

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 November 2023

Public Authority: Financial Ombudsman Service (FOS)
Address: PO Box 72308
London, E14 1QQ

Decision (including any steps ordered)

1. The complainant has made 32 information requests to FOS for copies of guidance, rules and codes of conduct provided to FOS staff, numerous items from FOS' internal guidance tool Discovery, information relating to the training of staff, a copy of the Channel 4 Dispatches documentary in 2018 about FOS, storage capacity of its computer systems and information relating to the publication of its decisions. FOS refused to comply with the requests citing section 14 of FOIA.
2. The Commissioner's decision is that FOS is entitled to rely on section 14 of FOIA.
3. The Commissioner does not require further steps.

Request and response

4. This notice covers three internal review responses dated 9 September 2022, 3 and 31 March 2023, all of which refuse to comply with the complainant's requests citing section 14 of FOIA.

5. The internal review response issued on 9 September 2022 covers 26 requests made between 18 February and 21 April 2022.
6. The internal review response issued on 3 March 2023 covers 5 additional requests made between 13 May and 28 July 2022.
7. The internal review response issued on 21 March 2023 covers one request made on 18 December 2022.
8. As there are 32 information requests, some of which are quite lengthy, the Commissioner has decided not to quote the exact wording of each in this notice but instead provide a brief description of what they relate to and ask for.
9. All the requests being considered here relate to the complainant's dispute with FOS in relation to the handling of a complaint they brought to it against a business. The complainant contends that their complaint has not been addressed appropriately or in accordance with FOS' own procedures. The requests seek copies of guidance, rules and codes of conduct provided to FOS staff, numerous items from FOS' internal guidance tool Discovery, information relating to the training of staff, a copy of the Channel 4 Dispatches documentary in 2018 about FOS, storage capacity of its computer systems and information relating to the publication of its decisions.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way their requests for information had been handled. The complainant disagrees that section 14 of FOIA applies and believes each request should be processed and all information released.
11. The Commissioner considers that the scope of his investigation is to determine whether or not FOS is entitled to rely on section 14 of FOIA.

Reasons for decision

Section 14 – vexatious requests

12. Section 14 of FOIS states that a public authority is entitled to refuse to comply with a request if it considers that request is vexatious.

FOS' view

13. FOS confirmed that the complainant referred a financial complainant to its service and on 7 February 2022, a decision was issued stating that their complaint was not something it could consider. Since the issue of that decision the complainant has raised multiple complaints to the service, the executive team and the data protection team about the decision and how it has been handled. The complainant has also made a large number of accompanying information requests. It said that some of the topics covered in the requests include (but are not limited to) copies of pages from FOS' internal guidance tool Discovery, guidance around its complaints handling and call recording procedures, details of how many complaints it has received linked to bullying and harassment from consumers and its internal staff disciplinary procedures.
14. Addressing the circumstances at the time of its internal review response of 9 September 2022, FOS advised that it had received 69 information requests and/or internal review requests from the complainant and in 2022 alone, over 160 emails. It advised that the complainant's multiple requests, correspondence and complaints around the handling of their requests has placed a significant burden on the service and at times, the rapidity of such correspondence in such a short space of time has acted to overwhelm the service's data protection team.
15. FOS explained how the pattern of requests started in December 2021 after receiving a subject access request from the complainant in April 2021. It said that the complainant began to complain on an almost daily basis about missing information, in particular call recordings, regardless of whether it had provided a response and they would copy in various recipients. Multiple contact would also be made over a period of one or two days. FOS advised that although it attempted to clarify that they had received all the information they were entitled to, the complainant continued to contact the team and then began making an increasing number of information requests from January 2022 onwards.
16. It argued that the volume of emails and cross-referencing of topics within them has made it extremely difficult to keep up with their information requests. As an example FOS said that the complainant would send several emails to the data protection team, spanning several pages, making complaints either about the handling of his case or accusations about information it had not shared with them via a subject access request. These then tend to be followed up with the complainant responding to his own emails to correct typing errors he had made. Within the body of the emails, the complainant will also include information requests.
17. FOS confirmed that whilst it does read through all of the emails it has received from the complainant, this can take a considerable amount of time and places a significant burden on the team. It stated that the

volume and complexity of emails has, at times, also led to information requests either being responded to late or missed altogether and it provided a sample of correspondence to the Commissioner to highlight this (this was also shared with the complainant during the Commissioner's investigation).

