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Mr Adam Ada
via email

22 August 2022

Our Ref: FOI9021

Your Ref:

Dear Mr Ada

Freedom of Information: internal review

Thank for your three emails dated 12 April 2022 (at 14:07, 14:22 and 14:31).

These all ask for an internal review ("Internal Review Requests") of the decision of the Financial Conduct Authority ("FCA") of 11 April 2022 ("Stage 1 Response") provided in reply to your two information requests, dated 8 February 2022 (at 15:23 and 16:34). These were made under the **Freedom of Information Act 2000** ("the Act"). The first of these relates to "Bonuses paid to FCA staff by grade" ("FOI Request 1"); the second to "[a] List of FCA staff" ("FOI Request 2").

As you may be aware, we would normally aim to complete a review within 20 working days. In this case the review has taken considerably longer, and I am sorry for the delay.

FOI Request 1

This is:

"For each of 2018/19 and 2019/20, for each subset of bonus award by percentage (i.e. of the 7 subsets, from 0% at the lowest to 25-30% at the highest) provide the "Percentage of workforce who received a bonus" broken down by grade to show the percentage of each the following grades that received a bonus for each of the 7 subsets (0%, 25-30% etc, etc):

- a. Executive Group/Executive Directors*
- b. Directors*
- c. Department Heads*
- d. Managers*
- e. Associates."*

FOI Request 2

This is:

"Please provide a list of all current FCA staff (actual names) at manager level and above, by grade, and covering all types of employment contract.

Should the position not be clear, please be advised that the information commissioner has previously determined that the public interest test favours the disclosure of staff names at manager level and above."

Stage 1 Response

Our Stage 1 Response, dated 11 April 2022, confirmed that we hold the information you have requested but explained that for FOI Request 1 the exemption under section 43(2) of the Act applies to the granular level of detail you have asked for. We consider that disclosure of the requested information would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it – i.e., the FCA).

Section 43 is a qualified exemption and in assessing where the balance of the public interest lies, we considered that, on the balance of this case at the time the request was made, the need to protect the FCA's commercial interests outweighs the public interest in providing under the Act the information for FOI Request 1.

We explained, however, that aggregated details of the bonus awards distribution within the FCA for the period in question can be found in our [Annual Report and Accounts 2019/20](#) (see page 109).

For FOI Request 2, we informed you that a list of staff at technical specialist/manager level and above is published on our website and can be accessed via this link <https://www.fca.org.uk/freedom-information/fca-publication-scheme/lists-registers> (i.e., by scrolling down the list and clicking on the embedded link in the tenth bullet point). We explained that this information was in the process of being updated and the up-to-date list was due to be published by the end of April 2022. (An updated list of staff was, in fact, published on 25 May 2022.)

Internal Review Requests

On 12 April 2022 you made three Internal Review Requests. Details of all three are provided in the Annex to this letter.

The internal review involves me looking at your two FOI Requests afresh and making a new independent decision. This includes me deciding whether the exemptions of the Act have been appropriately applied, whether another exemption is more appropriate and, if and where relevant, whether the public interest test has been correctly weighted. It is not just a review of our Stage 1 Response.

In so doing, I have noted, and considered, the extensive points you make in your Internal Review Requests.

In particular, in Internal Review Request 1, your first ground of appeal is that you say we have incorrectly applied the law to combine two separate and distinct requests. The second ground of your appeal is that you do not believe the section 43 exemption applies to FOI Request 1.

Your third ground of appeal for FOI Request 1 is that section 43 of the Act would require a public interest test to be undertaken and yet, you claim, we have completely failed to undertake a public interest test.

In Internal Review Request 2, your first ground of appeal is the same as that for Internal Review Request 1. Your second ground of appeal is that you claim we are saying the information is available via the link provided in our Stage 1 Response when patently it is not. You say there is no information provided via the link provided that meets the terms of your request.

