

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 4<sup>th</sup> September 2008

**Public Authority:** Financial Services Authority  
**Address:** 25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

#### Summary

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The complainant made over forty requests for information from the FSA regarding Halifax PLC and Halifax Insurance Ireland Limited. The FSA responded to most of the questions but initially refused to answer three of the requests under sections 21, 31, 43 and 44. During the course of the investigation the FSA explained that it was now seeking to withhold the information under section 12 as to locate and retrieve the information would exceed the appropriate cost limit. The Commissioner has investigated and found that the FSA were correct to rely on section 12 to withhold the information, however in failing to inform the complainant of its reliance on this exemption in the refusal notice the FSA breached the requirements of section 17(5) of the Act.

#### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## The Request

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2. The complainant has advised that on 1 August 2006 she wrote to the Financial Services Authority (FSA) requesting answers to 40 questions regarding Halifax PLC and Halifax Insurance Ireland Limited (HIIL).
3. On 2 August 2006 the complainant wrote to the Commissioner enclosing a copy of the letter of 1 August 2006 and asking the Commissioner to approach the FSA to compel them to respond.
4. The Commissioner wrote to the FSA on 1 September 2006 asking the FSA to clarify if the request had been received, if it was being treated as a request under the Act and if so when a response was due to be sent to the complainant.
5. The FSA responded to the Commissioner on 6 September 2006 confirming that the information request had not been received.
6. On 11 September 2006 the Commissioner provided the FSA with a copy of the complainant's request and asked the FSA to provide the complainant with a response within 20 working days of receipt.
7. On 11 October 2006 the FSA provided a substantive response to the complainant. In relation to the 40 questions the FSA provided answers, where the information related to the FSA or referred the complainant to the relevant body – the Financial Services Ombudsman (as much of the questions related to the complainant's individual issues with the Halifax and therefore not part of the FSA's remit). The FSA refused to confirm or deny under section 31 that information is held in relation to question 10 and refused to provide the information requested in questions 13 and the second part of question 40 under sections 21, 43 and 44:

*"10. How many complaints or investigations have FSA undertaken against the Halifax PLC and Halifax Insurance Ireland Limited?"*

*13. Would the FSA release any other correspondences and where necessary forward copies of them for my attention?"*

*40. Furthermore, I would also request for you to forward me copies of any Halifax correspondence and any documents that Halifax PLC and Halifax Insurance Ireland limited sent to FSA.*

The Commissioner has added the numbering to question 40 for ease of reference, it was added at the end of the letter to the FSA and had no numbering associated with it.

8. The complainant requested an internal review of this decision on 13 October 2006.

9. The FSA completed its internal review and communicated its findings to the complainant on 10 January 2007. The internal review upheld the application of sections 21, 43 and 44 to the withheld information and section 31 to neither confirm nor deny information is held in relation to question 10.

## The Investigation

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### Scope of the case

10. On 31 January 2007 the complainant contacted the Commissioner to complain about the way her request for information had been handled.
11. The complainant's original request contained 40 questions some with multiple parts. The full detail of these requests has not been replicated in this notice as some of the requests detail the complainant's personal data and are not relevant to the consideration of the exemptions applied. Whilst the Commissioner appreciates that some of the information requests could be seen to be subject access requests these were not considered by the FSA as it is not information the FSA would hold. The FSA does not investigate complaints by individual customers against firms, these have to be investigated by the firm itself and then the FOS. If a complaint in the FSA's possession taken with other information suggest that there are wider regulatory issues within the firm then the FSA has a number of methods for taking forward issues with a firm. In light of this the FSA did not respond to the questions which related to the complainant's individual complaints against the Halifax, or treat this a subject access request as it does not hold this type of information, instead it referred the complainant to the FOS.
12. In the complaint letter of 31 January 2007 the complainant asked the Commissioner to investigate if the FSA were correct to withhold the information under section 21, 31 and 44. Due to the wide scope of the original 40 questions the Commissioner wrote to the complainant on 16 April 2008 to clarify this and explain that the information withheld by the FSA under these exemptions related only to questions 10, 13 and the second part of question 40. The Commissioner informed the complainant that he would therefore be focusing his investigation on the handling of these three information requests unless the complainant indicated otherwise.