18. It commented that the sustained duration over which their requests were made indicated that requests would continue to be submitted in the same volume in the future and this has proved to be accurate. Since 9 September 2022 it has received a further 59 information requests, including 25 internal review requests, three subject access requests and over 150 pieces of other correspondence to its data protection team alone.
19. FOS also considered the breadth of the information requests – the broad topics touching multiple parts of the service – and how this would involve multiple personnel and teams trying to fulfil these requests across the different parts of the service (IT, HR, Casework Operations, Legal and Security for example) and require considerable coordination in order to respond.
20. As an example, it said even the isolated task of reviewing just guidance notes requested would be significant. Putting aside any correspondence concerning the requests, searching for, redacting and reviewing the notes would take an estimated 25 hours. This would have to be carried out by subject matter experts in its casework teams and would involve around 39 of its most senior ombudsman and operational staff members. Complying with these requests would divert senior and key staff away from their duties, which include maintaining the skills, knowledge and abilities of its junior staff and the wider organisation, making legally binding decisions on some of its most challenging and sensitive cases and developing its casework policies and approaches. This would all be on top of the work involved in responding to other parts of the information requests they have submitted.
21. FOS explained how the complainant's requests all share a common link and this is their disagreement with the outcome of their financial complaint and their criticism of the service for reaching that decision. Although clearly related and connected to this issue, the requests have shifted from requests for internal guidance and how it handles complaints to requests relating to the storage capacity of its systems and the amount of space required to retain all call recordings. It feels the latter now focus on topics of low value aimed at undermining its internal complaints process outcomes and were made following its confirmation to the complainant that they had now exhausted all processes and procedures. FOS is therefore of the view that the

complainant is simply making requests to attempt to justify their grievances and accusations against the service.

22. FOS advised that the complainant has repeatedly made a number of unsubstantiated accusations and claims, both against the service and a number of staff members in its casework department, data protection team, legal team and executive team. Some were sent in the form of an information request and some in general correspondence with the service. It provided the following examples:

On 25 March 2022:

"[...] the steps that an Ombudsman Manager ought to take should he find that the investigator has lied to, misled or cheated the consumer or broken undertakings and promises given to the consumer or violated his legitimate expectations; or that the investigator had failed to maintain the casefile with proper or adequate records – or has pretended to properly investigate the case but in fact did not do so and has instead arrived at a corrupt or pre-determined View irrespective of the facts, merits, FOS internal guidance and the law."

Additionally, on 30 March 2022:

"provide the information we hold as to any checking or auditing of the extent to which your staff do actually fully understand the FCA DISP Rules [...] and therefore do not negligently misadvise consumers as to their rights."

23. It considers some of the complainant's requests have been made in an attempt to discredit both the investigator's initial view and ombudsman's decision on the case and also to raise unsubstantiated claims that it has not properly investigated their complaints. Other accusations made as part of their requests include bullying, harassment, malicious communication, discrimination and preferential treatment given to businesses.
24. In terms of value and purpose, FOS confirmed that it views the value to the public from complying with these requests and supplying the requested information as minimal. It understands the value in being open and transparent and enabling customers to see how it works. It said that it has already published a lot of information about its processes and how it makes decisions on its website, including its approach to complaints about insurance (the subject of the complainant's financial complaint) as well as guidance on how consumers can complain about data protection matters or the service they receive. FOS is of the view that sharing additional information on its processes is unlikely to add significant value to the wider public that is not already available on its

website. It mentions requests for internal guidance and administrative policies (such as employee standards for keeping desks clean, how to contact internal colleagues and the style in which documents are drafted) which will only be of value internally to those working in FOS and will be of very limited value to the general public.

