

22 May 2020

Our Ref: FOI7231

Freedom of Information: Right to know request

Thank you for your request of 6 April 2020, concerning "*individuals who currently come under the Senior Managers Regime*".

We wrote to you on 6 May 2020 to explain that we believed the qualified exemption under section 31 of the Freedom of Information Act 2000 (FOIA) applied to some of the requested information and that we needed more time to balance the public interest in maintaining the exemption. We have now completed this exercise and our decision is outlined below. For ease of reference we will respond to each point of your request in turn.

A. Please provide an estimate of the number of individuals who currently come under the Senior Managers Regime.

A total of 69,805 persons currently approved to perform Senior Management Regime functions (as of 11/05/2020).

The extension of the Senior Managers Regime to solo-regulated firms in December 2019 has increased the number compared to last year.

B. As at the date of the FCA's response to this request, how many enforcement investigations does the FCA have open into:

- 1) Individuals who hold Senior Management Functions [SMF]. Please also provide a breakdown of this number to show which Senior Management Functions are held by individuals under investigation. Please also provide a general description of the nature of these investigations (e.g. lack of fitness/propriety or culture/governance);**

A total of 27 investigations are currently open into individuals who currently hold a SMF, held a SMF when the investigation commenced, or whose SMF was approved during the duration of investigation.

The breakdown of the relevant SMFs involved is contained in the table 1.

A general description of the nature of these investigations is contained in the table 2.

Please note, any figures lower than five have been redacted, as we believe their disclosure would breach the requirements of the General Data Protection Regulations ("GDPR") including the data protection principles of Article 5 and the Data Protection Act 2018 ("DPA"). This is because there is a risk that revealing such low figures could lead to the identification of the individuals concerned. For this reason, we have concluded that this information is exempt from disclosure under section 40 (Personal data) of FOIA. A more detailed explanation of why this exemption applies can be seen in Annex B.

Table 1:

Senior Manager Functions	No.
SMF19 Head of Overseas Branch	
SMF2 Chief Finance	
SMF16 Compliance Oversight	5
SMF21 EEA Branch Senior Manager	
SMF1 Chief Executive Function	5
SM27 Partner	
SMF18 Other Overall Responsibility	
SMF24 Chief Operations	
SMF17 Money Laundering Officer	
SMF3 Executive Director	10
SMF7 Group Entity Senior Manager	
SMF8 Credit Union Senior Manager	
Total	37*

**Some Senior Managers also held multiple SMFs, so 37 SMFs held by 27 Senior Managers*

Table 2:

Primary Issue	No.
Money Laundering controls	6
Individual - Senior Manager fallings	4
Market Manipulation	
Individual - Competence & Capability	
Individual - Honesty Integrity & Reputation	5
Advice/Pensions	
Conflicts of Interest	
Systems and Controls	

AR Monitoring & Oversight	
Total	27

2) How many investigations commenced against individuals who hold Senior Management Functions have been discontinued in the past 12 months.

We are unable to disclose this information for the same reasons outlined at point **B1**. In addition, we are exempt from the duty to disclose this information under section 31 (Law enforcement) of FOIA. This is because we believe that making this information public would be likely to prejudice the exercise by the FCA of its functions for the purposes set out in Annex A. Therefore, the information is exempt from disclosure under section 40 (Personal data) of FOIA. Annex A contains a detailed explanation of why this exemption applies.

3. Individuals who fall within the Certification Regime. Please provide a general description of the nature of these investigations

A total of 13 investigations are currently open into individuals who fall within the Certification Regime. The table below contains a general description of the nature of these investigations. Please note, for the reasons explained at point **B.1** above, any figures lower than five have been redacted.

Table 3

Primary Issue	No.
Complaints handling	
Insider dealing (opportunistic)	
Market Manipulation	5
Systems and Controls	
Conflicts of Interest	
Advice - Pensions	
Total	13

4. Individuals for breaches of the COCON rules who are not Senior Managers or covered by the certification regime.

We are unable to disclose this information for the same reasons outlined at point **B2**.

5. Individuals who fall within the Approved Persons Regime.

A total of 118 investigations are currently open into individual who fall within the Approved Persons Regime.

Your right to complain under FOIA

If you are unhappy with this response, you have the right to request an internal review. To do so, please 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 by phone or on their website at:

Telephone: 0303 123 1113

Website: 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, however, subject to a number of exclusions and exemptions, including the following:

- **Section 40 (Personal Information)**

To the extent that the information we hold may contain personal data about an individual, section 40(2)(b) of the Act provides that "*[a]ny 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) would be satisfied if the information requested comprises the personal data of individuals other than yourself and 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"). We consider that, where the numbers are very low, disclosure could lead to the identity of the individuals concerned. They would not have had the expectation that this information would be disclosed under these circumstances and therefore disclosure would not be necessary, or lawful, where none of the conditions in Article 6(1) of the GDPR have been met.

This 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 FOIA applies to point B.2 and B.4 of this request because disclosure of the information requested would, or would be likely to, prejudice the exercise by the FCA of its functions for the following purposes:

- the purpose of ascertaining whether any person has failed to comply with the law,
- the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

As this exemption is subject to the public interest test, we have considered relevant factors in favour, and against, disclosing information as required by FOIA.

For disclosure

- There is a strong public interest in favour of transparency and in the public being reassured about the effectiveness of the FCA's approach.
- Disclosing the information would demonstrate how we respond to matters arising in the markets we regulate. It would also enable stakeholders (including regulated firms) to better understand why and how we make decisions on regulatory matters.
- Disclosure would also provide the public with information to help 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 relating to point B.2 and B.4 of your request could prejudice our ability to do this, as it may cause firms to act in a way that circumvents our regulatory processes.
- Disclosing this information could lead to speculation which, without any further context, would be likely to be taken out of context and lead to the wrong conclusions being drawn about our decision-making processes.

On the facts of this particular request we have concluded that the balance of the public interest is in favour of applying the exemption under section 31 of FOIA.