

Telephone: 020 7066 8080
Email: foi@fca.org.uk

06 July 2016

Our Ref: FOI4562

Dear

Freedom of Information: Right to know request

We refer to your requests for information under the Freedom of Information Act 2000 ("the Act"), full details of which can be found at Annex A below.

You submitted five separate requests which have been aggregated and are being processed in accordance with the Act as one request. Under guidance issued by the Ministry of Justice, a public authority may aggregate requests in the following circumstances (amongst others):

- Two or more requests for information have been made to the same public authority;
- The requests are from the same person;
- The requests relate to the same or similar information.

The guidance can be found [here](#).

Further to my email of 9 June 2016, I advised we needed more time to consider whether the balance of public interest in the retention of information outweighed the public interest in its disclosure. I can now confirm we have now completed this exercise and the outcome is detailed below.

Before I respond to your points, I thought I would explain that we have taken "investigate" in your request to refer to formal enforcement investigations. In relation to points 1 and 2 of your request, whilst we hold information that confirms whether or not these firms have been investigated, we are unable to comment further than what has been said in any Final Notices published on our website. This is because disclosure of the number of investigations would, or would be likely to, prejudice the exercise by the FCA of its functions for one or more of the purposes specified in section 31(2) (Law enforcement) of the Act.

Furthermore, if we were to have conducted any investigations, disclosure of the number of investigations would be likely to prejudice the commercial interests of these firms, as it could lead to speculation about the identity of the subject(s) of investigation. As a result, section 43 (Commercial interests) of the Act exempts disclosure of that information to you.

Both of these exemptions apply for the reasons set out in Annex B of this response.

Turning now to point 3, we can confirm that no investigations have led to criminal proceedings. If the FCA had launched criminal proceedings against any firm this would be in the public domain via court proceedings and any outcome would be published on our website.

For points 4 and 5, you may already be aware that, in the event that the FCA is investigating or has investigated a particular individual/entity and formal enforcement action is subsequently taken, details of the action will generally be published on the FCA's website in the form of a Final Notice and associated press announcement. This serves to inform the public of the action taken and the reasons for that action.

Therefore, to the extent that the FCA holds information reasonably accessible to you in other ways, in this case via our website, we are not required under the Act to release it to you as the absolute exemption under section 21 (Information reasonably accessible to the applicant by other means) applies. Please see Annex B below for a detailed explanation of why this exemption applies.

You can obtain further information regarding enforcement action from the following places:

- Information about those cases where we have taken disciplinary action against individuals or firms since April 2013 may be found on the FCA's website via the following link:

<http://www.fca.org.uk/your-fca/list?ttypes=Final+Notice&yyear=&ssearch=>

- Information about cases where we have taken disciplinary action against individuals or firms prior to April 2013 can still be found on the FSA's website via the following link:

<http://www.fsa.gov.uk/Pages/Library/Communication/Notices/index.shtml>

- The website of the Upper Tribunal provides information about cases in which our decision to take enforcement action has been referred to the Tribunal. See:

<http://www.tribunals.gov.uk/financeandtax/Decisions/Financial.htm>

Our policy of publicly commenting on whether an investigation has or has not been carried out is set out in the FCA's Enforcement Guide (EG); see in particular EG 6 on Publicity. This may be found on the FCA website through the following link:

http://media.fshandbook.info/Handbook/EG_FCA_20141212.pdf

Further information on the enforcement process, including case selection, can be found at http://media.fshandbook.info/Handbook/EG_Full_20141212.pdf.

Yours sincerely

Information Access team
Financial Conduct Authority

Your right to complain under the FoI Act

If you are unhappy with the decision made in relation to your request, you have the right to request an internal review. If you wish to exercise this right you should contact us within three months of the date of this response.

If you are not content with the outcome of the internal review, you also have a right of appeal to the Information Commissioner at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF. Telephone: 01625 545 700. Website: www.ico.org.uk

Annex A

"Five requests received on 11 May 2016 and aggregated:

- 1. In the last five years how many times have you had to investigate, Lloyd's, bank of Scotland or Birmingham midshires for any reason.*
- 2. In the last five years have you investigated, Lloyd's the Bank of Scotland, Birmingham Midshires for failing to keep adequate records.*
- 3. In the last five years have investigations in Lloyd's, Bank of Scotland, Birmingham Midshires led to criminal proceedings.*
- 4. In the last five years how many times have Lloyd's, Bank of Scotland plc, Birmingham Midshires been censured for any reason.*
- 5. In the last five years how many times have Lloyd's, Birmingham Midshires, Bank of Scotland been fined following your investigation and the amounts."*

Annex B

- **General right of access to information held by public authorities**

Under section 1(1)(a) of the Act, any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request. If the public authority holds information of the type specified in the request, the person requesting the information is entitled under section 1(1)(b) of the Act to have the information communicated to them. The rights in section 1(1)(a) and (b) are subject to a number of exclusions and exemptions.