25. FOS commented further that information requests pertaining very specifically to the complainant's complaint against the financial business or their service complaints against the service would again be of very limited value to the public – these are private interests which do not coincide with a wider public interest.
26. It again considered the purpose in sharing the requested information with the complainant and said that, based on their correspondence with its casework and data protection teams, it believes the multiple requests have been made to try and get the service to re-open his financial complaint and multiple data protection and service complaints.
27. FOS confirmed that the complainant has exhausted all processes at the service – they have received a decision on their financial complaint, a final decision from its Independent Assessor to their complaints about the service, as well as final responses to their data protection complaints. Additional information will not lead to the complainant's complaints being reopened or investigated further. It believes (and considers there is sufficient evidence to demonstrate) that this continuation of behaviour is the complainant's attempt to have matters which are closed, reopened, justify their grievances and accusations against the service and also cause unjustified disruption.
28. In respect of the two internal reviews responses issued in March 2023, FOS confirmed that the circumstances surrounding them and the requests they cover are very similar and therefore, where appropriate, it has grouped these together.
29. During this period it viewed the complainant's behaviour to be very similar to the period leading up to its first internal review response of 9 September 2022, in that they continued to raise multiple requests and complaints around the handling of their requests. This volume of requests and correspondence has continued to place a significant burden on the team, particularly when multiple contact is made over a period of one or two days. It advised that the volume of emails and cross-referencing of topics in their emails has made it extremely difficult to keep up with them, which has again led at times to requests either being responded to late or missed altogether. It again provided example correspondence to highlight this to the Commissioner (this was also shared with the complainant during the Commissioner's investigation).

30. The requests covered by these two internal review responses are also very similar in nature or a continuation of the requests considered previously.
31. FOS advised how the complainant also sent in a large number of complaints and follow-up emails, following each response to their requests. It explained how the monitoring and responding of requests, complaints and correspondence was taking up a substantial proportion of its resources. The continued requests also made it more challenging for the team to meet its legal obligations of responding to other individuals FOIA requests. It said in 2022 that the complainant's requests and emails equated to 25% of the data protection team's FOI workload for example.
32. FOS confirmed that between November 2022 and March 2023, the service received in excess of 200-300 emails from the complainant in daily batches, sent to approximately 200 individuals and email addresses held at the service. Additionally, the complainant tended to reply to his own emails correcting errors in previous versions, which increased the body length and size of the file of each email each time. From 10 March 2023, the frequency of emails increased even further to the point the service received 800-900 emails from the complainant to various parts of the service, including members of the executive team, legal team and data protection team. It advised that the frequency and size of the emails meant that for a period of time, the service could no longer send or receive emails, as their emails had overloaded the inbound email queues. This prevented FOS from handling emails, providing responses and performing its statutory functions.
33. FOS stated that it reminded the complainant of their unreasonable level of contact both in May and July 2022 but as the complainant continued to send excessive emails to the service, it recommended in December 2022 that future correspondence from the complainant on any financial complaints will need to come via a suitable third-party representative going forward. Despite this, the complainant has continued to contact the service.
34. FOS advised that the complainant is again using their requests to continue their ongoing complaints about the outcome of their financial complaint and how it was handled and to also make unsubstantiated complaints against the service. While the complainant had previously been requesting information from its Discovery system on how the service handles complaints, the focus shifted and the requests became considerably more critical. It is of the view that the requests were then an attempt to back up their claims that FOS had not handled their complaints properly. It provided the following two examples in support of this (requests made in July 2022):

"Please also inform what are the disciplinary consequences for an Investigator or an Ombudsman if they are found to have acted deviously, deceitfully or dishonestly in their dealings with a consumer?"

"In any properly run customer -facing organisation lying to customers - or to other members of staff about work-related matters - is not permitted and may well result in dismissal. Are there any circumstances in which lying to a customer is tolerated and will not be a matter for disciplinary action or the FOS' HR department(s)? If so who will determine that to be the case?"

