

Email:       foi@fca.org.uk

By email

20 September 2018

Our Ref: FOI5900

Dear

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

Thank you for your request under the Freedom of Information Act 2000 ("the Act"), dated 24 July 2018, for the following information:

*"I am seeking further information on letters sent by the FCA investigating adviser training, competence and recruitment records for staff at financial advice firms. These letters were sent around March, as confirmed by the FCA and referenced in the following article.  
<https://www.moneymarketing.co.uk/fca-probes-adviser-training-competence-letter-firms/>*

*Please provide the following information:*

- 1. A copy of the letter sent by the FCA on adviser training, competence and recruitment records for staff.*
- 2. The number of letters that were sent to financial advice firms with these questions.*
- 3. How the FCA identified the firms it would send the letters to.*
- 4. Any deadlines for returning the information, and how many advice firms met and missed these deadlines respectively.*
- 5. Any results, in an anonymised format, gained from the response.*
- 6. Any additional work the FCA has or will be conducting on the basis of these results."*

When we wrote to you previously, we indicated that additional time was needed to consider your

request, as a decision had not yet been reached on the balance of public interest in respect of the information you have requested. This exercise has now been conducted and we will respond to each point in turn.

- 1) I can confirm that as part of our on-going supervision we have contacted a number of financial advice firms to gain a better understanding of their procedures when recruiting advisers and the systems and controls they have in place to monitor and oversee the quality of their advice. However, we cannot disclose a copy of the letters that were sent to these firms as we are of the view the information they contain is exempt from disclosure under section 31(2) (Law enforcement) of the Act.

In terms of the application of the qualified exemption in section 31, we are satisfied that the public interest in favour of disclosure is outweighed by the public interest in maintaining the (relevant) exemptions. For a detailed explanation as to why this exemption applies, please refer to Annex A below.

- 2) 40 firms
- 3) We identified the firms the FCA would write to through analysis of information and data we would normally rely on for the supervision of firms. This includes, but is not limited to, complaints data, Financial Ombudsman Service's awards and Financial Services Compensation Scheme's (FSCS) claims. While we hold a record of the information and data used to identify the firms written to, we cannot provide this information to you. This because the data and information you have requested relates to the business or other affairs of the firm which was received by the FCA for the purposes of, or in the discharge of, its functions under the Financial Services and Markets Act 2000 (FSMA) and which is not in the public domain. Therefore, we consider that this information is exempt from disclosure under section 44 (Prohibitions on disclosure) of the Act for the reasons set out in Annex A.

Further, we are of the view that analysis of the information and data is exempt from disclosure under section 31(2) (Law enforcement) of the Act.

In terms of the application of the qualified exemption in section 31, we are satisfied that the public interest in favour of disclosure is outweighed by the public interest in maintaining the (relevant) exemptions. For a detailed explanation as to why this exemption applies, please refer to Annex A below.

- 4) We gave the firms two weeks to respond. Firms that experienced difficulties complying with our timescale were provided an extension, where reasonable. Three of the 40 firms missed the deadline and had to be contacted before they supplied the information
- 5) This exercise has not yet been completed and we are still analysing the information received.
- 6) Our work is ongoing and we have not yet concluded what further work may be needed. Any further work would be fed back and followed up on a firm-specific basis as part of our supervision of these firms.

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 31 (Law enforcement)**

The qualified exemption in section 31(1)(g) of the Act applies (for the purpose set out in 31(2)(c)) 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 which would justify regulatory action in pursuance of any enactment exist or may arise.

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 the regulatory approach taken by the FCA and disclosure of the information would demonstrate how the FCA responds to matters arising within the sector it regulates.*
- *There is a strong public interest in the public being aware of any enquiries, considerations or actions the FCA may be taking in relation to the markets, firms or individuals who are, or may be, operating in the financial services industry.*

- *Disclosure of the information would increase public awareness and understanding of decisions taken by the FCA.*

#### *Against disclosure*

- *There is a strong public interest in the FCA being able to carry out its functions in the most effective manner possible, and disclosure of this information has the potential to prejudice any work we may presently be doing, as well as our ability to carry out enquires effectively in the future because, for example, firms or third parties would be less willing to engage in dialogue with the FCA or provide information voluntarily to the FCA.*
- *We consider that the information discussed in some of the redacted material reveal to the public details of the strategies and tactics used in our supervision of the firms we regulate. This could affect the way that the FCA interacts with firms, and ongoing and future investigations could be prejudiced.*
- *Disclosure of the information 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 that may be taken.*

On this occasion, we have concluded that the balance of the public interest is in favour of not disclosing the information, for the reasons set out above.

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

Section 44 of the Act provides that information is absolutely exempt if its disclosure (otherwise than under the Act) is prohibited by or under any enactment. Section 348 of FSMA restricts the FCA from disclosing “confidential information” it has received except in certain limited circumstances.

Confidential information for these purposes is non-anonymised information which relates to the business or other affairs of any person and which was received by the FCA for the purposes of, or in the discharge of, any of its functions under FSMA and which is not in the public domain. Disclosure of any such confidential information in breach of section 348 of FSMA is a criminal offence. The information requested would be confidential information, and as none of the limited circumstances in which s348 of FSMA does permit disclosure applies here, the FCA is prohibited from disclosing this information to you and the exemption conferred by section 44 of the Act applies.

Section 44 confers an absolute exemption which means that, if it is engaged, the Act does not require us to consider whether the public interest in disclosing the information outweighs the public interest in maintaining the exemption.