

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 March 2024

**Public Authority:** Financial Conduct Authority  
**Address:** 12 Endeavour Square  
London  
E20 1JN

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to whistleblowing complaints. The Financial Conduct Authority ("the public authority") disclosed some information but withheld the rest, citing section 31 (law enforcement).
2. The Commissioner's decision is that the public authority was correct to withhold the remaining information under section 31(1)(g).
3. The Commissioner does not require further steps.

#### Request and response

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4. On 13 June 2023, the complainant wrote to the public authority and requested:

'In FOI9195 the FCA provided information on the number of whistleblowing reports it had received categorized as SYSC 18 in 2019, 2020 and 2022.

1) I would like the number for 2022 and also 2023 YTD. - If the whistleblowing reports categorized as SYSC18 are subcategorized (eg SYSC18.3.9 etc) please provide a breakdown.

2) In addition please tell me how many open investigations the FCA has resulting from these SYSC18 whistleblowing reports.'

5. The public authority responded on 11 July 2023. In response to part 1 of the request, it confirmed that in 2022 it received 36 whistleblowing concerns and in 2023 (to the date of the request) it received 22. It refused to disclose the information requested at part 2, citing section 31(1)(g) by virtue of section 31(2)(a) and (c).
6. The complainant requested an internal review on 30 August 2023. They raised concerns that the public authority had disclosed this information under FOIA previously<sup>1</sup>, therefore it should be disclosed on this occasion.
7. The public authority provided the outcome to its internal review on 2 November 2023. It upheld its previous position.

## Reasons for decision

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### Section 31 – law enforcement

8. Section 31 of FOIA states:

“(1) information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice –

g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2).

(2) The purposes referred to in subsection (1)(g) to (i) are:

a) the purpose of ascertaining whether any person has failed to comply with the law,

c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.”

9. The public authority regulates financial services firms and financial markets in the UK. It gets its regulatory powers from the Financial Services and Markets Act 2000<sup>2</sup> ('the Act').
10. Part 11 of the Act outlines the public authority's powers to gather information, with a view to investigating any concerns and ascertaining

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<sup>1</sup> [Information on whistleblowing reports for 2019 to 2021 - May 2022 | FCA](#)

<sup>2</sup> [Financial Services and Markets Act 2000 \(legislation.gov.uk\)](#)

whether the Act has been complied with. The public authority's enforcement handbook<sup>3</sup> outlines its approach to exercising the main enforcement powers given to it by the Act.

11. The public authority has explained to the complainant:

"Ad hoc disclosure of information relating to the FCA's dealings with individual firms/individuals could lead to speculation on the rationale behind any decisions that may be made on this subject such as a decision to use one supervisory tool over another. Further, in the absence of any further background, the information, if disclosed, could be taken out of context and could lead to the wrong conclusions being drawn on our decision-making processes."

12. The public authority hasn't explained how this speculation or these wrong conclusions would be likely to prejudice its own law enforcement activities, so the Commissioner isn't convinced by this argument.

13. The public authority is also concerned:

"In my view the harm to our function of "ascertaining" or monitoring compliance with our regulatory requirements from public disclosure of the withheld information would be likely to occur over time (as opposed to during an ongoing investigation)."

14. It has elaborated:

"If firms, individuals or other third parties became aware that information obtained or created as part of our regulatory functions may be disclosed under the Act, they may be less open and uninhibited in the exchanges with the FCA."

15. The Commissioner has reminded himself of the information that's being requested here. The public authority has disclosed the number of whistleblowing complaints that it received in 2022 and 2023. However, it refused to disclose how many of these complaints progressed to investigation.

16. The Commissioner has compared the information disclosed in response to this request, with the information disclosed in response to the previous request referred to in paragraph 6.

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<sup>3</sup> [EG 1 - FCA Handbook](#)

