

Email: foி@fca.gov.uk

9 November 2018

Via Email

Our Ref: FOI6033

Dear

Freedom of Information: Right to know request

Thank you for your request under the Freedom of Information Act 2000 ("the Act"), dated 5 October 2018, for the following information:

"The Research commissioned by the FCA on the currency exchange transfer market [referred to in footnote 35 of CP18/21]"

In our email of 2 November 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.

Your request has now been considered and I can confirm that we hold the information you are seeking, some of which is contained in the attached annexes A and B, which contain the pages 1 to 48 and 49 to 78 of the report, respectively.

Please note that we are of the view that the exemptions in section 44 (Prohibitions on disclosure) and section 31(2) (Law enforcement) of the Act apply. 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 exemption. Annexes A and B have therefore been redacted to remove any information which is exempt from disclosure under either of the above sections of the Act. In particular, pages 23, 24, 28, 29, 31 and 34 of annex A has been redacted in their entirety and have therefore not been included in the attached scan.

For a detailed explanation as to why these exemptions apply, please refer to Annex C below.

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

Annex C

- **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 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 91 of the Financial Services (Banking Reform) Act 2013 (FSBRA) restricts the FCA from disclosing "confidential information" it has received except in certain limited circumstances, under section 91(4) FSBRA, none of which applies 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 for the purposes of, or in the discharge of, any functions of the FCA under FSBRA and which is not in the public domain.

It is also possible for "received" information to be embedded within information created by the FCA and such information is also exempt from disclosure under section 44 of the Act. Consequently, the FCA is prohibited from disclosing to you any information which we received while performing our regulatory duties and which is not in the public domain or where the relevant consents have not been obtained.

As mentioned, some of the information that we hold and which is within the scope of your request has been received for the purpose of carrying out our regulatory functions, so falls within section 91 FSBRA. Disclosure of such confidential information in breach of section 91 of FSBRA is a criminal offence.

This exemption is an "absolute" exemption, and so it is not necessary to balance the public interest for and against disclosing the information.

- **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 applies to your request as disclosure would, or would be likely to, harm our function of "ascertaining" or monitoring compliance with our regulatory requirements over time (as opposed to during an ongoing investigation), as firms or

third parties would be less willing to engage in dialogue with the FCA or provide information voluntarily to the FCA, which would make it hard to carry out our functions.

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

Reason 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. Disclosure of the information requested 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 would also provide information to consumers to assist them in making decisions about their dealings or potential dealings with the firms and individuals that 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.

Reasons 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. This is because firms or third parties would be less willing to engage in dialogue with the FCA or provide information voluntarily to the FCA, which would make it hard to carry out our functions.
- Should the information be disclosed, it could lead to speculation on the formulation of our policy regarding the regulation of the currency exchange transfer market. Further, in the absence of any further background, the information, if disclosed, could be taken out of context and could lead to the wrong conclusions being drawn on our decision-making process.
- Public disclosure of this information would hugely undermine the FCA's credible deterrence approach and hence its ability to meet its market integrity objective. It would also likely have an inhibiting effect on any future recommendations made to the FCA Board regarding the formulation of policy. This, in turn, could seriously undermine the FCA's regulatory function.
- We consider that the information discussed in some of the withheld material would 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.

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.