

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

### **Decision notice**

**Date:** 29 September 2011

**Public Authority:** The Financial Services Authority

**Address:** 25 The North Colonnade

Canary Wharf

London

E14 5HS

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

---

1. The complainant made a number of requests for various pieces of information relating to the Towry Law (the "Firm") takeover of Edward Jones.
2. The Commissioner's decision is that some of the requested information is not held, that the Financial Services Authority (the "FSA") was correct to withhold some of the information under section 43(2) and section 44(1)(a) of the Freedom of Information Act 2000 (FOIA). The Commissioner also considers that the FSA was correct to refuse to confirm or deny whether it held some of the requested information under section 44(2).
3. The Commissioner requires no steps to be taken.

### **Request and response**

---

4. The complainant made a request to the FSA on 26 November 2010 for various pieces of information numbered 1 to 16 relating to the Firm's takeover of Edward Jones.
5. On 29 December 2010 the FSA responded to the request for information. It provided the complainant with some of the information requested but withheld some of the information under section 40(2), section 44 and section 43(2).

6. As the complainant was dissatisfied with the response he had received, on 24 January 2011 he asked the FSA to carry out an internal review.
7. On 23 February 2011 the FSA wrote to the complainant with the result of the internal review it had carried out. It provided the complainant with further information but continued to withhold the information requested at points 8, 9 and 11 and part of the information requested at point 16. It refused to confirm or deny whether or not it held the information requested at points 14 and 15.
8. As the complainant was dissatisfied with the result of the internal review he made a formal complaint to the ICO on 7 March 2011. He explained that he was dissatisfied with the FSA's responses in relation to the following elements of the request:
  - a) How many complaints have the FSA had regarding the way Towry Law treated former Edward Jones clients? (point 8 of the original request)
  - b) From the information in its possession what does the FSA believe has been the longest period Towry Law has taken in transferring the assets of former Edward Jones clients? (point 9 of the original request)
  - c) Can you provide me with any documents or minutes indicating the FSA's view on how Towry Law has been treating former Edward Jones clients and the transfer of their assets? (point 11 of the original request)
  - d) When did the FSA become aware that Towry Law were going to close 6,000 of its client's accounts without consultation? (point 14 of the original request)
  - e) Can you provide me with any documentation or minutes which showed what reassurances the FSA sought from Towry Law that it would continue to handle the financial affairs of all its clients unless they decided to transfer their assets? (point 16 of the original request)

## Scope of the case

---

9. The complainant contacted the Commissioner to complain about the way points 8, 9, 11, 14 and 16 of the request had been handled (set out at a to e at paragraph 9 above).

10. On 29 March 2011 the Commissioner wrote to the FSA for further submissions in relation to its handling of the requests set out at points a to e above. On 4 May 2011 the FSA provided the Commissioner with further submissions in relation to its responses to the requests set out at points a to e above. In relation to point a of the request, it confirmed that the information requested was not held. In relation to points b and c of the request it confirmed that it could now disclose some of this information as it no longer considered that section 40 was applicable however it continued to apply sections 43(2) and 44(1)(a) to some of this information. The information that it considered could be disclosed was provided to the complainant. In relation to point d of the request it explained that it would neither confirm or deny if this information was held under section 43(3) and 44(2) of the Act. In relation to the information withheld relevant to point e of the request, it explained that sections 43(2) and 44(1)(a) were applicable.

## Reasons for decision

---

### Point a

11. Section 1(1)(a) provides that, any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request.

12. In this case the FSA has informed the Commissioner that it does not hold the information requested at point a of the request.

13. The FSA explained that:

"In general, the confidentiality constraints under which we operate prevent us from publishing information which we receive from or about individual firms (under Section 348 of FSMA). One exception is where the information in question has already become lawfully available to the public. In order to publish the complaints statistics which firms are required by our rules to send to us periodically, we recently changed our rules, to require each firm meeting certain criteria to publish its own return, and confirm to us once this had been done. Once each firm has complied with this requirement, we are able to include information from each return in the information we are then lawfully able to publish on the FSA's website. We are not allowed to publish anymore detailed information about, for example the nature of the complaint that firms receive. In relation to [the complainant's] request, while we are able to publish the total number of complaints received by Towry Law in relation to various types of financial services activities, in particular investment

business, we are unable to publish the nature of the complaints within that activity.”

