

Annex C

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 36 (Prejudice to the effective conduct of public affairs)**

Under section 36(2)(b)(ii) and (c) of FOIA this exemption applies if, in the FCA's reasonable opinion, disclosing this information would be likely to restrict free and frank advice or views for the purposes of deliberation or would otherwise prejudice, or be likely to prejudice, the effective conduct of public affairs. This decision was taken by a Qualified Person – someone with in-depth knowledge of the information and its context. This letter explains why, in their opinion, the exemption applies, and it is not in the public interest for us to disclose this information.

To function effectively, the FCA, its staff and external stakeholders need to feel confident that sensitive information in the form of views that are freely exchanged for the purposes of deliberation will not be disclosed. If it is disclosed, this would seriously undermine the mutual trust that exists between the FCA and members of Parliament.

Section 36 has qualifications in favour, and against, disclosing information. We have to balance the public interest for and against disclosure as required by FOIA. The Qualified Person has considered the factors for and against disclosure as follows.

In favour of disclosure

- In favour of disclosure, it is in the public interest that information is generally available as to how the FCA and parliament share information and make decisions that are of importance to consumers and the wider regulatory regime.
- Disclosure of this information would also show the FCA to be an open and transparent organisation and would give greater transparency into the operation of the FCA and its relationship with members of parliament.
- Disclosure will promote accountability. If the public can see the basis on which we make decisions, they will be able to make better informed comment.

Against disclosure

- There is a strong public interest in a public authority such as the FCA being able to take a sound and considered approach to important topical issues. Disclosure of the requested correspondence could act as a deterrent to the free expression and constructive deliberation of senior officers with third parties on similar issues.
- Disclosure would be likely to lead to unwarranted speculation. The FCA needs space away from live public scrutiny, so that the decisions it makes are sound and well considered. Without a protected space for open and honest

discussion of the important and complex issues involved, decision-makers and external stakeholders could be discouraged from frank exchanges.

Overall, taking into account these factors, the Qualified Person is satisfied that we should give greater importance to protecting the FCA's ability to have full and open discussions on these matters, and so this exemption should apply.

- **Section 40 (Personal information)**

To the extent that the information that we hold contains personal data about individuals, section 40(2)(b) of FOIA provides that "*[a]ny information to which a request for information relates is also exempt information if the first, second or third condition listed below is satisfied.*"

We have applied this exemption because the first condition (as stated in section 40(3A) of FOIA) is satisfied. Some of the information you have requested comprises the personal data of individuals other than yourself which, if disclosed, would contravene any of the data protection principles.

In particular, it would be a breach of the first data protection Principle as set out in Article 5 of the UK GDPR, to disclose such information, as it would not be lawful or fair to the individual concerned to do so. This is because, 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 of the UK 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 44 (Prohibitions on disclosure)**

Section 44(1)(a) of FOIA states that information is absolutely exempt from disclosure if this is prohibited by law. Section 348 of FSMA restricts the FCA from disclosing 'confidential information' it has received in the course of carrying out its public function. FSMA allows exceptions to this in a few specific circumstances, but none of these apply to this request.

Confidential information here is defined as non-public and non-anonymised information involving a person's business or other affairs, which the FCA received in the course of carrying out its public function.

Some of the information you requested is confidential information under this provision. Disclosure of this information in breach of section 348 of FSMA would be a criminal offence.

Section 44 is also an 'absolute' exemption, and so it is not necessary to balance the public interest for and against disclosing the information.