

Freedom of Information Act 2000

Decision notice

Date: 13 September 2016

Public Authority: Bank of England
Address: Threadneedle Street
London
EC2R 8AH

Decision (including any steps ordered)

1. The complainant requested information relating to a risk assessment she considered had been carried out by the Prudential Regulatory Authority (PRA) on Barclays Insurance (Dublin) Limited. The request was handled by the Bank of England, which is the parent organisation of the PRA and responsible for handling its requests under the Freedom of Information Act 2000 (the Act).
2. The Bank of England initially refused the request under section 44(1)(a) of the Act, as it considered that it held relevant information which was exempt by statutory bar. Following a clarification from the complainant for the specific information she wanted to obtain the Bank of England altered its position at internal review stage. The Bank of England stated that the information the complainant requested was not held.
3. The Commissioner's decision is that on the balance of probabilities the Bank of England is unlikely to hold the relevant information. No steps are required.

Request and response

4. On 31 May 2015, the complainant wrote to the PRA and requested information in the following terms:

"I would be most grateful if you could provide me the following under the Freedom of Information Act 2000:

The risk assessment conducted on Barclays Insurance (Dublin)'s inward 'passporting' (FSMA, Schedule 4)."

5. The Bank of England responded on 22 June 2015. It stated that information was held in the form of correspondence between the PRA and Barclays Insurance (Dublin) Limited. The Bank of England stated that this information was exempt under section 44(1)(a) of the Act, because disclosure would be prohibited under section 348 of the Financial Services and Markets Act 2000.
6. The complainant requested an internal review on 30 June 2015. In this she stated that her request was not asking for correspondence, but that she only wanted "*the final risk assessment produced by the PRA*".
7. Following an internal review the Bank of England wrote to the complainant on 30 July 2015. It stated that a risk assessment for Barclays Insurance (Dublin) Limited was not held. The review stated that the PRA had limited responsibilities "in respect of passported institutions when a notification is made from the home regulator (in this instance the Irish Financial Services Authority)", and that the PRA was not required to carry out a risk assessment because this would have been done by the home regulator.
8. The internal review also contained a section which stated that the correspondence was still exempt under section 44(1)(a), even though the complainant had made it clear this was not the information she wished to obtain.

Scope of the case

9. The complainant contacted the Commissioner on 27 August 2015 to complain about the way her request for information had been handled. Specifically, that information had been withheld under section 44(1)(a) of the Act, despite this relating only to the correspondence that did not come within the scope of the request.
10. The Commissioner started an investigation along those lines on 25 September 2015. In response to the Commissioner's correspondence the Bank of England informed the Commissioner that the relevant information – the risk assessment – was not exempt under section 44(1)(a), as that exemption only applied to the correspondence relating to Barclays Insurance (Dublin) Limited. It stated that the risk assessment was not held.
11. The Commissioner reached an agreement with the complainant that the case should be focussed on whether the Bank of England held the risk assessment. The correspondence withheld under section 44(1)(a) is not within the scope of the Commissioner's investigation.

Reasons for decision

Section 1 – information held

12. Section 1(1) of the Act states:

(1) Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

13. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complainant believes might be held, the Commissioner – in accordance with a number of First-Tier Tribunal decisions – applies the civil standard of the balance of probabilities. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

The complainant's position

14. The complainant referred the Commissioner to a section of the PRA's website in relation to passporting (Commissioner's emphasis):

*"Upon receipt of an inward passporting notification from the EEA supervisory authority, **the PRA will assess the risk posed by an incoming firm to its objectives** and whether a firm meets the requirements under the relevant single market directive."¹*

15. The complainant stated that this showed the PRA has the authority to conduct risk assessments on incoming firms. The complainant argued that this showed that even if risk assessment was carried out by the home regulator the statement on the website shows that the PRA will

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<http://www.bankofengland.co.uk/pr/pages/authorisations/passporting/default.aspx>

still conduct its own form of assessment; even if this is just accepting that of the home regulator and using it for its own purposes.

