

Reference: [FPR0987676]

Freedom of Information Act 2000 (Section 48) Practice Recommendation

Financial Ombudsman Service Ltd

20 February 2024

Summary

On 6 December 2023, the Financial Ombudsman Service Ltd (FOS) advised the Commissioner of the challenges it was facing in respect of its level of performance, particularly in terms of its response times to FOIA requests.

Following engagement with the FOS about the underlying reasons for these failings, the Commissioner has reached the view that the FOS' request handling practices do not conform to Part 4 of the section 45 Freedom of Information Code of Practice, issued by the Cabinet Office in July 2018 (the Code).

Recommendations

The FOS has drawn up an action plan and is in the process of implementing several improvements to its information request handling processes. The Commissioner has therefore issued the following recommendations to support and enhance the FOS' plans to improve its information rights practices.

In considering these recommendations, the Commissioner expects the FOS to ensure that it meets the requirements of all information rights legislation to which it is subject.

Area of Code	Non-conformity	Recommendation of steps to be taken
Part 4 – time limits for responding to requests Section 4.1 of the Code highlights the “clear” requirement that public authorities respond to	On 6 December 2023, the FOS informed the Commissioner that it had 61 open requests with 39 requests overdue.	<p>The FOS should ensure that requests for information are responded to in a timely manner.</p> <p>The FOS should use the Commissioner's FOI self-assessment toolkit to improve its timeliness compliance.</p>

<p>requests for information promptly, and within 20 working days of receipt in accordance with section 10(1) of FOIA.</p> <p>Section 4.4 of the Code states that public authorities may exceed the 20 working day deadline if additional time is required to consider the public interest.</p> <p>Section 4.6 of the Code advises that it is best practice for an extension to be no more than a further 20 working days although a longer extension may be appropriate depending on the circumstances of the case, including the complexity and volume of the material.</p> <p>Section 4.7 of the Code makes clear that when a public interest test extension is required, the public authority must inform requestors which exemption or exemptions it is relying on.</p>	<p>Since August 2023, the Commissioner has received at least nine complaints about the FOS failing to respond to requests within the statutory time limit. The Commissioner notes this is a common ground of complaint about the FOS to the ICO. Two of these complaints resulted in the Commissioner issuing a decision notice that formally found the FOS to be in breach of section 10 of FOIA and required it to respond to the request. The other seven were resolved by the Commissioner informally without the need for a decision notice to be issued.</p> <p>For the financial year 2022-2023, the FOS responded to only 65% of FOIA requests within the statutory time limit.</p> <p>For the current financial year 2023-2024 to the end of November 2023, the FOS' average compliance was</p>	<p>In accordance with part 8.5 of the Code, the FOS should publish its information access request statistics and make these easily accessible on its website. The statistics should include the number of information access requests that have not been processed and the number of completed requests where the processing took longer than 20 working days. The Commissioner has published further information it recommends all relevant public authorities follow about How to report on your performance on handling requests for information under FOIA 2000 ICO</p> <p>The FOS' request handling procedures should include provision for when a response is late or is likely to be late. At any stage of the internal processes, it should be clear when and to whom to escalate, who is responsible for taking action, the action they will need to take, and by when.</p> <p>The FOS must ensure that it has sufficient numbers of information rights trained staff to prevent request handling times falling below a compliant level in the event of the departure or absence of key staff members.</p> <p>The Action Plan which the FOS is implementing should be published on its website for full transparency about the improvements it is making.</p> <p>The FOS should ensure that both the backlog of overdue requests is cleared, and that 90% of requests are answered within the time statutory time</p>
---	--	--

Reference: [FPR0987676]

	<p>79%, but the monthly figures show a sharp drop-off from September onwards.</p> <p>For the month November 2023, the FOS had the lowest monthly level of compliance, only responding to 23% of FOIA requests within the statutory time limit.</p> <p>The FOS' monthly compliance statistics for the financial year 2023-2024 (April – November 2023, % of requests responded to within the statutory time limit) show a sudden drop in performance from 91% in August 2023 (having been at 100% in May 2023) to 23% in November 2023.</p>	<p>limits on a consistent basis by the end of May 2024, in line with its Action Plan. This should be maintained consistently with data on performance published regularly in line with the approach outlined above.</p>
--	--	---

Reasons for issuing this Practice Recommendation

The Commissioner is concerned that the FOS is experiencing significant inconsistency in how it meets its statutory obligations under FOIA to respond to requests for information within the statutory time limit. The Commissioner understands that most recently this is due to key staff leaving the FOS in August 2023. The Commissioner is particularly concerned that the percentage of requests responded to within the statutory time limits has been continually dropping since August 2023, reaching 23% in November 2023.

This practice recommendation therefore formalises the Commissioner's concerns and holds the FOS accountable for improving and, in turn, increasing public confidence and trust in, its FOIA request handling practices.

The Commissioner is issuing a Practice Recommendation at this time rather than, for example, an Enforcement Notice. This is because he acknowledges that the FOS has engaged openly with his office about the procedural problems it has faced and has shared an Action Plan outlining the proactive measures it is taking to resolve its backlog and compliance statistics.

Failure to comply

A practice recommendation cannot be directly enforced by the Commissioner. However, failure to comply with a practice recommendation may lead to a failure to comply with FOIA, which in turn may result in the issuing of an Enforcement Notice. Further, a failure to take account of a Practice Recommendation may lead in some circumstances to an adverse comment in a report to Parliament by the Commissioner.

The FOS should write to the Commissioner by 31 May 2024 to confirm that it has complied with its recommendations and how it has achieved this.

The Commissioner will have regard to this Practice Recommendation in his handling of subsequent cases involving the FOS.