

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 November 2022

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

### Decision (including any steps ordered)

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1. The complainant requested information as to how many FCA employees had outside paid employment in 2019/2020/2021. The FCA refused to comply with the request under section 12 FOIA as it considered it would exceed the cost limit to do so.
2. The Commissioner considers that the FCA was correct to apply section 12 FOIA in this case.
3. The Commissioner requires no steps to be taken.

### Request and response

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4. The complainant made the following information requests to the FCA on 5 July 2022:  
“...how many FCA employees had outside paid employment in 2019/2020/2021. Please breakdown the figures by job rank from junior associate to executive director for each year.”
5. On 2 August 2022 the FCA responded to the request. It refused to comply with the request under section 12 FOIA as it said it would exceed the cost limit to do so.
6. On 3 August 2022 the complainant asked the FCS to carry out an internal review. On 29 September 2022 the FCA provided the internal review, it upheld its response.

## Scope of the case

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7. The complainant contacted the Commissioner on 12 October 2022 to complain about the way the request for information had been handled.
8. The Commissioner considered that the scope of his investigation was to determine if the FCA was correct to apply section 12 FOIA to the request.

## Reasons for decision

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### Section 12 – cost of compliance

9. 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”).
10. 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.
11. 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.
12. 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.
13. 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.

14. 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.
15. 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, in line with section 16 of FOIA.
16. The FCA explained that in 2021 it transitioned its Conflict of Interests system. The previous system does not exist anymore, and all data has been since transferred to the current Conflict of Interests Portal.
17. It went on that the core issue with the request is the quality of the information from previous years which is vastly different to the current one. It said that the new system requires staff to state the exact nature of any position for the first time. The previous system did not request the same level of detail. The FCA explained that this means that within the old portal it was difficult to see what exactly was being declared. There are various categories of ‘conflicts’ that staff could report which could include paid external employment but also volunteer work, and positions held by family members. However, within the old system without reviewing that individual’s entry manually it would not be possible to ascertain exactly what kind of conflict the staff members had recorded.
18. The FCA acknowledged that whilst the old data had been transferred to the new system, only those entries made originally within the new system will have the transparency and level of granularity requested in this case. However, it should be noted that while it can technically, search for ‘newly created’ declarations on/after the May 2021 update, (should the FCA have more specific search parameters) it should be emphasised that this would not represent an accurate picture of the original request. Results would simply display *fresh* declarations excluding older ones still ongoing (or ended etc). Therefore, such a search would not reflect the true situation of FCA employees engaged in external employment.
19. The FCA clarified that when information was transferred to the new portal, staff were not required to perform a lookback and update the

transferred data to reflect the same level of detail as required for new entries.

20. The FCA therefore said that to satisfy the request, it would have to review every individual interest declaration received during the requested three-year period, (which amounts to approximately 2000 entries,) to determine if it refers to a paid work position held by the FCA employee at the time of their declaration. To provide a clearer idea of how long this would take, FCA estimates that to locate, review and document data contained within one interest declaration it would take approximately five minutes. To review 2000 records would take approximately 10,000 minutes or 166 hours. The requested data is therefore not available in a readily available, easily searchable system and it would take the FCA in excess of the £450 cost limit.
21. Having reviewed previous FCA Employee Handbooks regarding exclusive employment, the requirement to record external employment on the Conflict of Interest Portal was first introduced during May 2021. Previously, staff were not permitted to undertake external employment without written approval from the FCA but there was no requirement to record it on the system and as previously explained by the FCA, staff were not required to perform a lookback to update this on the new Portal. As such there was no formal obligation or expectation for the FCA to keep the information that's stored within the old portal readily accessible.
22. The FCA acknowledged that the complainant had stated that she believes the information should be easily extractable by using an alternative search method which the complainant specified. The FCA has explained however why this would not be possible and also confirmed that as the data isn't categorised in a granular way means a pivot search would still not return the requested results.
23. The FCA confirmed that within the FOI team it has people who are competent working with data. However, the issues identified above remain.
24. Based upon the fact that the only way to locate retrieve and extract the required information, the FCA would have to search 2000 records individually it would exceed the £450 or 18 hour cost limit to comply with this request. Even if the time implication per record were reduced to 1 minute this would still exceed 33 hour work. The Commissioner therefore considers the section 12 FOIA was correctly applied in this case.

## **Section 16 – advice and assistance**

25. FCA explained that on this occasion it was unable to offer advice and assistance regarding a refinement which would keep the request under the appropriate cost limit, as even if the time period were refined (for example to 1 years' worth of data instead of three) it considers that it would still exceed the £450 limit. It also reiterated that a request for any 'new created' declarations on after/May2021 would not represent an accurate picture of the original request and therefore not a helpful refinement.
26. As the FCA considers that it is unable to provide meaningful advice and assistance in this case because of the granularity of information requested and how this is held and this has been communicated to the complainant, it has complied with section 16 FOIA in this case.

## Right of appeal

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27. 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](mailto:grc@Justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

28. 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.
29. 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**