



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Information Rights**

Tribunal Reference:	EA/2014/0036
Appellant:	Carol Harries
Respondent:	The Information Commissioner
Judge:	NJ Warren
Member:	A Lowton
Member:	R Creedon
Hearing Date:	6 June 2014
Decision Date:	1 July 2014

DECISION NOTICE

1. In October 2006 Mrs Harries made a request for information under the Freedom of Information Act (FOIA) to the Financial Services Authority. From 1 April 2013 this became the Financial Conduct Authority (FCA), and we will use this term to describe both organisations. Mrs Harries had seen a report in the Sunday Times concerning money laundering by Columbian drug dealers through Barclays Private Bank. Her request read as follows:-

“I am writing to request under the terms of the FSA’s freedom of information policy to be supplied with the information you hold with regard to the matters reported on in the article in the Sunday Times with regard to BPB’s involvement with Columbian drugs money”.

There followed a complaint to the Information Commissioner (ICO) and then an appeal by the FCA to the Tribunal. The Tribunal decision, from now on referred to as “the first Tribunal decision” was that information should not be disclosed.

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2. On 13 November 2012 Mrs Harries asked for the same information again. It was again refused and she complained unsuccessfully to the ICO. She now appeals to this Tribunal.
3. There was a hearing of the appeal on 6 June 2014 at which Mrs Harries was represented by Mr Bousfield. We are grateful to them both for the way in which they put forward their arguments. The ICO did not trouble to attend.
4. We also had before us a bundle of closed material. This consisted of the confidential annex to the decision of the first Tribunal as well as the disputed information. The closed material seems to comprise the FCA file on the issue raised by Mrs Harries. It contains meticulous markings indicating the different grounds on which different parts of it should not be disclosed. The markings refer to:-
 - (a) Section 21 FOIA – which deals with information accessible by other means.
 - (b) Section 40 FOIA – which deals with personal information.
 - (c) Section 44 FOIA – which deals with information where disclosure is prohibited by some other law.
 - (d) Information marked “Section 31/Section 43(2)”. Section 31 FOIA deals with law enforcement and Section 43(2) FOIA deals with information likely to prejudice commercial interests.
 - (e) Information which is not relevant.
5. Nothing turns on the material marked “not relevant”. This refers to material outside the scope of the request for information, usually because in an internal FCA document matters relating to other investigations are discussed.
6. Nor is the material marked “Section 21” material at this stage. It consists mostly of copies of the Sunday Times article. There is one other such marking in an FCA memo which we will deal with later.

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7. At the hearing Mr Bousfield also agreed that references to personal information in the sense of names of individuals is not contentious. This leaves two big questions for us to address.
8. The first is the extent to which material is exempt from disclosure under Section 44 FOIA.
9. Information is exempt from disclosure under FOIA if its disclosure is prohibited by any other statute.
10. The relevant statute here is the Financial Services and Markets Act 2000. By Section 348 of that statute, the FCA must not disclose “confidential information” without consent. “Confidential information” is defined as information which relates to the business or other affairs of any person and which is received by the FCA for the purposes of or in the discharge of its functions under the statute.
11. We are satisfied that the parts of the closed information marked “Section 44” have been so received by the FCA. In connection with this exemption Mr Bousfield makes two points.
12. First, he asks whether the phrase “any person” should not be confined to human persons and thus not extend to a corporation such as a bank. Our answer to that question is that “person” means “legal person” and covers not just human beings but also limited companies, public authorities and other “legal persons”.
13. Second, Mr Bousfield sought to rely on Section 348(4)(b) which excludes information “in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person” from the definition of “confidential information” under the Act.
14. Given our conclusion that “person” includes a limited company or a corporation, it is impossible to see how an answer to a request for information concerning Barclays Private Bank could possibly come within the Section 348(4) exception.
15. It follows that the ICO decision is correct in respect of Section 44 FOIA.

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16. That leaves the passages in the closed information which are marked “Section 31/Section 43”.
17. This information is very limited. We agree with the first Tribunal that we have doubts as to whether it is really within the information sought by Mrs Harris or whether it does not also come within Section 348 Financial Services and Markets Act and thus Section 44 FOIA. (See paragraph 13 of the first Tribunal’s decision). It also includes material left over from a perhaps over conscientious redaction of Section 44 material and sometimes covers extracts from a sentence which on their own convey little if any meaning. We must however deal with this part of the material.
18. This part of the material is annotated throughout “Section 31/Section 43”. Section 43 FOIA deals with information likely to prejudice commercial interests if disclosed. We are told that this is the only other ground now relied on by the FCA. However, our consideration of the material leads us to believe that we should also consider Section 31 FOIA in relation to internal FCA communications. Information received by the FCA from others is, of course, already dealt with in our consideration of Section 44 FOIA.
19. In particular, we should in our view consider Section 31(1)(g) FOIA which deals with information the disclosure of which would be likely to prejudice the exercise by FCA of its functions for certain specified purposes. These include the purpose of ascertaining whether circumstances exist which would justify regulatory action.
20. Since the papers before us do not deal with Section 31 FOIA and since this exemption was not discussed at the hearing, it would be unfair for us to make a decision on this issue without first listening to any representations which the parties might wish to make. We therefore defer our final decision on this issue for three weeks to allow Mrs Harries and the ICO to make representations in respect of Section 31 should they wish to do so.
21. Unlike Section 44 FOIA, Section 31 is an exemption that requires a balancing of the public interest.

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22. At the hearing Mr Bousfield advanced a number of arguments concerning the FCA and its approach towards regulation of banks, especially when compared with the approach adopted in the USA. It is not necessary for Mr Bousfield to prove that his assertions are true. When it comes to the public interest balancing exercise, it is sufficient for him to show that there is a serious live issue about the decisions taken by the FCA which would benefit from public debate. In our view, that has been established.
23. We await any other submissions the parties may have under Section 31 FOIA before issuing a final decision.

NJ Warren**Chamber President****Dated 1 July 2014****Promulgation Date 3 July 2014**