14. It provided the Commissioner with a link to a copy of a blank form which is used by regulated firms to submit their complaints data to the FSA. It confirmed that this demonstrated that it does not require firms to provide it with the level of detail as requested by the complainant. The Commissioner has viewed the form and agrees that it does not seek to obtain the level of detail sought by the complainant.
15. The FSA therefore explained that it obtains and publishes the total number of complaints received by the Firm in relation to various types of financial services activities but it does not obtain or publish any further level of detail about the complaints. It also stated that there is no business purpose nor is there any statutory requirement upon it to hold this more detailed information. It therefore concluded that it does not hold the information requested at point a of the request.
16. Having taken into account the submissions provided by the FSA the Commissioner considers that on the balance of probabilities the FSA does not hold the information requested at point a of the request as it does not obtain this information from regulated firms. The Commissioner therefore considers that the FSA complied with section 1(1)(a) of the Act.

### **Points b, c and e**

#### **Section 44(1)(a)**

17. Section 44(1)(a) provides that, information is exempt information if its disclosure is prohibited by or under any enactment.
18. The FSA has explained that section 348 of the Financial Services and Markets Act 2000 (FSMA) is the relevant statutory bar in this case.
19. The FSMA provides for the regulation of financial services and markets. It confers regulatory functions upon the FSA. Section 348(1) provides that, confidential information must not be disclosed by a primary recipient, or by any person obtaining the information directly or indirectly from a primary recipient, without the consent of, (a) the person from whom the primary recipient obtained the information; and (b) if different, the person to whom it relates.
20. Section 348(5) specifies that the FSA is a primary recipient for the purpose of section 348(1).
21. Upon viewing the withheld information the Commissioner considers that it was received from or is about the Firm.

22. The FSA also confirmed that the Firm would not consent to disclosure of the information withheld under section 44(1)(a).
23. The Commissioner has therefore viewed the information withheld under section 44(1)(a) to determine whether it amounts to confidential information. Section 348(2) provides that "confidential information" means information which, (a) relates to the business or other affairs of any person, (b) was received by the primary recipient for the purposes of, or in the discharge of, any functions of the Authority, and (c) is not prevented from being confidential information by subsection (4).
24. The FSA has explained that the information to which it has applied section 44(1)(a) was received for the purpose of considering the Change in Control application and of carrying out its ongoing monitoring of the Firm's compliance with its requirements.
25. Upon considering the information withheld under section 44(1)(a) the Commissioner considers that it does relate to the business affairs of the Firm and it was received by the FSA for the purposes of carrying out its functions. The Commissioner is satisfied that section 348(4) would be applicable in this case.
26. The Commissioner therefore considers that section 44(1)(a) was correctly applied in this case.

### **Section 43(2)**

27. Section 43(2) provides an exemption from disclosure of information which would or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption, and is therefore subject to the public interest test.
28. In this case the FSA has stated that disclosure of the requested information would be likely to prejudice the commercial interests of the Firm.
29. In order to determine whether the exemption is engaged the Commissioner has first considered whether the prejudice claimed relates to the Firm's commercial interests. The Firm is an independent financial advice and management investment company. The requested information relates to the Firm's takeover of a company named Edward Jones. The Commissioner does consider that this relates to the Firm's commercial interests. The Commissioner is therefore satisfied that the withheld information falls within the scope of the exemption.

