

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 November 2022

**Public Authority:** Financial Conduct Authority (FCA)

**Address:** 12 Endeavour Square  
London  
E20 1JN

#### **Decision (including any steps ordered)**

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1. The complainant has requested information relating to Consultation Paper CP22/15. The FCA refused to disclose the requested information under section 44(1)(a) FOIA.
2. The Commissioner's decision is that the FCA has correctly applied section 44(1)(a) FOIA in this case.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 15 August 2022, the complainant wrote to the FCA and requested information in the following terms:

"I write with reference to Consultation Paper CP22/15. The FCA cite information provided by external stakeholders such as costs would be too high. As these statements cannot be made without any evidence please can you provide copies of the information used to support these claims from section 3.18 to 3.34.

For example, which insurers did the FCA speak to, and what did they say. How did the FCA calculate cost of deferred annuities would be too high?"

5. The FCA responded on 13 September 2022. It stated that the exemption at section 44(1)(a) FOIA was applicable in this case and refused to disclose the requested information on this basis.

6. Following an internal review the FCA wrote to the complainant on 14 October 2022. It upheld the application of section 44(1)(a) FOIA.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 3 November 2022 to complain about the way his request for information had been handled.
8. The Commissioner has considered whether section 44(1)(a) FOIA was correctly applied in this case.

### **Reasons for decision**

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9. Section 44(1)(a) of FOIA allows a public authority to withhold information whose disclosure, otherwise than under FOIA, is prohibited by or under another piece of legislation.

#### FCA's position

10. FCA has confirmed that it is prohibited from disclosing the information it holds within scope of the request as it constitutes 'confidential information' for the purposes of section 348 of the Financial Services and Markets Act 2000" (FSMA) which FCA received in discharging its public functions. Confidential information 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.
11. FCA said that if it were to disclose the requested information, without the provider's consent or the consent of the person the information is about (if different), it would be in breach of section 348 of FSMA. It confirmed that this would be a criminal offence.

#### Complainant's position

12. The complainant has said to the Commissioner that he "...understands the act prohibits personal information. But the information they rely upon is from respected insurance companies commenting on their views on dealing with compensation. Nothing specific about a personal. I also feel that this information could also have been provided in an anonymized format. This could tell us different insurer views without revealing the name of the company. It would also have allowed us to

see the calculations that the FCA cite that made deferred annuities too costly. On that point, I do not see how calculations reveal any personal or even company data.”

#### The Commissioner’s position

13. The Commissioner draws the complainant’s attention to his guidance on section 44 of FOIA and previous decision notices published on his website in which the Commissioner has explained the operation of section 44 and its interaction with FSMA, and has upheld FCA’s reliance on section 44(1)(a) – with section 348 of FSMA – in similar circumstances where requesters have sought information that FCA claims to be confidential.
14. Looking at the relevant provisions in FOIA and FSMA and applying them to the facts of this case, FCA will be a “primary recipient” of the requested information (the definition at section 348(5) of FSMA includes FCA).
15. The information will be ‘confidential’ as it relates to the affairs of the external stakeholders consulted by the FCA; it was clearly received by FCA for the purposes of/in the discharge of FCA’s functions; and it has not been made publicly available or framed as an anonymous summary/collection of information. Whilst in his complaint to the Commissioner the complainant has suggested that the information could be provided in an anonymised format, the request and request for internal review does not frame the request in such a way. Indeed the request directly asks which insurers the FCA spoke to.
16. FCA has said no gateways to disclosure apply, and the Commissioner’s guidance (following the Upper Tribunal) explains that if a public authority has decided that information should not be disclosed under a gateway “the Commissioner will only verify that the authority has made that decision, and not consider whether its decision was reasonable”.
17. Section 348(1) of FSMA provides that confidential information must not be disclosed by FCA without the consent of the person from whom FCA obtained the information and, if different, the person to whom the information relates. FCA referred to the issue of consent, stating that it would be a criminal offence to disclose the requested information without the required consent. The Commissioner considers that FCA is unlikely to have consent to disclose the information – in general third parties are unlikely to consent to FCA disclosing information it has obtained from them or about them in response to information requests under FOIA.

18. In summary, the Commissioner disagrees with the complainant's view that the requested information is not confidential under FSMA. The requested information will be "confidential information" under FSMA, and disclosure is prohibited. The Commissioner therefore considers that FCA was correct to cite section 44(1)(a) of FOIA.

## Right of appeal

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19. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
21. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed**.....

**Gemma Garvey**  
**Senior Case Officer**

**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**