

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 February 2023

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

Decision (including any steps ordered)

1. The complainant has requested information about service complaints raised with the Financial Ombudsman Service ("FOS").
2. The Commissioner's decision is that the FOS was entitled to refuse to comply with the request in accordance with section 12(1). The Commissioner also finds that the FOS complied with its obligations under section 16 of FOIA to offer advice and assistance. However he finds that the request was not responded to within the statutory 20 working days' time limit which is a breach of section 10(1) of FOIA.
3. The Commissioner does not require any steps.

Request and response

4. On 25 April 2022, the complainant wrote to the Financial Ombudsman Service ("FOS") and requested information in the following terms:

"I would please like to request information about FOS Service Complaints under the freedom of information act (FOIA)

Context

It's not unusual for a matter to take 6-12 months for a final decision to be made. If a member of the public makes 2 separate service complaints over the course of a single piece of casework (under a single reference number) that just happens to span 2 tax or calendar years.

(1) Based on the scenario, how many service complaints would be formally recorded for statistical purposes

(2) Based on the scenario, when precisely is the formal service complaint data recorded? eg. During the casework, after the casework etc

(3) How many service complaints are not investigated

(4) Number of people under the Unreasonable behaviour policy and what level of action has been taken and what was the unreasonable behaviour.

(5) Number of service complaints

Delivery and Format

For the last 5 years please provide the above service complaint information in a digital format and all broken down into the following categories

- Type/category/theme
- Monthly Figures
- Staff teams/department
- Ombudsman Manager Teams

- Individual Staff member (staff names redacted if necessary but not ombudsman as this information is in the public domain and freely available on the FOS website)
 - FOS class as vulnerable
 - FOS class as having a disability
 - Outcomes
 - Compensation paid.
 - Lessons learnt
 - Time taken to investigate
 - Deadlines met"
5. The FOS responded on 5 August 2022. It refused the request on the basis of section 12(1) (cost of compliance exceeds appropriate limit) of the FOIA. It advised the complainant that records are held for two years. The FOS advised that to stay within the cost limits the complainant could consider narrowing the scope of the request to a specific time period such as a "financial quarter, or for a particular calendar month, or a particular business, or product like a mortgage or loan."
 6. The complainant requested an internal review on 5 August 2022.
 7. The FOS provided the outcome of an internal review on 14 September 2022. It upheld its position to withhold the information on the basis of section 12(1) of the FOIA. Additionally it advised that "In your request for an internal review you have asked for "a list of data fields to see what information is recorded under service complaints". This is a new request and a member of the team will be in touch with the next steps regarding this request shortly."

Scope of the case

8. The complainant contacted the Commissioner on 14 September 2022 to complain about the way the request for information had been handled. Particularly the application of section 12 of the FOIA, and the time taken to respond to the request.
9. The scope of this case is to consider whether the FOS were correct to withhold information on the basis of section 12 and whether it adhered to the required timescales in responding to the request.

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 FOS 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 FOS.
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 FOS explained that it had considered the request and identified that the information would be contained within 6,684 service complaint records. This is for a period of two years, which is the FOS retention period for such records.
18. The FOS confirmed to the Commissioner that the 6,684 complaints are where individuals were dissatisfied with the service provided by the FOS.
19. In order to respond to the request, the FOS stated it would need to cross reference between the staff members connected to the complaints records with the internal directory. This is the only way to provide the complaints identified by their particular departments as per the request. The FOS explained this information is not recorded on a complaint record.
20. The FOS could collate some of the information requested by running a specific report. However, in order to retrieve the information in relation to “Staff teams/department” and “lessons learnt”, each individual service complaint record would need to be checked. This is in order to establish the lessons learnt, and cross reference each record against the internal staff directory to identify what team and department the member of staff belonged to in connection with the service complaint record. The information is not routinely captured in the way the data is requested.

21. The FOS confirmed that the above identified method would be the quickest way of providing the information that has been requested in relation to those specific parts of the request.
22. The FOS explained that it had undertaken a sample exercise and found that it would take a minimum of three minutes to retrieve the information requested about "Staff teams/department" and "lessons learnt". The sampling exercise found that 360 service complaint records could be searched through in one hour. The FOS therefore extrapolated that to search through 6,684 service complaint records would take just over 18.5 hours which exceeds the appropriate limit set by the Fees Regulations.
23. The Commissioner is satisfied that the FOS has explained in sufficient detail why it would exceed the cost limit to comply with the complainant's request. It has explained that the information is not recorded as defined in the request and therefore it would need to cross reference between service complaint records and other information. It has also carried out a sufficient sampling exercise of one hour which demonstrated that the appropriate cost limit would be exceeded.
24. There is no requirement under section 12 to respond in part to a request. The Commissioner is therefore satisfied that section 12 of FOIA applies.

Section 16(1) – The duty to provide advice and assistance

25. Section 16(1) of FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice 1 in providing advice and assistance, it will have complied with section 16(1).

26. The Commissioner notes that in its initial response the FOS advised:

"...Section 12 says that if answering one of the questions will take longer than 18 hours, then we are not required to answer the remaining questions. You may wish to consider refining your request – by asking us to narrow our search to a specific time period (for a financial quarter or for a particular calendar month), or a particular business, or product like a mortgage or loan."

In the review response the FOS stated additionally:

"...In line with our retention policy, we only hold information regarding our service complaint statistics for two years. In your request for an internal review you have asked for "a list of data fields to see what information is recorded under service complaints". This is a new request and a member of the team will be in touch with the next steps regarding this request shortly."

27. The Commissioner's guidance on section 16 states "A public authority should inform the requestor of what information can be provided within the appropriate limit..." Advising requestors to narrow their requests without indicating what information a public authority is able to provide within the limit, will often just result in requestors making new requests that still exceed the appropriate limit.
28. The Commissioner considers that the FOS could have provided the list of data fields to assist the complainant in making a new request as part of offering advice and assistance. This would be preferable to incurring further delay in raising it as a new request.
29. The Commissioner is satisfied, however, that that FOS complied with the minimum requirements of section 16 in providing examples of how the search could be refined.
30. The Commissioner is therefore satisfied that the FOS met its obligations under section 16 of FOIA.

Section 10 – Time for compliance

31. Section 10(1) of FOIA requires the public authority to respond to the request within 20 working days following the date of receipt.
32. In this case, the complainant made the request on 25 April 2022 and did not receive the response until 5 August 2022.
33. By failing to respond to the request within the statutory time period, the FOS has breached section 10(1) of FOIA. The Commissioner has made a record of this delay.

Right of appeal

34. 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

35. 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.
36. 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

Janet Wilson
Senior Case Officer
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