30. The Commissioner has gone on to consider how any prejudice to the commercial interests of the Firm would be likely to be caused by the disclosure of the withheld information.
31. The FSA has explained that disclosure of the withheld information would be likely to damage the Firm's reputation, brands and products. This is because there is no routine public disclosure of a firm's dealings with the FSA and therefore ad hoc disclosure may attract a disproportionate amount of attention to this Firm. It has explained that the information is very current as the FSA continues to be involved in ongoing supervisory issues surrounding the takeover. It has therefore argued that disclosure particularly whilst the FSA is still involved in a supervisory capacity would be likely to undermine consumer confidence in the Firm. This FSA explained that this in line with a previous tribunal decision, *Financial Services Authority v IC EA 2008/0061*, information which is not in the public domain and which relates to a case which it is still actively involved in, it considers should not generally be disclosed into the public domain.
32. After considering the withheld information, the Commissioner considers that it is sensitive information surrounding the takeover of Edward Jones by the Firm, which was being and continues to be regulated by the FSA.
33. In support of the use of this exemption the FSA has contacted the Firm to obtain its views on disclosure. The Firm considers that information held by the FSA relating to its regulation of this takeover would be treated as confidential. It also explained that it has challenged some of the information contained within the withheld information that it does not consider to be factually accurate and that disclosure of information which it considers inaccurate would be likely to damage its commercial interests as it would be likely to undermine consumer confidence in the Firm.
34. The FSA has confirmed that it considers that the prejudice would be likely to occur in this case. The Commissioner considers that as the withheld information is very current, in that the FSA are still involved in a regulatory capacity in this takeover, this increases the likelihood of the prejudice occurring in this case.
35. As section 43(2) is engaged in this case the Commissioner will go on to consider the public interest test.

### **Public interest arguments in favour of disclosing the requested information**

36. The FSA has explained that disclosure would increase public awareness and understanding of the way the FSA discharges its regulatory functions.
37. It would increase public confidence in the effectiveness of the FSA.
38. It would demonstrate how the FSA approaches important issues of wider interest both to firms and consumers.

### **Public interest arguments in favour of maintaining the exemption**

39. The FSA has explained that it is in the public interest that it is able to effectively regulate firms in the takeover process. It has said that “for the process of supervision to work efficiently and effectively, and deliver good outcomes for consumers, there needs to be an environment created in which firms feel able to provide information to the FSA and accept remedial action ... This requires the process to be kept confidential ...” If the process is not kept confidential and information is disclosed which would be likely to prejudice a regulated firm’s commercial interest’s, the FSA may be unable to supervise firms as efficiently in the future which is not in the interest of consumers and is not therefore in the public interest.
40. The FSA has also explained that as it is still involved in this case in a supervisory capacity this adds weight to the public interest in favour of maintaining the exemption.
41. The Commissioner does not consider that it is in the public interest to prejudice the commercial interests of firms being regulated by the FSA. The FSA regulates a significant number of firms and it would not be in the public interest to release information which could undermine those firms, particularly where regulation of a particular issue is ongoing.

### **Balance of the public interest arguments**

42. The Commissioner considers that disclosure would increase public understanding of the work of the FSA and would also provide the public with a greater understanding of the effectiveness of this regulatory body. It may also allow the public to enter more informed debate about the way in which the FSA tackles issues of wider interest to consumers. However the Commissioner considers that the FSA’s involvement in this case is ongoing and disclosure may hinder its efficiency in relation to this as well as having a wider impact upon its efficiency in the future, which is not in the public interest. He also considers that the FSA monitors a larger number of firms and it is not in the public



interest for information which would be likely to prejudice the commercial interests of those firms to be disclosed whilst regulation is ongoing and before any formal publicised action is taken.

43. The Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosure.

#### **Point d**

#### **Section 44(2)**

44. In relation to point d of the request the FSA refused to confirm or deny if it held the information requested under section 44(2). This is because it explained it would be in breach of section 348 of the FSMA to do so.
45. For the reasons set out at paragraphs 19-26 above the Commissioner considers that section 348(1) of the FSMA would be applicable to the information requested at point d. The FSA has confirmed that, because of how the request is worded, section 348(1) provides a statutory bar on even confirming or denying whether or not it received this information. This is because the fact as to whether this information is or is not held is confidential information for the purpose of section 348(1).
46. The Commissioner has considered further arguments made by the FSA which are contained in the confidential annex to this Notice.
47. The Commissioner considers that there is a statutory bar which prevents the FSA confirming or denying whether this information is held.



## Right of appeal

---

48. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

49. 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.
50. 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** .....

**Pamela Clements**  
**Group Manager, Complaints Resolution**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**