

Email:       foi@fca.org.uk

By E-mail

20 March 2019

Our Ref: FOI6198

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

We refer to your request under the Freedom of Information Act 2000 ("the Act"), dated 10 January 2019, for the following information:

*"There has been a reported instance in Germany in 2017 of Signalling System 7 (SS7) being used to steal two factor authentication codes used in mobile banking, resulting in theft from bank accounts (see [https://www.the-register.co.uk/2017/05/03/hackers\\_fire\\_up\\_ss7\\_flaws](https://www.the-register.co.uk/2017/05/03/hackers_fire_up_ss7_flaws)). I would like details of any similar instances involving financial organisations you regulate in the UK, or reported to you by organisations you regulate."*

Your request was clarified on 24 January 2019 in the form of the questions set out directly below. On 21 February 2019, we advised that more time was required to balance the "public interest" arguments for and against disclosure in relation to the information you are seeking. We have now considered your request in full and our response is set out below.

*"I would like the following details, if available, please:*

- *whether there have been any such instances involving financial organisations you regulate, or reported to you by organisations you regulate.*

**Yes, there have been reported incidences from firms regulated by the FCA.**

- *how many instances*

**Four firms have notified the FCA of such incidences.**

- *when did they occur*

**The FCA was notified in respect of all four incidents in November 2018.**

- *which organisations were involved (financial organisations and/or telecommunications companies, if known and releasable, but if not releasable, I would still appreciate the other details)*

**We are of the view that disclosure of such details would result in the disclosure of "confidential information" as defined in s348 of the Financial Services and Markets Act 2000 ("FSMA"). We are therefore prohibited from disclosing this information to you under section 44 (Prohibitions on disclosure) of the Act.**

**Further, we are also of the view that disclosure of this information would be likely to prejudice the commercial interests of any firms involved were it to be made public, and therefore the exemption at section 43 (commercial interests) of the Act applies for the reasons set out in Annex A below**

- *how was any such incident discovered/reported*

**We are of the view that disclosure of such details would, or would be likely to, prejudice the exercise by the FCA of its functions for one or more of the purposes set out in subsection 31(2) of the Act. Therefore, we consider that section 31 (Law enforcement) of the Act applies.**

- *how much money was stolen."*

**We can confirm that based on the information reported to the FCA, at the time of notification, a total of £1,169,758.82 was stolen in relation to the four instances mentioned above in response to your second question.**

For further details on why these exemptions apply, please refer to Annex A 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 the Information Disclosure Team 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](http://www.ico.org.uk)

Yours sincerely

**Information Disclosure Team**



## 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 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 the information requested would, or would be likely to, prejudice the exercise by the FCA of its functions for the purposes of:

- ascertaining whether any person has failed to comply with the law;
- ascertaining whether any person is responsible for any conduct which is improper, and
- ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

This exemption applies to point 5 of your request in that such information, if disclosed now would, or would be likely to, prejudice any future reports of these type of incidents to the FCA. 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 of the information could prejudice our ability to do this as it may cause firms to act in a way that circumvents our regulatory process/es.
- 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.

- Disclosure could also affect the brand and reputation of the relevant markets and/or entities 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 entities having had the opportunity to comment.

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).

This exemption applies to point 4 of your request. The commercial interests of the firms in question 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, in turn, would or would be likely to harm the firms' brand 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 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' brand and reputation 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. Disclosure of the information could lead to firms being less willing to co-operate with the regulator on work of a similar nature.

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

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

Section 44(1)(a) of the Act provides that information is absolutely exempt from disclosure 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 non-public and 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, its functions under FSMA and which is not in the public domain.

This comprises any information which has been received by the FCA from a firm/individual while performing its regulatory duties and which is not in the public domain.

The information requested in point 4 of your request amounts to confidential information which, when received by the FCA, would have been received in the discharge of its functions under FSMA. Disclosure of any confidential information, without the consent of the provider of the information, and, if different, the consent of the person to whom the information relates would be a breach of section 348 of FSMA and would be a criminal offence.

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