

Email: foi@fca.org.uk

(By email)

17 December 2018

Our Ref: FOI6007

Dear

Freedom of Information: Right to know request

We refer to your request under the Freedom of Information Act 2000 ("the Act") dated 10 September 2018, for the following information:

"I am seeking further information about a report which is referred into the FCA's board meeting minutes dated 23 and 24 May.

Please follow the link here to see the relevant board minutes I am asking for:
<https://www.fca.org.uk/publication/minutes/fca-board-23-and-24-may-2018.pdf>

18. Transfers from the British Steel Pension Scheme – the FCA response

18.1 The Board considered the paper which reflected on the work undertaken by the FCA in response to the risk of harm to members of the British Steel Pension Scheme (BSPS) following its restructure. In considering the paper the Board noted learnings from that work which could have wider application across the FCA. The Board welcomed the "lessons learned" spirit with which the paper had been prepared and considered that this approach should be adopted more widely across the FCA.

In 18.1 it says the "Board considered the paper which reflected on the work undertaken by the FCA in response to the risk of harm to members of the British Steel Pension Scheme (BSPS) following its restructure".

Would it be possible to get a copy of the report if you redact the information relevant to third parties?"

In our emails of 8 October, 5 November and 3 December 2018, we 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.

I can confirm we hold the information you have requested, which is contained in the attached Annex A. However, we are unable to disclose some of this information to you as disclosure would, or would be likely to, prejudice the exercise by the FCA of its functions as set out under subsection (2)(c), by virtue of subsection (1)(g) of the Act. Therefore,

some of the information you have requested is exempt from disclosure under section 31 (Law enforcement) of the Act.

In addition, we consider that disclosure of some of this information would likely to prejudice the commercial interests of the parties to whom the information relates. As a result, we are prohibited from disclosing it to you under section 43 (Commercial interests) of the Act.

Further, some of the information is (or contains) confidential information as defined in section 348 of the Financial Services and Markets Act 2000 ("FSMA"). As a result, we are prohibited from disclosing the information under section 44 (Prohibitions on disclosure) of the Act.

Also, some of the information contained in Annex A has been redacted as we are of the view that the exemption in section 40(2)(b) (Personal information) applies.

Finally, as it is our intention to publish some of the information you have requested in the future, we are not obliged to provide it to you now under section 22 (Information intended for future publication) of the Act.

For a more detailed explanation of why these exemptions apply, please see Annex B below.

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 40 working days 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

Yours sincerely

Information Disclosure Team
Financial Conduct Authority

Annex B

- **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.
- Disclosure of the information would demonstrate how we respond to matters arising within the markets we regulate and would enable regulated firms to better understand why and how we make decisions on regulatory matters.
- Disclosure would also provide the public with information to assist 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 could lead to notifying the public of confidential work carried out by the FCA.
- Disclosure of the information could lead to further speculation which, in the absence of any further background information, could be taken out of context and could lead to the wrong conclusions being drawn in respect of our decision-making processes.
- The information is part of a wider communication of the activity and outcomes during the defined benefit pensions project phase 3. This will be published late November/early December detailing the actions taken as a result.

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(2) of the Act provides that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The commercial interests of the firms captured in your request may be harmed in several ways as disclosure of the information requested would be likely to lead to further comment and speculation about them. This would or would be likely to harm the firms' brands and so harm their commercial interests as well as that of their stakeholders, including their employees. As there is no routine public disclosure of firms' dealings with the FCA, ad hoc public disclosure under the Act would be likely to attract a disproportionate amount of attention to the firms concerned.

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

For disclosure:

- Disclosure of the information would reassure the public about the effectiveness of the regulatory approach taken by the FCA, and demonstrate how the FCA responds to Enforcement and supervisory matters within the sector it regulates.
- Disclosure would also provide information to consumers to assist them in making decisions about their dealings or potential dealings with firms and individuals that are, or may be, operating in the financial services industry.

Against disclosure:

- Disclosure could lead to widespread speculation which could affect the firms' brands and reputations in the market in which they operate, in the absence of due process having been followed - i.e. in the absence of any formal public announcement and without the firms having had the opportunity to comment.
- It is strongly in the public interest that the FCA has open and candid exchanges of information with the firms it regulates, regardless of the commercial sensitivity of the information in order to be able to fulfil its regulatory duties. If this information was to be disclosed, firms may not be as open with the FCA in the future. This will then in turn affect how the FCA can regulate its firms.

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(1)(a) 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 (none of which apply here).

Confidential information for these purposes is defined as 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 its functions under FSMA and which is not in the public domain.

This information is information which relates to the business affairs of the firms concerned and which was received by the FCA for the purpose of carrying out our regulatory functions so falls within section 348 of FSMA. Consequently the FCA is prohibited from disclosing it to you.

Disclosure of any such confidential information is in breach of section 348 of FSMA and is a criminal offence.

Section 44 is an absolute exemption so it is not necessary to balance the public interest for and against disclosing the information.

- **Section 40 (Personal information)**

To the extent that the information that we hold may contain personal data about individuals, section 40(2)(b) of the Act provides that "Any information to which a request for information relates is also exempt information if ... either the first or second condition below (see sections 40(3) and 40(4) of the Act) is satisfied".

We have applied this exemption because the first condition (as stated in section 40(3) of the Act) is satisfied. The information you have requested comprises the personal data of an individual other than yourself which, if disclosed, would breach the requirement of the General Data Protection Regulations ("GDPR") including the data protection principles of Article 5 and the Data Protection Act 2018 ("DPA")

In particular, it would be a breach of the first data protection Principle as set out in Article 5 of the GDPR, to disclose such information, as it would not be necessary or fair to the individual concerned, or lawful, where none of the conditions in Article 6(1) of the GDPR have been met. The individual concerned has not given his consent for his personal details to be made public and the release of such information may be detrimental to the individual himself.

In line with the FCA's policy, the information that is redacted under Section 40 usually consists of the names of current FCA staff below management level and their direct FCA telephone numbers, as well as the names and telephone numbers of former FCA staff, if these are not already in the public domain.

Section 40 is an "absolute" exemption, and so it is not necessary to consider the public interests for and against disclosure of the information falling within this exemption.

- **Section 22 (Information intended for future publication)**

Section 22 of the Act provides that information is exempt if it is held with a view to its future publication at some future date. Section 22 is a qualified exemption and is subject to the public interest test. As such we have considered the factors for and against disclosure as follows.

For disclosure

- Disclosure would increase public awareness of this information prior to its publication.

Against disclosure

- We do not consider it to be in the public interest to release this information in advance of publication as disclosure of this information in its current format could be taken out of context. What we are considering to publish in the near future will provide the full context of the work completed.

Overall, we consider that the public interest lies against disclosure for the reasons above, and we do not consider it to be in the public interest to release the information in advance of publication.