

## **Annex B**

- **Section 42 (Legal professional privilege)**

This section states that information that is subject to legal professional privilege is exempt. This exemption under FOIA includes advice from lawyers to the FCA, including internal legal advice.

Section 42 of FOIA is a qualified exemption and so we have considered the public interest for and against disclosure of the information, as required by FOIA.

### *For disclosure*

- As part of providing wider transparency about the FCA's work there may be a legitimate public interest in disclosing any legal advice which has been provided.

### *Against disclosure*

- It is strongly in the public interest for the FCA to be able to have open and candid communications with its lawyers to ensure we seek and receive the best possible legal advice, given without fear or favour. This enables us to carry out our statutory functions lawfully as well as effectively.
- Our ability to seek and receive proper and adequate legal advice, in a free and frank way, would be undermined if our exchanges with lawyers were made publicly available.
- Disclosing the legal advice would prejudice the FCA's ability to defend our legal interests. This would be both directly, by unfairly exposing our legal position to challenge, and indirectly, by reducing our reliance on legal advice having been fully considered and presented without fear or favour.
- The public interest is generally not served by disclosing material that is covered by legal professional privilege.

Having balanced the public interest for and against disclosure as required by FOIA, in this case, in our view, the public interest lies against disclosure for the reasons set out above.

- **Section 44 (Prohibitions on Disclosure)**

Section 44(1)(a) of FOIA states that information is absolutely exempt from disclosure if this is prohibited by law. Section 348 of FSMA restricts the FCA from disclosing 'confidential information' it has received in the course of carrying out its public function. FSMA allows exceptions to this in a few specific circumstances, but none of these apply to this request.

Confidential information here is defined as non-public and non-anonymised information involving a person's business or other affairs, which the FCA received in the course of carrying out its public function.

The information you requested is confidential information under this provision. Disclosure of this information in breach of section 348 of FSMA would be a criminal offence.

In many requests for information under FOIA we have to consider different factors to decide whether disclosing the requested information would be in the public interest or not. For this request, we have an 'absolute' exemption against supplying the information, and so we do not need to make this kind of consideration.

- **Section 40 (Personal Information)**

To the extent that the information that we hold contains personal data about individuals, section 40(2)(b) of FOIA provides that *"any information to which a request for information relates is also exempt information if the first, second or third condition listed below is satisfied."*

We have applied this exemption because the first condition (as stated in section 40(3A) of FOIA) is satisfied. Some of the information you have requested comprises the personal data of individuals other than yourself which, if disclosed, would contravene any of the data protection principles.

In particular, it would be a breach of the first data protection Principle as set out in Article 5 of the UK GDPR, to disclose such information, as it would not be lawful or fair to the individuals concerned to do so. This is because, they would not have had the expectation that this information would be disclosed under these circumstances, and therefore disclosure would not be necessary, or lawful, where none of the conditions in Article 6 of the UK GDPR have been met.

This is an 'absolute' exemption, and so it is not necessary to balance the public interest for and against disclosing the information.