- **Section 31 (Law enforcement)**

The qualified exemption in section 31(1)(g) of the Act applies because disclosure of information relating to the number of responsive investigations the FCA has conducted or is conducting would, or would be likely to, prejudice the exercise by the FCA of functions specified in section 31(2) of the Act.

In particular, we believe that paragraphs (b) and (c) of sub-section 31(2) are engaged. We consider that disclosure would, or would be likely to, prejudice:

- the purpose of ascertaining whether any person is responsible for conduct which is improper, and
- the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

To the extent that we are investigating the firms to which you refer (which may, or may not, be the case in this instance), disclosure of information which confirms or denies such investigations has the potential to mislead and prejudice the financial markets and consumers, because either misconduct or a clean bill of health may be inferred incorrectly from our response.

This could also lead to speculation which could hinder and prejudice the progress of any current and/or future FCA enquiries, considerations and/or action. It could also affect the brand and reputation of the market in the absence of due process having been followed - i.e. in the absence of any formal public announcement and without the market having had the opportunity to comment.

This exemption is qualified and we have balanced the public interest for and against disclosure as required by the Act.

For disclosure

- There is a strong public interest in favour of transparency and in the public being reassured about the effectiveness of our regulatory approach.
- Disclosure of the information would demonstrate how we respond to matters arising within the sector we regulate and would enable regulated firms and their senior management to better understand why and how we make decisions.

- This, in turn, would facilitate comments on the FCA's regulatory and supervisory approach.

Against disclosure

- There is a strong public interest in the FCA being able to carry out its functions in the most effective manner possible. Premature or *ad hoc* disclosure relating to any investigation or enforcement action could lead to widespread speculation. This, in turn, could hinder and prejudice the progress of any current and/or future FCA enquiries, considerations and/or action.
- Disclosure could also affect the brand and reputation of the relevant markets and/or entity in the absence of due process having been followed – i.e. in the absence of any formal public announcement and without the relevant markets and/or entity having had the opportunity to comment.
- Public disclosure of this information could undermine the FCA's credible deterrence approach and hence its ability to meet its market integrity objective. This, in turn, could seriously undermine the FCA's functions.

On this occasion we have concluded that the balance of the public interest is in favour of maintaining the exemption under section 31 of the Act, for the reasons set out above.

- **Section 43 (Commercial interests)**

Section 43 of the Act provides that an exemption applies if the disclosure of responsive information would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it) mentioned in section 43(2).

Were it to be the case that we have conducted, or are conducting, any investigations into the firms in question, confirmation of this fact could lead to unfair or unjustified adverse comment and speculation in connection with issuers, particularly where certain issuers are known or suspected to have been the subject of complaints. This could affect the brand and reputation of the firms involved where speculation is misplaced or in the absence of due process having been followed - i.e. in the absence of any formal finding of misconduct and without the issuer having had the opportunity to comment. Any loss of confidence can have serious, adverse consequences for these firms and its stakeholders, including employees, investors and creditors.

There is a strong public interest in legitimate commercial interests of firms and individuals not being undermined. This is unless and until such time as there has been any formal finding of misconduct, following a full investigation and details of any such investigation are permitted to be made public under FSMA.

Section 43 is a qualified exemption and therefore we have balanced the public interest for and against disclosure as required by the Act. The factors in favour of and against disclosing information are identical to those set out for section 31 above. Therefore in our view the public interest lies against disclosure for the reasons set out above.

- **Section 21 (Information reasonably accessible to the applicant by other means)**

To the extent that we hold publicly available information, we are not required to provide this under the exemption contained in section 21 of the Act as it is information which is reasonably accessible to you by other means.

Section 21(2)(b) states that information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request whether free of charge or on payment. Some of the information you have requested is reasonably accessible under this provision as, under section 391(4) FSMA, the FCA is obliged when giving a decision or final notice to publish such information about the matter as we consider appropriate.