35. It said the general tone of these is to make accusations against the service rather than request information held by the service.

36. FOS advised again how the decision it reached on the complainant's financial complaint marks the end of its statutory procedure. However, the complainant has a different interpretation and believes that dismissal decisions are not final. It stated that the complainant has had a number of complaints around the subject, which it has responded to and explained that its dismissal decisions, regardless of outcome, are final and will not be considered further. Following these complaints, the complainant made the following information request:

"Please therefore can you:

1. Inform of the source of the legal obligation to publish final decisions made by your Ombudsmen on your website;
2. Provide any other information that you hold on, and around, the subject of publication on your website of the FOS' final decisions that is held in central locations.
3. Provide any and all information held as to any considerations, consultations or discussions that may have taken place at Parliamentary, FCA, FOS board, or FOS' senior management level in which the question of whether, or not, to also publish the FOS' dismissal decisions or out-of-jurisdiction decisions as taken by Ombudsmen, on the FOS website."

37. It said that the complainant believes FOS does not publish dismissal decisions because it does not consider them to be final decisions. FOS confirmed that this is not the case, and it has made this clear to the complainant previously.

38. FOS believe the requests continued to be accusations against the service and individuals investigating his complaint. On 18 December 2022 the complainant submitted the following request:

"Please also identify the third party and provide a copy of the correspondence you refer to having held with that third party and inform the date(s) on which the correspondence took place.

So it may assist if I re-phrase the question as 'what staff ought to do when they become aware that it is or may be inappropriate for them to continue working on a Case and therefore they may need to recuse themselves or suggested they be recused?'"

39. Again, in terms of value and purpose, FOS considers the complainant's requests have minimal value to the wider public, as the requests are so closely tied to their own grievances with their financial complaint and with the service itself. It referred to a request made on 13 May 2022, which was wording as follows:

"I understand from discussions with your Helpline that the FOS has an official policy that only one Case may be discussed in a single telephone call.

I also note that [name redacted] - a former FOS Investigator - also alluded to the fact that he said that he would not discuss more than one case in a single telephone call with AXA - even though he dealt with [business name redacted] representative on a number of cases and was well used to speaking with her as a result.

So should for example a business wish to discuss more than one case with an Investigator or Ombudsman manager on a single telephone call the FOS representative should explain that each case will have to be discussed in separate telephone calls.

I understand that for obvious reasons this makes proper records management far easier to achieve.

Please could you provide the guidance that is given to FOS staff in this respect. I refer to guidance held in central locations and that is provided to, or available to, all staff or to all staff who take external telephone calls. If there is separate guidance for Investigators and for Ombudsman Managers or Ombudsmen please provide the same too."

40. In conclusion, FOS stated that given the limited value of the information requests, the narrow private interests in their purpose and the perceived motive to voice disagreement with a decision made by the service, it considers section 14 applies to all requests covered by the three internal review responses being considered here. It does not consider any value and purpose (which is minimal) that can be identified outweighs the significant burden and distress that would be involved in complying with the complainant's continual requests. It said that the burden is significant; it has and will continue to generate a significant amount of

correspondence and compliance would utilise a substantial amount of time and resource. It is of the view that the intemperate nature, volume, rapidity and scope for further, similar requests will continue to cause distress and distract necessary personnel from fulfilling their official statutory functions.