The Bank of England's position

16. The Bank of England submissions made it clear that it had focussed on the specific wording of the complainant's request, and highlighted that the complainant had specifically asked for review "produced" by PRA for Barclays Insurance (Dublin) Limited's inward passporting when she clarified her request in the internal review request of 30 June 2015.
17. The Bank of England explained that "passporting" is a process which allows a firm which is authorised to conduct a regulated activity in one European Economic Area (EEA) state (the home state) to carry on activities in another EEA state (the host state) without the need for separate approval. It stated that "inward passporting" describes the process from the perspective of the host state.
18. The Bank of England highlighted that the PRA was brought into being on 1 April 2013 under the Financial Services Act 2012. This was followed by the Financial Services Act 2012 (Transitional Provisions) (Permission and Approval) Order 2013, which provides the criteria for firms which qualify for authorisation of inward passporting without the need for additional approval:

15 Firms qualifying for authorisation

(1) Paragraph (2) applies if, before the commencement date –

- (a) an EEA firm satisfied the establishment conditions in paragraph 13 (establishment) of Schedule 3 (EEA passport rights) or the services conditions in paragraph 14 (services) of that Schedule;*
- (b) the EEA firm had not ceased to qualify for authorisation; and*
- (c) the Authority had not given a direction under section 34 (EEA firms) cancelling the EEA firm's authorisation.*

(2) Subject to section 34(1), the EEA firm is to be treated as qualifying for authorisation under Schedule 3 for the purpose of section 31 (authorised persons).²

² <http://origin-www.legislation.gov.uk/uksi/2013/440/article/15/made>

19. The effect of section 15 of the Financial Services Act 2012 (Transitional Provisions) (Permission and Approval) Order 2013 is that a firm that already had rights established before the existence of the PRA would be "treated as qualifying for authorisation".
20. The Financial Conduct Authority and PRA hold a register of firms that are permitted to operate within the UK.³ This shows that Barclays Insurance (Dublin) Limited had been operating under the PRA's predecessors – the Financial Services Authority – before the PRA came in effect on 1 April 2013:

Regulator Name	Effective From	Effective To
Department of Enterprise, Trade and Employment	01/01/1901	30/04/2003
Financial Conduct Authority	01/04/2013	
Financial Services Authority	01/12/2001	31/03/2013
Her Majesty's Treasury	01/01/1901	30/11/2001
Irish Financial Services Regulatory Authority	01/05/2003	
Prudential Regulation Authority	01/04/2013	

21. The Bank of England considers this demonstrates that it does not hold a risk assessment because one had not been carried out under the PRA's auspices. Barclays Insurance (Dublin) Limited was granted 'grandfather rights' as per the qualifications for access outlined in the statutory instrument referred to at paragraphs 18 and 19. The Bank of England referred the Commissioner to the Central Bank of Ireland's website, which shows that Barclays Insurance (Dublin) Limited was granted authorised on 14 July 1997.⁴
22. The Bank of England argued that the wording of the request assumes that the PRA has carried out some form of assessment, whereas

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https://register.fca.org.uk/ShPo_FirmDetailsPage?id=001b000000MfKHnAAN
(see Regulators section)

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<http://registers.centralbank.ie/DownloadsPage.aspx?AspxAutoDetectCookieSupport=1> see 'Non-Life Undertakings regulated by the Central Bank of Ireland as at 04 Aug 2016' under Register of Life and Non-Life Insurance Undertakings

actually this has never been required because of the grandfather rights that Barclays Insurance (Dublin) Limited has. Therefore, the information the complainant specifically requested is not held by the PRA or the Bank of England.

The Commissioner's view

23. The Commissioner agrees with the Bank of England that the complainant's view is based on the assumption that the PRA has had some obligation to carry out a risk assessment. To refer back to the section of the PRA's website that the complainant quoted to the Commissioner: "*Upon receipt of an inward passporting notification from the EEA supervisory authority, the PRA will assess the risk posed*". The PRA has not received an inward passporting notification and so it follows there was no requirement to assess the risk posed.
24. In fact, the risk assessment was carried out by on 14 July 1997, several years before the PRA came into existence. The evidence seen by the Commissioner shows that there was no requirement on the PRA to carry out a risk assessment due to the rights of authorisation afforded to Barclays Insurance (Dublin) Limited under the Financial Services Act 2012 (Transitional Provisions) (Permission and Approval) Order 2013.
25. The Commissioner considers that on the balance of probability, the Bank of England does not hold the requested information for the reasons explained above. No further action is required.

Right of appeal

26. 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 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

27. 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.
28. 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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