

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 February 2022

Public Authority: Financial Ombudsman Service
Address: Exchange Tower
London
E14 9SR

Decision (including any steps ordered)

1. The complainant requested information relating to resources used by case handlers at the Financial Ombudsman Service (FOS). FOS disclosed some information and withheld other information under the exemptions for law enforcement (section 31) and prejudice to the effective conduct of public affairs (section 36).
2. The Commissioner's decision is that FOS was entitled to rely on sections 36(2)(b)(i) and (ii) to refuse the request.
3. The Commissioner does not require FOS to take any steps.

Request and response

4. On 5 June 2022, the complainant made the following request for information to The Financial Ombudsman Service ("FOS"):

'Please provide electronic copies of the following information.

1) A list of the titles (and any other available summary/description of the content) of

A) the individual current live contents notes and draft content notes; and

B) discussion boards and announcements

on the Discovery portal (or on any successor FOS knowledge resource).

I would not object to the FOS redacting information identifying or relating to individuals or identifying any financial business.

2) Information available to the FOS' Data Protection and Freedom of Information personnel sufficient to identify the capability to make electronic searches of FOS documentation or parts. Including (if applicable)

A) Identification of any available proprietary search software;

B) information demonstrating the types of possible searches (e.g. keywords only, key phrases, word proximity searches, date-limited searches, searches within previous search results, etc.);

C) details of any specific potential search locations (i.e. within sets of, e.g. emails related to individual complaints, or other general emails of the FOS, or legal or other departmental documents, other identifiable electronic files and computer folders, the Discovery portal); and

D) Any description of additional search capabilities."

5. The complainant confirmed that they wanted the Commissioner to consider FOS' response to part 1(B) of their request which asked for a list of discussion board titles. FOS' final position is that this information is subject to the exemptions in section 36(2).

Reasons for decision

Section 36 – Prejudice to the effective conduct of public affairs

6. Section 36 of FOIA states that information is exempt where, in the reasonable opinion of a qualified person, disclosure would, or would be likely to, prejudice the effective conduct of public affairs.
7. FOS applied sections 36(2)(b)(i) and (ii) and section 36(2)(c) to withhold the titles of discussions in the Discovery discussion board. FOS has explained that “Discovery” is an internal knowledge sharing toolkit which contains notes providing staff with guidance on a large variety of topics and the discussion board sits alongside and separate to the guidance notes.
8. FOS has stated that it considers that all of the Discovery discussion board topic titles are exempt under section 36(2)(b)(ii), which is applicable where disclosure would, or would be likely to inhibit the ability of public authority staff and others to express themselves openly, honestly and completely when giving their views as part of the process of deliberation.
9. FOS has explained that its case handlers and ombudsmen need a private space such as that provided by the Discovery discussion board to be able to discuss cases, processes and general queries and ask for advice and help from colleagues confidentially in order to resolve cases without fearing the information could end up in the public domain.
10. FOS has argued that, if colleagues felt unable to discuss cases and ask for advice confidentially amongst themselves in a format accessible to as many colleagues as possible, this would be likely to prejudice its ability to have open and honest conversations; it would inhibit learning, development and pragmatic case-handling and would stifle policy discussions and innovation. FOS considers that disclosure would also result in case handlers and ombudsmen to become less willing to have discussions and evaluate different ideas in order to reach an outcome on a complaint.
11. FOS has argued that the titles of the discussion board notes may highlight a change in approach to complaints about certain products and services when new information or investigations come to light. It has explained that, where the titles highlight a change in approach to certain complaints, this would be likely to impact its statutory function as well as hindering future free and frank discussions on these boards if there is a risk that changes in approach would be disclosed to the world at large.

12. The exemptions at section 36 can only be engaged on the basis of the reasonable opinion of a qualified person. The Commissioner is satisfied that FOS' Chief of Staff is authorised as the qualified person under section 36(5) of FOIA and that they gave the opinion that the exemption was engaged.
13. The Commissioner accepts that it was reasonable for the qualified person to consider that there is a need to protect the confidentiality of discussions, deliberations and advice. He is also satisfied that the qualified person's opinion - that inhibition relevant to those subsections would be likely to occur through disclosure of the withheld information - is reasonable. He is therefore satisfied that the exemption was engaged correctly.
14. In relation to the public interest in the application of this exemption, the Commissioner considers the public interest in good decision-making by FOS to be a compelling argument in favour of maintaining the exemption. He acknowledges that the public interest in openness and transparency would be served if the information was disclosed, however, on balance, he finds the public interest in protecting FOS' ability to have free and frank discussions and to obtain free and frank advice are the stronger arguments in this case.
15. Consequently, the Commissioner is satisfied that, in this case, the public interest favours maintaining the exemption. It follows that his decision is that FOS was entitled to rely on sections 36(2)(b)(i) and (ii) of FOIA to refuse the request.
16. In light of this decision, the Commissioner has not gone on to consider FOS' application of section 36(2)(c) of FOIA.

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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.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

Christopher Williams
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