

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 January 2014

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

Decision (including any steps ordered)

1. The complainant has requested information relating to Barclays Private Bank and money laundering. The Financial Conduct Authority (FCA) refused to provide the requested information under sections 21, 40(2), 43(2) and 44(1)(a) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the FCA has correctly applied section 21, 40(2), 43(2) and 44(1)(a) FOIA in this case.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 13 November 2012 the complainant requested information of the following description:

"...I am asking that my request for the information held at the time by the FSA relating to Barclays Private Bank money laundering be revisited and provided to me...

[FOI0587 (received 26/10/2006)...to be supplied with the information you hold with regard to the matters reported on in the article in the Sunday Times with regard to Barclays Private Bank's involvement with Columbian drugs money."

5. On 15 January 2013 the FCA responded. It refused to provide the information requested under section 21, section 40(2), section 43(2) and section 44(1)(a) FOIA.
6. The complainant requested an internal review on 4 February 2013. The FCA sent the outcome of its internal review on 19 March 2013. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 2 December 2013 to complain about the way her request for information had been handled.
8. The Commissioner has considered whether the FCA was correct to apply section 21, 40(2), 43(2) and 44(1)(a) FOIA to the withheld information.

Background

9. The FCA first explained that on 1 April 2013 the Financial Services Authority (FSA) was succeeded by the FCA. Therefore references to the FCA in this Notice also refer to its predecessor where appropriate.
10. The FCA explained that the request made by the complainant is substantially similar to a request she made in October 2006 for the same information. It explained that the ICO issued a Decision Notice under reference FS50147637 upholding its application of section 21, 40(2) and 44(1)(a) FOIA but did not uphold the application of section 43(2) FOIA. It confirmed that the FCA appealed to the Information Rights Tribunal which subsequently upheld its application of section 43(2) FOIA.

Reasons for decision

Section 21, 40(2) and 44(1)(a) FOIA

11. The FCA explained that the material to which it has applied section 21, 40(2) and 44(1)(a) FOIA, has not altered since the ICO upheld the application of these exemptions when considering the previous complaint under case reference FS50147637. It said that its position

remains exactly the same as set out in the Decision Notice issued under reference FS50147637.

12. The Commissioner considers that as the withheld information to which these exemptions were applied in case reference FS50147637 is exactly the same and has not altered, the FCA is correct to withhold this information under these exemptions for the reasons set out in the previous decision notice issued. This decision notice can be accessed using the following link:

http://ico.org.uk/~media/documents/decisionnotices/2008/FS_50147637REDACTED.ashx

13. The Commissioner acknowledges that the information is the same but also considers that the passage of time hasn't altered the position as none of these exemptions require consideration of the public interest test and in relation to section 40(2) the legitimate interests of the public hasn't changed over the course of time to outweigh the protection of the individual's rights and freedoms.

Section 43(2)

14. As stated above, the FCA explained that whilst the ICO did not uphold its application of section 43(2) FOIA, the Tribunal subsequently overturned this decision. The Tribunal decision can be accessed using the following link:

[http://www.informationtribunal.gov.uk/DBFiles/Decision/i294/FSA%20v%20IC%20\(EA-2008-0061\)%20Decision%2016-02-09.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i294/FSA%20v%20IC%20(EA-2008-0061)%20Decision%2016-02-09.pdf)

15. As the information is the same, the FCA explained that section 43(2) FOIA was applicable for the same reasons as set out in the above Tribunal decision. The Commissioner is aware that Barclay's Wealth (the party whose commercial interests would be likely to be prejudiced by disclosure) has been contacted again by the FCA and it has confirmed on 18 March and 5 December 2013 that disclosure would still be likely to prejudice its commercial interests despite the passage of time since the Tribunal decision.
16. For the same reasons as set out in the Tribunal decision, the Commissioner considers that section 43(2) FOIA was correctly engaged by the FCA in this case, despite the passage of time since this decision was made.
17. The Commissioner has therefore gone on to consider whether the balance of the public interest has altered due to the time which has

elapsed between the request made in October 2006 and the request made on 13 November 2012.

18. The FCA has relied upon the public interest arguments in favour of maintaining the exemption as set out in paragraph 16 and 17 of the above Tribunal decision. These were contained in a confidential annex attached to the decision. The FCA said that the current focus on banks' conduct means that the risk of harm to the reputation of Barclays Wealth and Barclays Group as a whole has not diminished. The Commissioner is therefore satisfied that the public interest arguments in favour of maintaining the exemption are still relevant.
19. The FCA said that it considers that the public interest in disclosure has however reduced due to the lapse of time since the Tribunal decision. The Commissioner considers that whilst some of the public interest arguments in favour of disclosure as set out in the Tribunal's decision may to some extent diminish due to the passage of time, given the serious issues this case involves and the size of the bank, the public interest arguments in favour of disclosure would still be relevant.
20. The Commissioner is however aware that section 43(2) FOIA is applicable to only a very limited amount of information as most of the withheld information is exempt under section 44(1)(a) FOIA. The limited amount of information to which section 43(2) FOIA has been applied would not meet the public interest arguments in favour of disclosure to any significant extent.
21. The Commissioner is therefore satisfied that the public interest arguments in favour of disclosure are still outweighed by the public interest arguments in favour of maintaining the exemption in this case.

Right of appeal

22. 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: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. 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.
24. 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

Pamela Clements
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