authority, has a duty to adopt and maintain a scheme which relates to the publication of information by the authority and to publish information in accordance with its publication scheme. Should it breach its statutory duty in this regard (and we make no findings that it has done so), enforcement powers lie with the Commissioner, not with the Tribunal.
32. Finally we would be remiss if we did not express our concern about the expenditure of public funds on an appeal that should never have come before the Tribunal. In October 2011, the Tribunal dealt with the Appellant's appeals (EA/2011/0088 & 0089) against the Commissioner (acting in his capacity as a public authority) in connection with various requests for information about his former employer, Egg plc, and related companies. In that determination, we

expressed the view that the appeals should never have been brought because we had no doubt that the public authority had been willing to provide the Appellant with all such information as it held coming within the scope of his requests. Those observations apply equally to the present case. There as here, no exemptions are relied on, nor is there any material difference in the parties' interpretation of their respective rights and responsibilities under FOIA.

33. We consider that responsibility for this unnecessary appeal lies with both the Appellant and the FSA. The FSA provided information using terminology specific to the FSA without providing any explanation as to what those terms meant. They also used the term "registered" for firms they do not consider are registered with them. If, as in this case, this is not explained, it is a recipe for confusion. They also failed to provide certain information until the hearing itself not because, in our view, they intended to withhold it, but because they did not take sufficient care, even during the preparation of the appeal, to realise that they had not provided what the Appellant had asked for.
34. As regards the Appellant, he persists in misunderstanding the purpose of FOIA and the scope of the Tribunal's jurisdiction, despite the Tribunal's repeated efforts to explain these matters to him. There is also a tendency, on Appellant's part, to construe errors in the information provided as being an attempt to withhold or even to fabricate the information rather than accepting the possibility that the errors may be caused by carelessness.
35. It is hoped that lessons will have been learned by both sides, and that they will be mindful, in the event of any future appeal, of the Tribunal's powers under Rule 10 to order costs where the Tribunal considers that a party has acted unreasonably in bringing or defending proceedings.

**Decision**

36. We dismiss this appeal. Our decision is unanimous.

**Signed**

[Signed on original]

**Anisa Dhanji  
Judge**

**20 February 2011**



## **Appendix**

### **Evidence of Mr Fitzgibbon**

1. Mr Fitzgibbon has been employed by the FSA since January 2010 as an Associate in the FSA's Business Systems Management Team. In that role, he has acquired an understanding of how the FSA holds information received for its various regulatory functions, and also how some of that information is made publicly available. His evidence is summarised below.

### **The Register**

2. The FSA is the UK's financial services regulator. Under the Financial Services and Markets Act 2000 ("FSMA") it is required to maintain and make publicly available a record containing the information prescribed by section 347 of the FSMA including all those persons which are authorised by the FSA to carry on regulated activities in the UK and individuals who the FSA has approved to carry out various functions as authorised persons. The FSA commonly refers to businesses, whether authorised or not, as "firms" and it calls the record published under section 347 the "Register". The FSA publishes the Register on its website.

### **TARDIS**

3. The FSA holds considerably more information about firms than it makes publicly available on the Register. One of its main databases is called the Amalgamated Regulatory Data Information System ("TARDIS"). Only a subset of the information held on TARDIS is reflected on the Register.
4. Most of the information on TARDIS is received from the firms themselves when they apply to the FSA to be authorised to carry on regulated activities in the UK. If the firm becomes authorised, it will be shown on the Register.
5. Since October 2010, firms notify any changes to their details using the on-line Notification and Applications ("ONA") system. If the information submitted by a firm is in order, TARDIS and the Register are updated without any manual intervention. If ONA detects an irregularity, the information will not be updated and the firm will be notified of the problem.

### **Firm Reference Numbers**

6. The FSA gives a firm a Firm Reference Number ("FRN") in three circumstances:
  - (a) Where the firm is authorised or exempt from authorisation in the UK as a result of an authorisation granted by the regulator in another country in the European Community;
  - (b) Where the firm is registered under FSMA or other legislation; and
  - (c) Where the firm is neither authorised nor registered, but the FSA has received information about the firm. This final category can cover a wide variety of circumstances, from a holding company of an authorised firm

which is not itself required to be authorised or registered (for example, Egg plc.), to a firm alleged to be carrying on regulated activities without authorisation.

7. As regards the distinction between authorisation and registration, a firm which has been authorised by the FSA under FSMA has been considered suitable to carry on, in the UK, some of the various activities covered by FSMA. The firm will then be subject to the FSA's rules and guidance as set in the FSA's Handbook. It will also be subject to the FSA's investigation and enforcement powers. In addition, consumers dealing with authorised firms will have access to the Financial Ombudsman Service and the Financial Service Compensation Scheme. A firm which is registered but not authorised will not have all these features, depending on the terms of the legislation which imposed the registration requirement.
8. A firm which is neither authorised, nor registered yet about which the FSA holds information, would not be described to the public as "registered" although it may be so described on TARDIS. Mr Fitzgibbon accepts that the two uses of "registered", one internal within the FSA and one external on the Register, may have caused confusion to the Appellant when the FSA responded to his request. A firm falling within paragraph 7(c), above, will not appear on the Register. That is why, if a search of the Register is carried out using the FRN for Egg plc. (i.e. 226995), no information is disclosed. It may be possible for information about a firm not available on the Register to be provided by the FSA under a FOIA request, if the information is publicly available elsewhere. This was the case with Egg plc as the holding company of Egg Banking plc since the information was available from Companies House.

#### The Schedule Provided to the Appellant

9. Mr Fitzgibbon explains that the schedule provided by the FSA to the Appellant is not one which is generally available to the public. It is what the FSA internally describes as a "business intelligence" report. It is produced from TARDIS using certain software. Depending on the filters used, a large amount of information can be retrieved, or a small amount, as in the case of the schedule provided to the Appellant.
10. The FSA does not hold a Firm Address History for Egg plc as this firm is neither authorised by, nor registered with the FSA.
11. In response to the Appellant's challenge as to the use by the FSA of the term "Principle Place of Business" in the Schedule in the third column of the Firm Address History for Egg Banking plc., and the Appellant's view that the FSA should give the firm's registered office address, Mr Fitzgibbon says that the FSA gives the Principle Place of Business ("PPB") rather than the registered office address. This is because a firm's PPB is where its senior management is located and this will not necessarily be the same place as the registered office which may simply be a "brass plate". Also, not all firms are companies. Smaller firms may be conventional partnerships or sole traders with no registered office.

### **Evidence of Mr Thornton**

12. Mr Thornton says that he has been employed by the FSA since February 2003. He is a solicitor and is currently the Head of the Legal Department in the FSA's Enforcement and Financial Crime Division. In the summer of 2004, he was asked by the FSA's Company Secretariat to investigate a complaint made by the Appellant to the effect that the FSA had failed properly to regulate Egg Plc., which he understood to be the Appellant's employer or former employer. On 18 August he sent a report of his investigation to the Company Secretariat.
13. In that report, at paragraph 1, he referred to Egg Plc. as "Egg". In paragraph 3, he states that there are no specific rules for banks, such as Egg, concerning retention of internal emails. He acknowledges that this appears to indicate that Egg Plc. was regarded as a bank. He says, however, that while he was aware that there was a group of firms using the name "Egg", he did not address his mind specifically to whether Egg Plc. was or was not so regulated. This was because the issue he was concerned with in the report was the retention of internal emails. However, since the FSA had no specific rules governing the retention of internal emails, Egg Plc. would not have been subject to any rules even if it had been regulated by the FSA.