Internal Review Request 3 complains that having taken months to deal with your two requests made under the Act, that should be processed within 20 working days, and [then] provided no information to you, we have completely failed to understand these two distinct requests and have instead sought to respond outside the law, and have only finally responded because we were required to do so by the Information Commissioner.

Outcome

There are several parts to your two requests, and you make a number of points in your three Internal Review Requests (as set out in Annex A to this letter and summarised above).

My conclusions are:

Aggregation of the requests

We do not consider our approach to the aggregation of requests to have been improper. In any event, the aggregation has made no substantive difference to our response. In particular, we note that:

- 'aggregation' is not a legislative term used in the FOI;
- the ICO's guidance and Decisions on aggregation concern aggregation for the purposes of determining whether the appropriate limit for a request under the Act is breached (see link and pages referred to above). In this case, notwithstanding that we have aggregated the two requests, we have not relied on section 12 (Exemption where cost of compliance exceeds appropriate limit) as a reason not to provide the information;
- whilst we have responded to the two requests in the same Stage 1 Response of 11 April 2022, we have considered each request separately;
- nor has the aggregation of the two requests had any other implications for the way in which the substance of the requests have been considered.

FOI Request 1

As I have noted above, the ICO's *The Guide to Freedom of Information* (see [here](#), see page 59) makes clear that at internal review the authority should "make a fresh decision based on all the available evidence that is relevant to the date of the request, not just a review of the first decision".

For FOI Request 1, the outcome of my internal review is that I am satisfied that the Stage 1 Response correctly stated that section 43(2) of the Act applies.

However, in the interests of transparency, we have also considered whether the section 43(2) exemption would apply were a request for this information be made now, and we have considered if the public interest in maintaining the exemption outweighs the public interest in disclosing the information at the date of our internal review decision. We have concluded that,

if the 'relevant date' for these purposes were to now be the date of the internal review, the section 43(2) exemption should no longer be maintained; and that we should now disclose the information requested for FOI Request 1. This is now provided as an attachment to this response in Annex B.

I should also explain that as part of the introduction of the New employment offer, we have ended the discretionary performance bonus scheme with the last payments made in April 2022 for the performance year 2021/22.

FOI Request 2

The list of staff changes regularly. So, as part of our duty to offer advice and assistance, we explained that this information was in the process of being updated and the up-to-date list was due to be published by the end of April 2022. In substance, our Stage 1 Response applied the exemption at section 22 FOIA (Information intended for future publication), albeit our Stage 1 Response did not specify that exemption. That said, I consider that when considering our Stage 1 Response for FOI Request 1, we should have asked you to clarify / confirm which version of the information you were requesting.

In the absence of that, our Stage 1 Response, of 11 April 2022, provided you with a link to a web page titled Lists and Registers, the tenth bullet point on the page contained a hyperlink to a list of staff published on our website at that time. I am sorry if our original response did not make it clear how the relevant information could be accessed. The FCA updated the information on its website for Managers / Technical Specialists and above, effective from April 2022, on 25 May 2022 - see <https://www.fca.org.uk/publication/foi/managers-list.pdf>. In view of this, the FCA relies on the exemption at section 21 FOIA (Information accessible to applicant by other means) in relation to this information.

I trust this information is helpful and that this meets your requirements for FOI Request 2.

Timeliness of Stage 1 Response

If I may, before concluding my review, I should also like to address the comments you make in your Internal Review Requests about the time it took for us to write to you with our substantive Stage 1 Response, dated 11 April 2022.

I should explain that when you submitted your two FOI Requests on 8 February 2022 the FCA was experiencing a high volume of requests for information and our priority was focused on working through the cases in date order. I am sorry that we did not meet that expectation and you found it necessary to take recourse to writing to the ICO to complain about the delay and lack of information. I am, however, satisfied, that once we were able, we have met the obligation to respond to you as soon as is reasonably practicable.

Conclusion

I believe the information we have provided in our response dated 11 April 2022, together with the additional information now provided in and with this letter, meets our obligations under the Act.

