

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 February 2023

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

Decision (including any steps ordered)

1. The complainant requested various information from the Financial Conduct Authority ('the FCA') in respect of Lendy. The FCA refused the request citing section 30 FOIA.
2. The Commissioner's decision is that the FCA breached section 17(1)(b) FOIA by failing to specify the relevant subsection of the exemption upon which it was relying. The Commissioner considers that this is necessary in order that the applicant is clear about the reason a request is refused.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - confirm to the complainant which subsection of section 30 it is relying on.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 21 February 2022, the complainant wrote to the FCA and requested the following information:

"1. Please provide the letter from the FCA to Lendy dated 13/10/2016 as described in p50 of Webb#2:

"in a follow up (to 13/09/16) letter dated 13 October 2016, the FCA stated that ...A copy of the letter is at pages 175-178"

2. Please provide the letter from the FCA to Lendy dated 01 06 2017 as described in p24 of Webb #2:

"On 1 June 2017, the FCA wrote to Lendy and confirmed, amongst many other things ...A copy of the letter, together with Lendy's response is at pages 3-29"

3. Please provide the response letter from Lendy to the FCA as described in paragraph 2 above.

4. Please provide the letter from the FCA to Lendy dated 06/03/2018 as described in p211 of Webb #2

"In an email from the FCA dated 6 March 2018 (see pages 715-717), the FCA raised concerns..."

5. Please provide the letter from Lendy to the FCA dated 01/06/2017 as described in p211 of the Webb #2

"In an email to the FCA on 9 March 2018 (see page 723) [named individual] sets out changes..."

6. Please provide the letter from the FCA to Lendy dated 13/03/2018 as described in p177 of the Judgement:

"On 13 March 2018, in another email, the FCA said that Lendy did "not provided any information about its "unpaid fees, costs and expenses""

7. Please provide the letter from Lendy to the FCA dated 16/03/2018 as described in p179 of the Judgement:

"On 16 March 2018, Lendy's Head of Compliance, [named individual] replied to the FCA email of 13 March"

8. Please provide the report from the FCA to the Regulatory Decisions Committee as described in p88 of Webb #2:

"The FCA had concerns about the extent of Lendy's compliance with the VREQ and carried out a short-notice audit at Lendy's offices on 9 and 10 April 2019. At pages 250-260 is a copy of the FCA's enforcement submission document to the Regulatory Decisions Committee"

9. Please provide the OIREQ on Lendy as described in p91 of Webb#2:
"on 16 April 2019, the FCA imposed an indefinite OIREQ (Own Initial Requirements) for Lendy (see pages 261-270)"
10. Please provide the letter from the FCA to Lendy dated 22/05/2019 as described in p93 of Webb #2:
"On 22 May 2019, the FCA contacted Lendy and SSSHL to notify them that they intended to wind up Lendy and SSSHL on just and equitable grounds"
11. Please provide the e-mail from Lendy to the FCA dated 23/05/2019 at 10:10 (see pages 275-276) stating:"
12. Please provide the letter from the FCA to Lendy dated 23/05/2019 as described in p97 of Webb #2:
"On 23 May 2019, at 15:30 (see page 271), the FCA replied to Stuart and Shoosmiths as follows..."
13. If the FCA has the report of February 2018 as described in p52 of Webb #2 please provide it:
"In February 2018, Lendy instructed Duff and Phelps Ltd to undertake a review of 82 lending files which made up Lendy's "iive" loan book, in response to weaknesses identified by the FCA. Duff and Phelps suggested a number of recommendations for Lendy to review their processes (see pages 181-209)."
6. The FCA responded on 24 June 2022. It confirmed that it held relevant information and cited section 31 (Law Enforcement), section 44 (Prohibitions on Disclosure) and section 40 (Personal Information) to refuse the request.
7. Following an internal review the FCA wrote to the complainant on 16 September 2022. It withdrew its reliance on sections 44 and 31 FOIA in favour of section 30 to continue to withhold the information. It also stated that due to the applicability of section 30, it had not reviewed all of the requested documents to assess the applicability of section 40 FOIA, however reserved the right to rely on it at a later stage if necessary.

Reasons for decision

Section 17 – refusal of request

8. Section 17 FOIA concerns the refusal of a request. Section 17(1) states that:

“A public authority which, in relation to any request for information, is to any extent relying on a claim ... that information is exempt information must, within the time for complying with section 1(1) give the applicant a notice which -

- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if it would not otherwise be apparent) why the exemption applies”
9. The Commissioner notes that the FCA refused to specify which subsection of section 30 it was relying on, informing the complainant that:

“In accordance with section 17(4) of the Act, I am not able to explain why the exemption applies as doing so would involve the disclosure of information that would itself be exempt information.

10. Section 17(4) FOIA states:

“A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.”

11. The Commissioner pointed out to the FCA that it had misinterpreted section 17(4) FOIA as it relates to an ‘explanation’ as opposed to the subsection of the exemption.
12. However, the FCA has maintained its position that it does not need to specify the subsection, since arguing that its understanding of section 17(1)(b) only requires that the decision “specifies the exemption in question”.
13. The Commissioner would point out to the FCA that it is required to specify the relevant subsection when it is relying on an exemption from

Part II FOIA. It is not sufficient to state that the information would be exempt under section 30 FOIA, the FCA needs to confirm which specific subsection from the section 30 exemption is being relied upon in line with the Commissioner's guidance¹.

14. The Commissioner would also refer to the following recent section 17(1)(b) decision notices issued in respect of case reference IC-153644-G0J2² and case reference IC-124082-G7T7³ which confirm that a subsection must be specified.
15. These subsections have different meanings and it is essential that a requester is informed of this. As the Council did not specify the specific exemption in question it has breached section 17(1)(b) FOIA.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/refusing-a-request-writing-a-refusal-notice-section-17/>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022761/ic-153644-g0j2.pdf>

³ <https://ico.org.uk/media/action-weve-taken/decision-notices/2022/4022890/ic-124082-g7t7.pdf>

Right of appeal

16. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. 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.
18. 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

**Catherine Dickenson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**