17. In its refusal notice of 11 July 2023, the public authority confirmed that:

“Please note that the ‘SYSC 18’ categorisation applied to whistleblowing disclosures encompass all firms where whistleblowers report detriment, rather than the population of firms that are in scope and subject to all SYSC 18 rules.”
18. The scope of these two requests, while both relating to whistleblowing complaints, are different. The previous request relates to whistleblowing complaints in general, whilst this request relates to whistleblowing complaints that meet the SYSC criteria.
19. In response to the first request, the public authority confirmed that there were 1179 whistleblowing complaints in 2019, 1075 in 2020 and 20125 in 2021. This is compared to the 36 whistleblowing concerns it received in 2022 and 22 in 2023 (that meet the SYSC criteria). These are much lower numbers.
20. In response to the first request, the public authority confirmed how many of the whistleblowing complaints progressed to investigation (59, 46 and 7). Whilst acknowledging it had provided some form of confirmation previously, it said this didn’t set a precedent and maintained its decision to withhold the requested information in this instance.
21. The Commissioner considers that although previous disclosures may have been made by a public authority, it does not set a precedent for future disclosures. Each request is considered on its own merits taking into account the circumstances at the time.
22. The Commissioner notes that the public authority has formal powers which it can use to compel an organisation to provide information or cooperate with any investigation.
23. However, the Commissioner also recognises that people or organisations can help investigations, particularly those falling within section 31(2), by voluntarily providing information, rather than being compelled to do so by the use of such powers. Generally, such investigations take less time and are more effective, when information is provided voluntarily.
24. The public authority has explained:

“In the interests of fairness the FCA considers that the conduct of those it regulates should generally remain private unless and until a final decision to take formal enforcement action has been reached and that even then it should not publish information if to do so would be “unfair”.”

25. The public authority is concerned that, if it confirmed how many of these whistleblowing concerns progressed to investigation, it could discourage organisations or individuals from having candid discussions with it as a regulator.
26. The Commissioner believes this is reasonable, especially taking into account the small numbers that have been disclosed in part 1 of the request. This will mean the number of whistleblowing concerns that have progressed to investigation will be even smaller.
27. With these small numbers, and the specific criteria the request relates to, comes the increased risk that either the Whistleblower, or the organisation to whom the complaint relates, will recognise themselves within the information disclosed in response to part 2. If this happens, individuals and organisations might become less likely to engage with the public authority. In turn, this would be likely to prejudice the public authority's ability to carry out its regulatory functions and ensure compliance with the Act.
28. The Commissioner is satisfied that the exemption has been engaged appropriately. Therefore, he'll go on to consider where the balance of the public interest lies.

## **The public interest test**

### **Arguments in favour of disclosure**

29. The public authority acknowledges there's a 'strong public interest in favour of transparency and in the public being reassured about the effectiveness' of its approach.
30. It also acknowledges that disclosure would demonstrate 'how we respond to matters arising in the markets we regulate.'
31. The public authority explained that 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.'
32. The Commissioner questions the extent to which this would occur, though he accepts that confirming how many whistleblowing complaints were deemed worthy of investigation would paint a picture of compliance with the Act in this sector for 2022-2023.

## **Arguments in favour of maintaining the exemption**

33. The public authority is argued that:

“There is a strong public interest in the FCA being able to carry out its functions in the most effective manner possible. Disclosure of the information would be likely to prejudice our ability to do this, as it would reveal the focus of the FCA’s regulatory strategies and techniques.”

34. Again, the Commissioner isn’t sure how, in isolation, the requested information would reveal the focus of the public authority’s regulatory strategies and techniques.

35. However, the public authority has repeated the arguments in paragraphs 22 – 25 and argued that this prejudice isn’t in the public interest.

36. The Commissioner acknowledges that, as the regulator of the Act, there is a strong public interest in allowing the public authority to carry out its regulatory activities as robustly and efficiently as possible.

## **The balance of the public interest**

37. In this instance, the Commissioner has determined that the balance of the public interest lies in maintaining the exemption.

38. The public authority has explained:

“The FCA already makes available substantial amount of information to enable firms, consumers, and out key stakeholders to understand how the FCA operates and the standards of conduct they are expected to meet, mainly in the published Handbook of rules and guidance.”

39. It also explained that, when formal regulatory action is taken against a firm or individual, the matter is made public through the public authority’s website and the media. This meets the public interest in transparency when a breach of the Act has been identified, rather than disclosing information relating to investigations which might result in no action but would be likely to result in the prejudice discussed.

40. It’s the role of the public authority to ensure the Act is complied with; protecting the public from financial services that don’t comply. If the envisaged prejudice occurs, this would hamper the public authority’s ability to carry out its work efficiently; which would, in turn, make it more difficult to regulate the Act.

41. In the absence of any compelling public interest arguments from the complainant; the Commissioner has decided its in the public interest to

preserve the public authority's ability to regulate organisations and enforce the Act.

## **Other matters**

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42. The Commissioner's guidance states that a public authority should provide its internal review outcome within 20 working days, or 40 in exceptional circumstances. The public authority exceeded this timescale in this instance.

## **Right of appeal**

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43. 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)

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**