

13 August 2020

Our Ref: FOI7471

Freedom of Information: Right to know request

Thank you for email of 16 July 2020 about notifications of data breaches reported by retail banks and payments to the FCA.

We are handling your email as a request for information under the Freedom of Information Act 2000 (FOIA). We have answered each of your questions in turn:

Please note we have defined 'data breach' as 'a confirmed incident in which the confidentiality of company or personal data is compromised or breached'. This does not mean that in every case personal/company data was exfiltrated/stolen. Also we are only sighted on reportable data breaches that are notified to us. The Data Protection Act 2018 does not require firms to report data breaches to us and as such we are not obligated to report data breaches about firms to the Information Commissioners Office; this is the responsibility of the firms.

1. How many notifications of data breaches were reported by retail banks and payments to the FCA between 01/07/2019 and 31/12/2019?

We received 4 notifications of data breaches from retail banks and payment services firms between 01/07/2019 and 31/12/2019.

2. How many notifications of data breaches were reported by retail banks and payments to the FCA between 01/01/2020 and 30/06/2020?

We received 6 notifications of data breaches from retail banks and payment services firms between 01/01/2020 and 30/06/2020.

3. How many notifications of data breaches were reported by retail banks and payments to the FCA in the calendar year of 2019?

The FCA received 6 notifications of data breaches from retail banks and payment services firms in the calendar year of 2019.

4. How many notifications of data breaches were reported by [named firms] between 01/07/2019 and 30/06/2020? (please note: the total amount of notifications of all these banks is fine, as opposed to a breakdown for each bank)?

We have now considered your request. We can neither confirm nor deny whether we hold the information you have requested.

Any information we may hold would be the business affairs of the firm mentioned while undertaking our regulatory functions under the Financial Services and Markets Act (FSMA).

Section 348 of FSMA prevents us from disclosing 'confidential information' we have received except in certain limited circumstances (none of which would apply here). Under section 44 (Prohibitions on disclosure) of FOIA we cannot confirm or deny whether we hold information as this would be disclosing 'confidential information'.

For a detailed explanation of this, please see Annex A.

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

Annex A

- **General right of access to information held by public authorities**

Anyone requesting information from a public authority is entitled to be informed in writing whether it holds the information described (this is under section 1(1)(a) of FOIA). If the public authority does hold it, the person requesting it is entitled to have the information communicated to them, under section 1(1)(b). However, there are exclusions and exemptions to these rights.

Section 44 is one of them. It is an absolute exemption which means that if it is engaged, a weighing of the public interest for and against maintaining the exclusion of the duty to confirm or deny whether the information is held by a public authority is not required.

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

A public authority does not have to confirm or deny whether it holds the information requested if doing so is prohibited under another Act from FOIA.

Section 348 of FSMA prevents us from disclosing 'confidential information' we have received except in certain limited circumstances (none of which would apply here).

By 'confidential information' we mean:

- non-public and non-anonymised information which relates to the business or other affairs of any person
- and which the FCA (or its predecessor the FSA) received for the purposes of, or in the discharge of, its functions under FSMA which is not in the public domain

If we held information falling within the scope of your request it would be 'confidential information' which was received by the FCA in the discharge of its functions under FSMA. Disclosing such 'confidential information', without the consent of the provider of the information – and, if different, the consent of the person the information relates to – would breach section 348 of FSMA and would be a criminal offence.