The complainant's view

41. The complainant has submitted a considerable amount of correspondence to the Commissioner outlining their view of the application of section 14 of FOIA to their requests. The Commissioner has done his best to summarise these as follows.
42. The complainant refers to a Channel 4 dispatches programme from 2018 which they consider criticised the FOS and its service to consumers. They also provided Trust Pilot reviews from a number of other consumers who have used the service, which again criticises the service and how it has handled complaints brought to it. They feel this demonstrates how it is not fit for purpose and how they are amongst many others who feel their complaints have not been adequately investigated.
43. They refer to FOS' arguments in support of section 14 of FOIA and how these are copied and pasted arguments. In terms of the volume of correspondence and requests, the complainant has said that this is due to their failure to respond and adhere to statutory timeframes, missing requests, missing information, not reading the submissions they presented and making a decision without reading their evidence and trying to gain access to the information they need to understand how complaints are investigated and what procedures and rules are in place.
44. The complainant believes the Ombudsman's final decision is not final, it can be reopened, and nothing has been concluded. This is their procedure, yet it has not been followed in their case. They requested FOS to provide a statement of reasons detailing why their complaint was dismissed and this has not been provided. The level of correspondence and requests has been necessary to argue these points and try and get FOS to respond accordingly. They refer to an email of 21 December 2022 and how they waited 6 months for this response. Correspondence was necessary in the volume submitted as they were being ignored and they still have not received an explanation as to why their complaint cannot be re-opened or re-visited. Similarly, in terms of requests, the volume of correspondence was due to FOS' failure to respond and adhere to statutory timeframes.
45. The complainant also believes the Ombudsman's decision was intentionally taken, contrary to its own rules and procedures, and is

therefore unsafe and unlawful. They are of the view that the Ombudsman was cherry picked and they were the victim of a fast-tracked decision, which intentionally supported the company, as this was what had been promised to that company, regardless of the merits of their case. They said the decision was made less than 72 hours after they were informed that a scheduled telephone call with the investigator had been cancelled and the matter put into the queue for an Ombudsman's decision. They strongly believe their case jumped the queue so it could be assigned to an Ombudsman who had pre-agreed to provide colleagues previously involved in the case the outcome they wished for so they could then fulfil their advance promises to the company and its solicitors.

46. The complainant stated that they have fraudulently and aggressively been prevented from accessing the process to re-open/re-visit the dismissal decision and many requests have been made pertaining to their mistreatment by the service. They do not feel this makes their requests improper and disagrees that they are using FOIA as a means to make critical statements about the service. They commented that they could do this on internet forums if this was their only or main intention.
47. They consider all the requests submitted are essential to understanding FOS' actions and the decisions it has reached. They feel they have immense value and purpose as they address the fact that FOS staff either are unaware and negligent or, more likely in this instance, intentionally defrauding them and potentially millions of other customers by misleading them about their rights and failing to disclose information.

The Commissioner's decision

48. The Commissioner notes that the complainant has had a long running dispute with a financial company and approached FOS for assistance with that. In February 2022 the complainant received the Ombudsman's final decision, within that it was stated:

"For the reasons set out above, my decision is I dismiss this complaint without considering its merits. I accept [redacted] will disagree with my decision. But my decision is final"

Its covering email sending this decision also stated:

"As you'll see, the ombudsman has decided that your complaint isn't one we should look into. Because an ombudsman's decision is our final stage, we can't take things any further."

This correspondence is clear and says how the Ombudsman's decision is the final stage and how it can't take matters any further.

49. On 31 May 2022 the complainant received further correspondence from FOS which informed them of FOS' unreasonable behaviour policy and how if this was not taken on board it would have to consider how it communicates with them.
50. On 4 July 2022 FOS issued further correspondence, referring back to its former correspondence of 31 May 2022. It stated:

I also explained that I don't think its helpful to continue corresponding on your case as there is nothing further I or anyone else can add, so I'd like to remind you that calling our helpline isn't helpful and there isn't any further recourse through our complaints process at the Service. Any future calls made will be politely terminated and we won't discuss your case or complaint any further. It's likely we may also ask you to use a representative if you wish to bring a new case to our Service in the future.

We're still waiting to hear back on whether you'd like your call with [name redacted] to be sent via a CD or USB – please let [name redacted] know so we can get this sent out to you. Any other emails will be added to your file but won't be responded to."

51. FOS issued further correspondence on 21 December 2022. This again said:

"...you've received both a decision from the ombudsman and a service complaint final response from myself so there's nothing further I or anyone else at the Service can add. Your case won't be re-opened or looked at again."

You have exhausted our processes at the Financial Ombudsman Service and we cannot help you further. I also made it clear that if we consider your behaviour to be unreasonable then we will need to consider how we communicate with you going forwards.

