

FCA's Freedom of Information internal review process

Overview

1. You have the right to complain to us if your request for information is denied or partially denied or if you are otherwise unhappy with the FCA's response to a 'Right to know' (RTK) request made under the Freedom of Information Act 2000 (FOIA).
2. You also have the right to complain to the Information Commissioner but, before doing so, you must exhaust the FCA's internal review process.
3. The FCA's internal review process is intended to be as straightforward as possible; where practical, we will try to resolve your concerns informally by:
 - explaining in more detail the grounds for refusal to disclose any/all of the information requested; or
 - clarifying the exemptions being relied upon.
4. Where it is not possible to resolve the complaint informally, you will be notified of the right to have the decision reviewed, initially through the FCA's internal review procedure and then, if you are still dissatisfied, by the Information Commissioner.
5. If you ask us for an internal review of our decision, we will acknowledge your appeal, which will be treated as a formal complaint and will be subject to the internal review procedure.
6. A number of outcomes are possible, including:
 - the original decision is upheld; or
 - the original decision is reversed in part or in full; or
 - the original decision is modified.

Timing

7. If you wish to exercise your right to an internal review you should contact us within three months of the date of our 'Right to know' decision letter. There is no statutory deadline for undertaking internal reviews, but the Information Commissioner has published guidance saying that internal reviews should take no longer than 20 working days, depending upon the complexity of the case. If it is not possible for us to reach a decision within 20 working days we will write to you again to advise you of the position and the anticipated timescale for our response.

Internal review

8. Requests for internal review will be handled by the FCA's Information Access Team who will be responsible for reviewing the decision and the material (if held). Other FCA staff may also be involved before reaching a decision.
9. The final decision will be made by the FCA's Internal Reviewer or another senior member of staff who was not involved in making the original decision.
10. As part of the process, we will consider whether:
 - FOIA has been properly applied, in particular, whether the information requested genuinely falls within the exemption(s) cited and (where relevant) the balance of the public interests favours not permitting disclosure;
 - there have been any developments since the original response, including any points made by you when making your complaint, that should alter our approach;
 - it is possible to provide any further information to you; and
 - there are any lessons for handling future cases.
11. If the original decision is reversed, you will be informed and either sent the information requested or notified of the date by which you may expect to receive the information.
12. If the outcome of the review is that the original decision is upheld or to release more of the information requested, but not all of it, you will be notified in writing and we will explain why, referring to the relevant exemption(s), and advising you of your right to appeal further to the Information Commissioner.

Role of the Information Commissioner

13. FOIA is enforced by the Information Commissioner. The Information Commissioner is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.
14. Complaints about decisions made under FOIA by public authorities, including the FCA, can be made to the Information Commissioner (after internal review) for a decision on whether the FCA dealt with the request in accordance with FOIA. In particular he will consider whether:
 - an exemption has been properly applied and (where relevant) the public interest balancing exercise has been properly carried out;
 - the time taken by the public authority to comply was reasonable; and
 - correspondence complies with statutory requirements.
15. After an initial assessment of the complaint the Information Commissioner may attempt to settle the matter informally by contacting both parties to provide his views on how the dispute can be resolved without going through the full appeal process. If the Information Commissioner elects to undertake a full investigation he can decide either that the FCA has complied with the Act or that further action is necessary to comply. The nature of this action (e.g. to provide information previously withheld) will be set out in a Decision Notice or an Enforcement Notice. These notices are binding on the public authority although you and the FCA can appeal the Information Commissioner's decision to the First Tier Tribunal (Information Rights) and thereafter, on a point of law only, to the Upper Tribunal.

16. If the Information Commissioner upholds a complaint and decides that the FCA must disclose information a Decision Notice will be issued and served on the complainant and the FCA. This will specify the information that must be disclosed and the time period for doing so.
17. If the FCA receives a Decision Notice that over-rules previous action taken by the FCA (e.g. to withhold information), we may either comply or we can appeal to the First Tier Tribunal (Information Rights).