

## **Annex B**

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

Anyone making a request for information to a public authority is entitled to be told in writing by the public authority whether it holds the information the request describes. If the public authority does hold this information, the person requesting it has the right to have the information communicated to them. These rights, in section 1(1)(a) and (b) of FOIA, have some exclusions and exemptions.

#### **• Section 31 (Law enforcement)**

The qualified exemption in section 31(1)(g) of FOIA applies to 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.

This exemption applies because if we disclosed the information now, it would, or would be likely to, prejudice any such investigations or actions.

Since section 31 is a 'qualified exemption', we have considered relevant factors in favour and against disclosing the 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*

- In addition to the reasons given above, disclosing the information could lead to further speculation which, without any further background information, would be likely to be taken out of context and lead to the wrong conclusions being drawn about our decision-making processes.
- Disclosure would be likely to adversely affect the brand and reputation of the relevant markets and/or entities without due process having been followed – i.e. without any formal public announcement and without the relevant markets and/or entities having had the opportunity to comment.

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