### Chronology

13. The Commissioner began his investigation on 16 April 2008 by writing to the FSA asking it to provide a copy of the withheld information and for further explanation regarding the application of the exemptions.
14. The FSA responded on 20 May 2008 providing the Commissioner with further arguments to support its refusal to neither confirm nor deny that information is held in relation to question 10 under section 31. The FSA also provided further explanation regarding its reliance on section 44 to withhold the information requested in question 40 and indicated it now considered that this information

- was also exempt under section 12. In relation to question 13 the FSA explained that it had treated the question as a hypothetical question as the complainant had not made a formal request for the information. The FSA stated that it had explained to the complainant that sections 21, 43 and 44 would apply but that if she wished to obtain copies of such correspondence she would need to make a formal request in writing. As no request has been made the FSA have not applied any exemptions and have refused to disclose this information.
15. The Commissioner replied on 20 May 2008 explaining to the FSA its view that the wording of the request of 13 did not make it 'hypothetical' but that it was his view that it was clear from the wording that the complainant intended the request to be a formal request for a copy of the information. In light of this the Commissioner asked the FSA to confirm what information it held in relation to this request and under which exemption it was seeking to withhold this information.
  16. The FSA replied on 25 June 2008 explaining why in its view request 13 is a hypothetical one and not an actual request for the information. In the alternative the FSA stated that to provide this information and the information requested in 40 would exceed the appropriate cost limit and is therefore exempt under section 12. The FSA explained that whilst it would take less time to comply with request 10 it considered that as the requests are from the same person and relate to similar information; it now considered the estimated total cost of complying with any of the requests would exceed the total cost of complying with all of them.

## Analysis

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### Procedural matters: Section 1 'General Right of Access'

17. Section 1(1) states that any person making a request for information to a public authority is entitled to be informed in writing if the information is held and if so to have that information communicated to him.
18. Section 8 states that for the purpose of the Act any reference to a request for information is reference to such a request which (a) is in writing (b) states the name of the applicant and an address for correspondence and (c) describes the information requested.
19. The FSA have stated that question 13 of the complainant's request has been treated as a hypothetical request because of the wording 'would' at the start of the request. The FSA stated in a letter to the Commissioner dated 20 May 2008 that in its initial response of 11 October 2006 it advised the complainant that it was treating it as such and that sections 21, 43 and 44 of the Act would apply if she were to make a formal request in writing for the information. The FSA state that it nevertheless invited the complainant to request this information formally and that this position was reiterated in the internal review.
20. The request was '*would the FSA release any other correspondence and where necessary forward copies of them for my attention.*' The Commissioner considers

that it is possible for this request for information to be interpreted as a formal request for the information held rather than just a hypothetical question. Whilst the wording of this request may be indicative of a question or a request for recorded information, the Commissioner believes that the correct approach for the public authority here would have been to treat this as a request for recorded information. In failing to do so, technically the public authority did not comply with the requirements of section 1(1)(a) and (b), although the Commissioner notes it did later treat question 13 as a request (see paragraph 23).

## Section 12 'Cost Limit'

21. Section 12(1) of the Act does not oblige a public authority to comply with a request if the authority estimates the cost of complying with the request would exceed the appropriate limit. Section 12(4) states that where two or more requests for information are made to a public authority (a) by more than one person, or (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign the estimated cost of complying with any of the request is to be taken as the estimated total cost of complying with all of them.
22. The Guidance on the application of the Freedom of Information and Data Protection (appropriate limit and fees) Regulations 2004 (the Regulations) state that in certain situations, the costs of answering more than one request can be added together or aggregated for the purposes of estimating whether the appropriate limit would be exceeded in relation to any one of those requests. The Regulations state that requests can only be aggregated in the following circumstances:
  - two or more requests for information must have been made to the same public authority;
  - they must be either from the same person, or from 'different persons who appear to the public authority to be acting in concert or in pursuance of a campaign'
  - the requests must relate to the same or similar information; and
  - they must have been received by the public authority within a space of 60 consecutive working days.
23. The FSA state that it has reviewed its handling of the requests and now considers that, rather than refusing to confirm or deny if information is held in relation to question 10, it should have aggregated this request with the information requested in 13 and 40 as they are from the same person, relate to similar information and were received by it on the same day. The Commissioner considers that as the requests are clearly from the same person, relate to similar information and were received on the same day, the FSA is entitled to aggregate the requests in considering if compliance would exceed the appropriate cost limit.
24. The FSA state that it is likely to take more than 18 hours to locate and extract the relevant information from its files and therefore complying with the request would exceed the appropriate limit as set out in the Regulations. The Regulations set a limit of £450 to the cost of complying with a request for all public authorities

