

Annex B:

General right of access to information held by public authorities

Anyone making a request for information to a public authority is entitled to be told in writing by the public authority whether it holds the information the request describes. If the public authority does hold this information, the person requesting it has the right to have the information communicated to them. These rights, in section 1(1)(a) and (b) of FOIA, have some exclusions and exemptions.

- **Section 31 (Law enforcement)**

The qualified exemption in section 31(1)(g) of FOIA applies to this request because disclosure of the information requested would, or would be likely to, prejudice the exercise by the FCA of its functions for the following purposes:

- the purpose of ascertaining whether any person has failed to comply with the law,
- the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

This exemption applies because if we disclosed the information now, it would, or would be likely to, prejudice any such investigations or actions. It would also be likely to compromise our ability to obtain information from other agencies, which would be likely to prejudice to our ability to carry out investigations.

Since section 31 is a 'qualified exemption', we have considered relevant factors in favour and against disclosing the information, as required by FOIA.

For disclosure

- There is a strong public interest in favour of transparency and in the public being reassured about the effectiveness of the FCA's approach to DP23/5.
- Disclosing the information would demonstrate how we respond to matters arising in the markets we regulate. It would also enable stakeholders (including regulated firms) to better

understand why and how we make decisions on regulatory matters.

- Disclosure would also provide the public with information to help them in making decisions about their dealings, or potential dealings, with the markets and firms that are operating in the financial services sector.

Against disclosure

- There is a strong public interest in the FCA being able to carry out its functions in the most effective manner possible. Disclosure of the information would be likely to lead the subjects, potential subjects or other third parties to act in a different way which might harm the conduct of our regulatory functions.
- Disclosing the information could lead to further speculation which, without any further background information, would be likely to be taken out of context and lead to the wrong conclusions being drawn about our decision-making processes.
- It is in the public interest that the FCA can have open and candid exchanges with the entities it works closely with, regardless of the information's sensitivity.
- Disclosure would be likely to compromise our ability to obtain information from other entities, which would be likely to prejudice our ability to carry out our regulatory function.

On the facts of this particular request we have concluded that the balance of the public interest is in favour of applying the exemption under section 31 of the Act, for these reasons.