If you are not content with the outcome of the internal review, you have a right of appeal to the Information Commissioner who can be contacted by phone or on their website. Telephone: 0303 123 1113, Website: www.ico.org.uk.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Elizabeth Bull', written in a cursive style.

Elizabeth Bull
Internal Reviewer

Financial Conduct Authority ("FCA")

Freedom of Information Act 2000: Three Internal Review Requests from Mr Adam Ada (FOI9021)

Internal Review Request (1), dated 12 April 2022 at 14:07

"Dear The Financial Conduct Authority,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of The Financial Conduct Authority's handling of my FOI request 'Bonuses paid to FCA staff by grade'. Please understand that this was a discrete request for information. It was submitted separately to my request for a staff list which again is a discrete request.

Therefore, my first ground of appeal is that you have incorrectly applied the law to combine two separate and distinct requests. This request is about "Bonuses paid to FCA staff" and is clearly titled and described as such. The other request refers to a "List of FCA staff". So, the two requests clearly DO NOT relate to the same or similar information. One is about BONUS PAYMENTS and the other is about a STAFF LIST. Your decision is flawed and it is worrying that you have sought to combine matters that are distinct and dissimilar.

My second ground of appeal is that you are saying information about bonus payments is exempt from release under exemption under section 43 (commercial interests) of FOIA. I would advise you that the ICO's guidance makes it clear that a public organisation must provide evidence if it seeks to rely on section 43 and yet you have completely failed to provide any evidence - there is no reasoning whatsoever and no attempt to apply the legal definition to the circumstances of this request. This means your decision is flawed and fails in terms of its understanding and application of the law.

My third ground of appeal is that section 43 would require a public interest test to be undertaken and yet you have completely failed to undertake a public interest test. This means your decision is flawed and fails in terms of its understanding and application of the law.

I will submit a separate request for internal review of my second request.

Yours faithfully,

Mr A Ada"

Internal Review Request (2), dated 12 April 2022 at 14:22

"Dear The Financial Conduct Authority,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of The Financial Conduct Authority's handling of my FOI request 'List of FCA staff'. Please understand that this was a discrete request for

information. It was submitted separately to my request about 'Bonuses paid to FCA staff by grade', which again is a discrete request.

I am writing to request an internal review of The Financial Conduct Authority's handling of my FOI request.

My first ground of appeal is that you have incorrectly applied the law to combine two separate and distinct requests. This request is about "A list of FCA staff" and is clearly titled and described as such. The other request refers to "Bonuses paid to FCA staff by grade". So, the two requests clearly DO NOT relate to the same or similar information. One is about BONUS PAYMENTS and the other is about a STAFF LIST. Your decision is flawed and it is very worrying that you have sought to combine matters that are distinct and dissimilar.

My second ground of appeal is that you are saying the information is available via the link you provided when patently it is not. There is no information provided via the link you provided that meets the terms of my request.

I have submitted a separate request for internal review of my second request.

PLEASE NOTE: I wish both requests (Bonus payments & Staff list) to be passed directly to the person who conducts Freedom of Information reviews. It is unfortunate that having taken months to deal with requests that should be processed within 20 days, and provided no information to me, you have completely failed to understand these two distinct requests and have instead sought to respond outside the law, and have only finally responded because you were required to do so by the Information Commissioner.

Yours faithfully,

Mr A Ada"

Internal Review Request (3), dated 12 April 2022 at 14:31

"Dear The Financial Conduct Authority,

This is a further comment with regard to my request for Freedom of Information internal review on this case "Bonuses paid to FCA staff".

PLEASE NOTE: I wish both this appeal ("Bonus payments") and a separate appeal regarding "Staff lists" to be passed directly to the person who conducts Freedom of Information reviews. It is unfortunate that having taken months to deal with requests that should be processed within 20 days, and provided no information to me, you have completely failed to understand these two distinct requests and have instead sought to respond outside the law, and have only finally responded because you were required to do so by the Information Commissioner.
Yours faithfully,

Mr A Ada"