

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 December 2022

Public Authority: Financial Conduct Authority
Address: 12 Endeavour Square
London
E20 1JN

Decision (including any steps ordered)

1. The complainant has requested a copy of that FCA's internal policy document on the use of the DBAAT system and the number of files which were found not to have dealt with disclosure properly. The FCA aggregated these requests and confirmed it would exceed the cost limit under section 12 FOIA to comply. It did however confirm that it does not hold the internal policy requested.
2. The Commissioner's decision is that section 12 FOIA was correctly applied to the request. The FCA also complied with its obligations under section 16 FOIA by providing advice and assistance to the requester as to how the request could be refined.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 21 and 29 March 2022 the complainant made the following request for information under the FOIA for:

"Does the FCA have an internal policy document on the use of the DBAAT system? If so, can this be disclosed?

Can you confirm the number of files which were found not to have dealt with disclosure properly."
5. The FCA provided a response on 18 May 2022, it refused to comply with the request under section 12 FOIA as it said it would exceed the cost limit to do so. However it did confirm that whilst the requests had

- been aggregated, it was the second part of the request in relation to which it would exceed the cost limit to comply and that it did not hold the internal policy requested within part 1 of the request. It said that it was unable to provide advice and assistance under section 16 FOIA as to how part 2 of the request could be refined.
6. The complainant requested an internal review on 24 May 2022, in relation to part 2 of the request and the FCA's application of section 12 FOIA.
 7. On 21 July 2022 the FCA provided the result of the internal review, it upheld its application of section 12 FOIA to part 2 of the request. It also provided advice and assistance under section 16 FOIA. It suggested that the complainant could refine his request to the 352 files that had been located in order to provide a separate response on 24 June 2022 to a separate request (which is not under consideration within this Decision Notice).

Scope of the case

8. The complainant contacted the Commissioner to complain about the way the request for information had been handled, in particular the FCA's application of section 12 FOIA.
9. The Commissioner has considered whether the FCA was correct to refuse to comply with part 2 of the request under section 12 FOIA (as the complainant had not raised any issue with the FCA's confirmation that the information requested at part 1 of the request was not held within their request for internal review and in any event the requests have been aggregated).

Reasons for decision

Section 12 – cost of compliance

10. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the "appropriate limit" as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ("the Fees Regulations").

11. The appropriate limit is set in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 at £600 for central government, legislative bodies and the armed forces and at £450 for all other public authorities. The appropriate limit for the FCA is £450.
12. The Fees Regulations also specify that the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the FCA.
13. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.
14. A public authority does not have to make a precise calculation of the costs of complying with a request; instead only an estimate is required. However, it must be a reasonable estimate. In accordance with the First-Tier Tribunal in the case of *Randall v Information Commissioner & Medicines and Healthcare Products Regulatory Agency EA/2007/0004*, the Commissioner considers that any estimate must be "sensible, realistic and supported by cogent evidence". The task for the Commissioner in a section 12 matter is to determine whether the public authority made a reasonable estimate of the cost of complying with the request.
15. Section 12 is not subject to a public interest test; if complying with the request would exceed the cost limit then there is no requirement under FOIA to consider whether there is a public interest in the disclosure of the information.
16. Where a public authority claims that section 12 of FOIA is engaged it should, where reasonable, provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit or confirm that this is not possible, in line with section 16 of FOIA.
17. The FCA explained that the information is held within 365 excel spreadsheets across a range of electronic systems, one of which has been retired. The records are not organised by key terms but are set up using the file structures and naming conventions the relevant business area considers most appropriate.

18. FCA said that it used the work it had undertaken to provide a separate response dated 24 June 2022 to the complainant (to a separate request) to inform its internal review in this case (as similar work would be required). In the separate case 352 files were reviewed and this took in excess of 40 hours work.
19. Based upon the fact that the FCA has reviewed 352 files to respond to a separate request which took over 40 hours work (this work was carried out after the request was made in this case) and in this case there are 365 relevant files, it would clearly have exceeded the cost limit under section 12 FOIA to comply with this request in March 2022.

Section 16 – advice and assistance

20. As explained above, when relying upon section 12 FOIA, under section 16 FOIA a public authority must (where reasonable) provide advice and assistance to help the requester refine the request so that it can be dealt with under the appropriate limit or confirm that this is not possible.
21. In this case, at the internal review stage, due to the work that the FCA had undertaken in relation to 352 files for a separate request, it advised that the complainant could refine their request to ask for the number of files which were found not to have dealt with disclosure properly within these 352 files.

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: 0870 739 5836
Email: grc@justice.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.....

Gemma Garvey
Senior Case Officer

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