Since then you've sent hundreds of emails to our Service, directed to hundreds of people who work here, the vast majority of whom have had nothing to do with your case. You've also continued to call our helpline which has led you to relying on information that's not relevant to your case – for example you were told there was a possibility your case would be re-opened but that was incorrect."

In this correspondence it explained how it is a free service and the complainant's "excessive" contact has placed an unacceptable burden on the service and its ability to meet its core functions. It said that if the

complainant needs to bring any new complaints to the service in the future they will need to do so via a representative, as it will not communicate with the complainant directly anymore. The correspondence ends by saying that the complainant needs to stop contacting the FOS completely and it will continue to terminate calls and will not respond to any emails.

52. At the time of the internal review response of 9 September 2022 FOS had received 69 information requests and/or internal reviews from the complainant and a substantial amount of correspondence surrounding those requests and their complaints. The level of correspondence and requests was placing a significant burden on FOS in terms of time and resources, and it was clear that, regardless of the response they would issue, this level of correspondence and requests would continue. The complainant strongly believes the final decision they have received is not final and can be revisited. Also, that it should be because in their view it is not sound or in accordance with FOS' own procedures and rules. The Commissioner considers it is fair to say that by September 2022 it was clear that volumes of correspondence and requests would continue until the complainant had, in their mind, proved this view and secured a revisit to their complaint, something which FOS had already said in the decision in February 2022, and the correspondence in the May and July, would not happen.
53. It is not for the Commissioner to make any determination or comment on the merits of the complainant's financial complaint or whether or not FOS followed procedure. This is not in his remit. But it was clear by this time (whether the complainant agreed or not) that FOS felt the matter was closed and would not be revisited. The complainant had received several communications to this effect.
54. The Commissioner acknowledges that the requests have some value and purpose, but this is mainly in terms of the complainant's own private interests rather than the wider interests of the public. The complainant's correspondence and requests were becoming increasingly difficult to manage and placed, in the Commissioner's view, a disproportionate and unjustified burden on the limited and valuable resources of FOS. While FOIA provides a right of access to recorded information and is a useful tool to research or assist a particular debate, complaint or grievance, it should not be used as a means of challenging or trying to continue to debate a decision which has already been received and is firmly closed. This is a misuse of FOIA. The Commissioner considers there is sufficient evidence to demonstrate that, whether intentionally or not, by September 2022, the use of FOIA in this case was inappropriate and not the correct or most appropriate channel to continue the complainant's dispute.

55. For these reasons the Commissioner is satisfied that FOS is entitled to rely on section 14 of FOIA for the information requests covered by the internal review response issued on 9 September 2022.
56. It follows that this is also the Commissioner's decision for the internal review responses issued on 2 and 23 March 2023 and the information requests these covers. Despite the September 2022 internal review citing section 14 of FOIA, correspondence in May, July and December 2022 stating clearly all FOS avenues were closed and the matter would not be reopened, being warned of excessive contact and correspondence and being told all contact with FOS will now permanently cease for all matters (they would have to use a representative), the complainant continued to send volumes of correspondence, copying in numerous recipients across the organisation. Referring back to FOS' submissions above, between November 2022 and March 2023 FOS received 200 to 300 emails despite this marked correspondence. From 10 March 2023 frequency increased so FOS had by then received 800 to 900 emails in total covering this period.
57. Any serious purpose or value that can be identified whether private or not does not justify such level of correspondence and the clear disruption and burden this would place on a public authority.
58. For both September 2022 and March 2023, the Commissioner does not agree that the level of requests and correspondence was also necessary to chase outstanding or late information requests. The Commissioner can see how FOS would find the volume of correspondence and frequency of correspondence difficult to manage and how information requests could therefore have been missed or delayed. The appropriate means of challenging this would be a referral to the Commissioner under section 50 of FOIA, once statutory timeframes had expired.

Right of appeal

59. 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

60. 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.
61. 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

Samantha Coward
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