

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 36 (Prejudice to the effective conduct of public affairs)**

Under section 36(2)(b)(ii) of FOIA this exemption applies if, in the FCA's reasonable opinion, disclosing this information would be likely to restrict free and frank exchange of views for the purposes of deliberation. This decision was taken by a Qualified Person – someone with in-depth knowledge of the information and its context. This letter explains why, in their opinion, the exemption applies, and it is not in the public interest for us to disclose this information.

To function effectively, the FCA, its staff and external stakeholders need to feel confident that sensitive information in the form of views that are freely exchanged will not be disclosed. If it is disclosed, this would seriously undermine the mutual trust that exists between the FCA and members of Parliament.

Section 36 has qualifications in favour, and against, disclosing information. We have to balance the public interest for and against disclosure as required by FOIA. The Qualified Person has considered the factors for and against disclosure as follows.

In favour of disclosure

- It is in the public interest that information is generally available as to how the FCA and parliamentarians share information on issues of importance to consumers, the financial industry and the wider UK economy.
- Disclosure of this information would also show the FCA to be an open and transparent organisation and would give greater transparency into the operation of the FCA and its relationship with members of parliament.

Against disclosure

- There is a strong public interest in a public authority such as the FCA being able to take a sound and considered approach to important topical issues. Disclosure of some of the information requested could act as a deterrent to the free expression and exchange of views between senior FCA officers and members of parliament.
- Disclosure would be likely to lead to unwarranted speculation. The FCA needs space away from live public scrutiny to exchange views with members of parliament. Without a protected space for open and honest discussion of the important and complex issues involved, external stakeholders could be discouraged from frank exchanges.

Overall, taking into account these factors, the Qualified Person is satisfied that we should give greater importance to protecting the FCA's ability to have full and open discussions on these such matters, and so this exemption should apply.