subject to the Act not listed in Schedule 1 part I. In estimating the cost of complying a public authority can take the following into account:

- determining whether it holds the information requested,
- locating the information or documents containing the information,
- retrieving such information or documents, and
- extracting the information from the document containing it.

The Regulations state: *'any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour'*.

25. The FSA explained that the complainant requested information about Halifax PLC and Halifax Insurance Ireland Limited (HIIL). Following a merger in September 2001, Halifax PLC and HIIL became part of the HBOS PLC group (HBOS). HBOS is divided into business units or divisions with a management structure for each division. These divisions do not necessarily correlate with the legal entities. Halifax PLC was used as a retail brand and the FSA referred to it as Halifax, while HIIL was also referred to as HIIL. Since the complainant made her request Halifax PLC has ceased to exist as a legal entity.
26. The FSA states that it holds a large amount of information concerning the Halifax brand, both in paper and electronic format. There are some files specifically pertaining to HIIL however given the use of Halifax as a brand name, relevant information, could be found amongst information files in all three categories i.e. Halifax, HBOS and HIIL.
27. The FSA explained that the material it holds in paper form in relation to the Halifax brand alone is contained within at least 62 files, each of which consists of several hundred pages. These files are structured in a way that they contain a number of different types of documents (e.g. internal meeting notes, internal emails, and notes on internal discussions) rather than just correspondence. Because the information relating to Halifax PLC and HIIL is spread across these files, it would need to go through every file in order to locate any document containing a reference to Halifax and then review each such document to ascertain if it is correspondence between the FSA and Halifax or HIIL. The FSA state that in addition it would need to determine whether the correspondence falls within the relevant time period (was sent or received before the date of the information request).
28. The FSA continued to explain that it also holds a significant amount of potentially relevant information which is stored electronically. To locate all the relevant information in its electronic records it stated it would need to access every document with the word Halifax in it. A search of its electronic records returned 1465 electronic files created before the request was made which contain the term Halifax and an additional 42 files which contain the term HIIL. As with the paper files the FSA state it would need to open and view each file to ascertain if it contained information which fell within the scope of the request; email

correspondence in particular would require a more detailed review as it may not be immediately obvious if any part of an email chain contains correspondence between the FSA and Halifax or HILL as apposed to internal FSA correspondence. Whilst the Commissioner notes that the FSA has responded to the majority of the questions posed to it by the complainant, these responses either referred the complainant to the FOS or related to the FSA's functions and responsibilities rather than requiring the FSA to go through its files held on the Halifax.

29. The FSA estimate that it would take on average 20 minutes to review and extract the relevant information from each paper file and 3 minutes to review each electronic file to locate and extract relevant information which makes a total of 96 hours, exceeding the appropriate cost limit.
30. The Commissioner has accepted that the FSA was entitled to aggregate the cost of complying with the three information requests together under section 12(4). He also accepts that the requests are broad in scope and that to locate the information sought would require the FSA to review all its paper and electronic files. The Commissioner therefore finds that section 12 applies as to provide the requested information would exceed the appropriate cost limit.

### **Section 16 'Advice and Assistance'**

31. Section 16 states: (1) it shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made requests for information to it. (2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.
32. Under the Code of Practice, where an authority refuses to comply with a request for information under section 12 of the Act i.e. the "appropriate limit", it should consider advising the applicant how he or she can re-focus their request. In doing so there are two issues a public authority should consider
  - (i) it may mean the information can be obtained within the appropriate limit
  - (ii) if the public authority issue a fees notice and the complainant does not want to pay, a re-focussed request may lead to some information being disclosed for no / lower fee.

This decision notice is only dealing with the first scenario.

