

Telephone: 020 7066 8080  
Email: [foi@fca.org.uk](mailto:foi@fca.org.uk)

(By email)

4 April 2018

Our Ref: FOI5654

Dear

**Freedom of Information: Right to know request**

Thank you for your request under the Freedom of Information Act 2000 (the Act) dated 7 March 2018 for the following information:

*"I would like to know how many data breaches have been reported to you by companies you regulate for the calendar years 2015, 2016 and 2017. If possible I would like the data split by month and sector."*

Your request has now been considered and the relevant information is attached within Annex A.

Yours sincerely,

**Information Disclosure Team**



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](http://www.ico.org.uk)

## **Annex A**

- **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) to have the information communicated to them. The rights in section 1(1)(a) and (b) are, however, subject to a number of exclusions and exemptions, including the following:

- **Section 40 (Personal Information)**

Section 40(5)(b)(i) of the Act provides that the duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of section 40(2) if the confirmation or denial that would have to be given to meet the FCA's duty under the Act would itself contravene any of the principles in the Data Protection Act 1998.

We have applied this exemption because the confirmation or denial that would have to be given to satisfy your request would itself entail the disclosure of personal data relating to the mentioned individual, which would breach data protection Principle 1. In particular, it would not be lawful or fair to the individual concerned, who would not have had any expectation that their personal data would be disclosed in such circumstances.

- **Section 31 (Law enforcement)**

The qualified exemption in section 31(1)(g) and 31(2)(c) of the Act applies because, disclosure of the information requested would, or would be likely to, prejudice the exercise by the FCA of its functions for the purposes of ascertaining whether circumstances exist or may arise which would justify regulatory action in pursuance of any enactment.

Section 31 is a qualified exemption and therefore we have balanced the public interest for and against confirmation/denial, as required by the Act.

*Against maintaining the exclusion of the duty to confirm or deny:*

- There is a strong public interest in favour of transparency, and in the public being aware of any enquiries, considerations or actions we may (or may not) be taking in relation to the markets and/or firms and/or individuals who are, or may be, operating in the financial services industry.
- Disclosure of the information (if it were to exist) would reassure the public about the effectiveness of the regulatory approach taken by the FCA, and demonstrate how the FCA responds to matters arising within the sector it regulates.

- Disclosure would also provide information (if it were to exist) to consumers to assist them in making decisions about their dealings or potential dealings with the markets, firms and individuals that are, or may be, operating in the financial services industry.

*In favour of maintaining the exclusion of the duty to confirm or deny:*

- There is a strong public interest in the FCA being able to carry out its functions in the most effective manner possible. Confirmation or denial that we hold information falling within the scope of the request, 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 the mere fact that we hold or do not hold information falling within the scope of the request.
- In particular, this could also lead to widespread 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.
- Confirmation or denial that we hold the information (which may or may not be the case) could, in addition, 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.

Having balanced the public interest, for the reasons set out above, we are satisfied that overall the balance of the public interest in this case comes down in favour of maintaining the exclusion of the duty to confirm or deny under section 31(3); and in neither confirming nor denying that we hold any information that falls within the scope of your request.

- **Section 43 (Commercial interests)**

Section 43(3) of the Act provides that the duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it) mentioned in section 43(2).

The commercial interests of the mentioned individual could be harmed by confirming whether or not we hold the information requested. Were it to be the case (which we cannot confirm) that we hold any of the information requested, a confirmation that this was the case could lead to unfair or unjustified adverse comment and speculation in connection with the individual involved and any firms they may have been related to. This could affect the brand and reputation of the relevant individual and firms in the absence of due process having been followed - i.e. in the absence of any formal finding of misconduct and without the individual or firms having had the opportunity to comment. Any loss of confidence could have serious, adverse consequences for the individual and firms, as well as their 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 (which may or may not be the case in this instance) 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 confirmation/denial, as required by the Act.

*Against maintaining the exclusion of the duty to confirm or deny:*

- There is a strong public interest in favour of transparency, and in the public being aware of any enquiries, considerations or actions we may (or may not) be taking in relation to the markets and/or firms and/or individuals who are, or may be, operating in the financial services industry.
- Disclosure of the information (if it were to exist) would reassure the public about the effectiveness of the regulatory approach taken by the FCA, and demonstrate how the FCA responds to matters arising within the sector it regulates.
- Disclosure would also provide information (if it were to exist) to consumers to assist them in making decisions about their dealings or potential dealings with the markets, firms and individuals that are, or may be, operating in the financial services industry.

*In favour of maintaining the exclusion of the duty to confirm or deny:*

- There is a strong public interest in the FCA being able to carry out its functions in the most effective manner possible.
- Confirmation or denial that we hold information falling within the scope of the request, 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 the mere fact that we hold or do not hold information falling within the scope of the request.
- This could also lead to widespread 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.

Having balanced the public interest for and against maintaining the exclusion of the duty to confirm or deny, as required by the Act, in this case, in our view the public interest lies in favour of maintaining the exclusion for the reasons set out above.