

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 31 (Law enforcement)

Under section 31(3) we do not have to confirm or deny whether we hold the information requested if doing so 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.

Section 31 is a 'qualified exemption' so we have balanced the public interest for and against confirmation/denial, as required by FOIA.

Against maintaining the exclusion:

- There is a strong public interest in favour of transparency and in the public being aware of any enquiries, considerations or actions we may (or may not) be taking in relation to the markets and/or firms and/or individuals who are, or may be, operating in the financial services industry.
- Disclosure of the information (if it were to exist) would reassure the public about the effectiveness of the regulatory approach taken by the FCA, and demonstrate how the FCA responds to matters arising within the sector it regulates.
- Disclosure would also provide information (if it were to exist) to consumers to assist them in making decisions about their dealings or potential dealings with the markets, firms and individuals that are, or may be, operating in the financial services industry.

In favour of maintaining the exclusion of the duty to confirm or deny:

- There is a strong public interest in the FCA being able to carry out its functions in the most effective manner possible. Confirmation or denial that we hold information falling within the scope of the request would be likely to lead to widespread speculation which could hinder and prejudice the progress of any current and/or future FCA enquiries, considerations and/or action. It would also likely affect the brand and reputation of the market in the absence of due process having been followed - i.e. in the

absence of any formal public announcement and without the market having had the opportunity to comment.

- Confirmation or denial that we hold information falling within the scope of the request would also be likely to affect the way that we interact with the firms and individuals we regulate, make firms less willing to voluntarily share information with us, and so risk the need for the FCA to use its statutory information-gathering powers, which may lead to delays and disputes with firms when gathering information.