33. The FSA did not invite the complainant to refine her three remaining requests as it stated that even if the request were to be refined at a later stage the exemptions at section 21, 31, 43 and 44 are likely to apply to the information held.
34. The Commissioner does not consider that the FSA can pre-empt what information the complainant may seek within any refined request, nor therefore can it assume that the information which may be sought is likely to be exempt. The Commissioner further notes that as the FSA has not yet located any of the

information sought in the original request it cannot have considered if any exemptions apply to it. The Commissioner does not consider that this is a valid reason for the FSA failing to offer the complainant advice and assistance in relation to these three remaining elements of her request.

35. The Commissioner is mindful of the fact that the FSA did respond to the majority of the complainant's 40 questions by either providing the information requested or by referring the complainant to the relevant body. The FSA only applied section 12 to three elements and notes that it would have been possible for the FSA to refuse all the requests under the aggregation rules of section 12. By not doing so and supplying the complainant with much of the information within the cost limit the FSA has effectively refined the complainant's request on her behalf. Whilst the Commissioner welcomes the approach of the FSA to provide as much information as possible to the complainant he notes that in doing so it has not given the complainant the opportunity to refine the request to the information the complainant would particularly wish to obtain. The action taken by the FSA has effectively made the decision for the applicant. In not providing the applicant an idea of what might be provided within the cost limit, the FSA cannot have had knowledge of the priority that may have been placed on the available information, therefore, potentially limiting the direction of the request away from where the requestor may have had most interest.
36. The Commissioner does therefore now expect the FSA to offer further advice and assistance to the complainant in order to assist her in bringing the remaining elements of her information request within the appropriate limit.

### **Section 17 'Refusal of request'**

37. Section 17(1) states that a public authority which is seeking to refuse a request for information on a claim that the information is exempt, must, within the time for compliance with section 1 give the applicant a notice which:
- (a) states that fact
  - (b) specifies the exemption in question
  - (c) states why the exemption applies.

Section 17(5) states that a public authority which is relying on a claim that section 12 applies must, within the time for compliance with section 1 give the applicant a notice stating that fact.

38. The FSA's initial refusal notice explained to the complainant that the information sought was exempt under section 31, 21, 43 and 44. However, during communication with the Commissioner the FSA found that all the information sought was exempt under section 12 as to retrieve and locate the information would exceed the appropriate cost limit. In light of this response it is clear that at the time of the initial refusal the FSA could not have had sight of the requested information as it was unable to retrieve and locate it within the cost limit, the FSA therefore could not have reviewed the information to determine if the requested information was exempt under the exemptions claimed.



39. The FSA in its initial refusal notice also failed to inform the complainant that it was also seeking to rely on section 12. The Commissioner therefore finds that the FSA's refusal notice was issued in breach of the requirements of section 17(5).

## The Decision

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40. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

(i) the application of section 12(1) to the withheld information

41. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

(i) In initially failing to treat request 13 as a formal request for information the FSA breached the requirements of section 1(1)(a) and (b)

(ii) The refusal notice was issued in breach of the requirements of section 17(5).

## Steps Required

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42. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

(i) Provide the complainant with advice and assistance in bringing her three remaining requests within the appropriate cost limit in compliance with the section 45 Code of Practice and the requirement of section 16(2). Having established the refined request the FSA should either provide the complainant with the information she requests in line with its duty under section 1 of the Act or provide the complainant with a refusal notice compliant with section 17 of the Act.

43. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## Failure to comply

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44. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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44. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 4<sup>th</sup> day of September 2008**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

**Refusal of Request**

**Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

**Section 17(2)** states –

“Where–

- (a) in relation to any request for information, a public authority is, as respects any information, relying on a claim-
  - (i) that any provision of part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or
  - (ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and
- (b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.”

**Section 17(3)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming -

(a) that, in all the circumstances of the case , the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

**Section 17(4)** provides that -

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

**Section 17(5)** provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

**Section 17(6)** provides that –

“Subsection (5) does not apply where –

- (a) the public authority is relying on a claim that section 14 applies,
- (b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and
- (c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.”

**Section 17(7)** provides that –

“A notice under section (1), (3) or (5) must –

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.”