

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 March 2017

Public Authority: Financial Ombudsman Service
Address: South Quay Plaza
183 March Wall
London
E14 9SR

Decision (including any steps ordered)

1. The complainant made a request to the Financial Ombudsman Service (FOS) for information relating to a complaint he had made about a particular company. The FOS refused to disclose the information under FOIA as it said the information requested was the complainant's own personal data and therefore the absolute exemption at section 40(1) FOIA applied. It did however confirm that it was willing to process the request under the Data Protection Act 1998 (DPA) and asked the complainant to make payment of a £10 processing fee under that legislation. This is however outside the scope of this Decision Notice.
2. The Commissioner's decision is that the FOS has correctly applied section 40(1) FOIA in this case to the majority of the withheld information. Where the Commissioner does not consider that section 40(1) FOIA applies she has proactively applied section 21 FOIA as she considers that this information would already be reasonably accessible to the complainant.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 12 November 2016 the complainant made the following request for information under the FOIA for:

I require FOS disclosure(s) of FCE 'Settlement Quotation' mentioned in

5/6/2014 letter, quoting [£££] which was the ACTUAL Rebate applied by FCE upon 'early settlement' which [named individual] EXPLICITLY queried on 17/6/2014, since FCE on 25/6/2014 (wrongly) told your service that [£££] applied which was wrongly relied upon, so also quoted by [named individual] within her Adjudication letter dated 4/7/2014. I also wish you to provide FCE 'evidence' requested under (6) and (7) within [named individual's] "e-mail" of 17/6/2014; also, 'SECCI' documentation sent by FCE as 'evidence' since I do not remember that 'SECCI' specified that an extra 30 days interest was payable upon Early Settlement under the Consumer Credit Act (S.94 or S.95) as asserted by FCE by their letter dated 25/6/2014. Given the FOS letter to FCE Bank dated 15/8/2014 will be above case be re-activated due to above material error(s) now identified as [£££] extra is clearly due & simply equals the 'difference' between [£££] Rebate quoted on 25/6/2014 and [£££] ACTUAL Rebate applied by FCE upon 'early settlement'?

5. On 12 December 2016 FOS responded. It said that the information the complainant had requested was his own personal data and was therefore absolutely exempt under section 40(1) FOIA. It said that it would process the request under the DPA but required the £10 processing fee in order to go ahead with this.
6. The complainant requested an internal review on 9 December 2016. FOS sent the outcome of its internal review. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 11 January 2017 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether the FOS was correct to withhold the requested information under section 40(1) FOIA.

Reasons for decision

Section 40(1)

9. Section 40(1) provides an exemption for information which is the personal data of the applicant. This is an absolute exemption.

10. The Commissioner has first considered whether the withheld information is the personal data of the complainant.
11. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
12. The FOS identified 9 documents falling within the scope of the request. It said that the withheld information contains personal details such as the complainant's finances, name, address and purchases, which all relate to and identify him. As such FOS confirmed that it was satisfied that all of the withheld information falls within the definition of personal data.
13. The Commissioner has viewed the withheld information and considers that the majority of it is information from which a living individual (the complainant) would be identifiable. However there are some contractual boiler plate clauses that the Commissioner does not consider would amount to the complainant's own personal data. These will be dealt with below. The withheld information (other than contractual boiler plate clauses) is therefore the personal data of the complainant.
14. The Commissioner therefore considers that section 40(1) FOIA was correctly engaged in this case to all information apart from contractual boiler plate clauses.

Section 21

15. As stated above the Commissioner does not consider that contractual boiler plate clauses contained in the withheld information would amount to the complainant's own personal data. However as these clauses are contained within a document clearly signed by the complainant, the Commissioner consider that this is information which is reasonably accessible to him and exempt under section 21 FOIA.

Other Matters

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16. As referred to above, the Commissioner would take this opportunity to reiterate that as the majority of the requested information relates to the complainant's own personal data, FOS has indicated that it is willing to process this request under the DPA upon payment of the £10 processing fee by the complainant.

Right of appeal

17. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

18. 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.
19. 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

Gemma Garvey
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF