

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 March 2023

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

Decision (including any steps ordered)

1. The Commissioner's decision is that the three requests about Ayma/Blackmore Bond that the complainant submitted to the Financial Conduct Authority (FCA) can be categorised as vexatious requests under section 14(1) of FOIA. The FCA is not obliged to comply with the requests, and it is not necessary for the FCA to take any steps.

Request and response

2. On 16 January 2022, 15 July 2022, and 16 August 2022 the complainant submitted requests for information to the FCA. Given their combined length the requests are reproduced in the appendix to this notice.
3. The FCA's final position was to refuse the requests under section 14(1) of FOIA.

Reasons for decision

4. This reasoning covers whether FCA is entitled to rely on section 14(1) of FOIA to refuse the complainant's requests.

5. Under section 14(1) of FOIA a public authority is not obliged to comply with a request for information if the request is vexatious.
6. Broadly, vexatiousness involves consideration of whether a request is likely to cause a disproportionate or unjustified level of disruption, irritation, or distress.
7. To analyse vexatiousness, the Commissioner considers four broad themes that the Upper Tribunal (UT) developed in **Information Commissioner vs Devon County Council & Dransfield [2012] UKUT 440 (ACC)**:
 - Value or serious purpose
 - Motive
 - Burden; and
 - Harassment to staff
8. The Commissioner will first look at the value of the requests as this is the main point in favour of the request not being vexatious. He will then look at the negative impacts of the requests ie the three remaining themes of burden, motive, and harassment, before balancing the value of the requests against those negative impacts.
9. The Commissioner has considered the correspondence between the FCA and the complainant, the complaint and FCA's submission to him.
10. In its submission to the Commissioner the FCA has provided a background and context to the requests which the Commissioner has reviewed but does not intend to reproduce in this notice.
11. In its internal review response dated 7 February 2023, the FCA discusses the value of the requests. At first glance, the FCA said, it appeared that disclosing the information requested would be of reasonable value to the public as it may increase understanding of: (1) the FCA's supervisory approach and decision making in relation to the entity Amyma and specifically the sharing (or not) of information relating to the receipt of any reports and the consideration of Amyma's activities; and (2) the FCA's supervisory approach and decision making in relation to the entity Blackmore and specifically the sharing (or not) of information relating to the receipt of any reports and the consideration of Blackmore's activities.
12. The FCA noted that the Commissioner's published guidance on section 14 explains that there may be factors which reduce the value of a request, which the FCA set out as follows.
13. The FCA said that the letters the complainant had received dated 21 December 2021 and in February 2022 both fully and comprehensively addressed the complainant's previous queries in relation to Amyma and

Blackmore as far as FCA was able to. Both letters also explained the strict confidentiality restrictions which the FCA is bound by under section 348 of the Financial Services and Markets Act 2000 ("FSMA"). This constitutes a legal requirement on the FCA, a breach of which would be a criminal offence on the discloser personally. The FCA also drew the complainant's attention to certain relevant aspects of the FCA's own policy on the information it shares.

14. For instance, the FCA doesn't usually make public the fact that it is investigating (or has investigated) a firm or individual. This is partly to protect the effectiveness of its investigation, as publicity might encourage people to destroy or hide evidence, and partly because announcing an FCA investigation can damage reputations prior to undertaking the investigation and reaching relevant conclusions. The FCA said that while it appreciated that this may be frustrating for the complainant (and others), these restrictions limit the scope of any responses and the amount of information the FCA could give the complainant regarding any actions the relevant departments may (or may not) have taken in respect of any information that they (or others) may have provided to the FCA.
15. The FCA's internal review response goes on to discuss the burden the requests impose.
16. The FCA noted that the Commissioner's guidance says that "it is common for a potentially vexatious request to be the latest in a series of requests submitted by the individual. The greater the number of requests received, the more likely it is that the latest request is vexatious." Therefore, the FCA said, section 14(1) is not limited to similar requests, but asks whether the burden imposed by the requester more broadly is disproportionate.
17. The FCA advised that during the period 17 January 2022 to 28 November 2022 the complainant had submitted to the FCA 12 Freedom of Information requests, including the three it amalgamated under the reference FOI8975 (and which are being considered in this notice). Over half of these (seven) were received in a period of just over three months (15 July to 18 October 2022). The FCA considered this to be a substantial inflow of requests in such a short timeframe. Furthermore, the complainant had requested internal reviews be undertaken of nine of the 12 first stage decisions issued (including those where the FCA had amalgamated several requests under one FCA FOIA reference (such as in the current case). The FCA said that the cost, time, and burden of fulfilling the requests represented a disproportionate allocation of the FCA's resources.
18. It advised that FOIA's purpose is to promote public access to important information. It is therefore important that public authorities are capable

of processing requests made under FOIA to enable such access. On examining the volume and frequency of your requests, FCA advised the complainant it was clear that they had submitted multiple requests before, including the issues that they had raised and that had been addressed through the 21 December 2021 and February 2022 letters. IN those letters, members of FCA staff had both expended a great deal of time in addressing the points and matters the complainant raised.

19. Considering the number of the complainant's requests and other correspondence together, the FCA concluded that a vast amount of resources was being utilised on processing them. The FCA considered that this contributed to an unmanageable workload for the FCA's Information Disclosure Team, which in turn impacts the team's ability to facilitate disclosing publicly valuable information.
20. The FCA pointed out that the Commissioner's guidance states that "the collective burden of dealing with the previous requests, combined with the burden imposed by the latest request, may mean a tipping point has been reached, rendering the latest request vexatious."
21. In view of the factors considered above, the FCA found that the "tipping point" had been reached in this case.
22. The FCA's internal review response then discussed the potential motive behind the request and the issue of distress and harassment.
23. It noted that applications made under FOIA must generally be considered 'motive-blind'. But it also noted that the Commissioner's guidance makes clear, the potential motive behind the request is relevant when considering whether it is vexatious under section 14(1).
24. The FCA also said that it must also consider the wider context of the complainant's requests and other correspondence. In particular, the FCA considers the letters discussed above both fully and comprehensively address, as far as the FCA was able to, the complainant's previous queries in relation to its supervisory approach of Aymya and Blackmore. As the FCA had summarised above, it is bound by the strict confidentiality restrictions that apply under section 348 of FSMA. These restrictions limit the scope of any responses, and the amount of information, the FCA can give the complainant (or any other party), whether this is under FOIA, the Complaints Scheme, or as business as usual, regarding any actions the FCA may (or may not) have taken in respect of any information it receives in carrying out its regulatory functions.
25. The FCA advised the complainant that it considered their request of 16 August 2022 to be an amalgam of their earlier requests submitted on 16 January 2022 and 15 July 2022. FCA's view was that it should have had an opportunity to address the complainant's earlier requests before they

submitted a repeat of the information they were previously seeking. The FCA accepted that that this all took a longer time than it had anticipated, and would aim to achieve, for which the FCA apologised.

26. In terms of the points and assertions made in their requests, the FCA noted that these contain issues the complainant has raised as part of a long series of correspondence about matters relating to the FCA's supervisory approach to Aymya and Blackmore. The FCA's view was that the complainant may be using FOIA to further matters that have already been considered by the FCA in [the letters of] December 2021, February 2022, (and also previously). It considered that the relevant issues raised in the requests are unlikely to add anything of substance to the information already provided to the complainant on this subject.
27. The FCA advised the complainant that it considered their requests were not serious requests for information but rather amount to a vehicle for the complainant to make unfounded accusations against the FCA and its staff. It noted that the complainant's covering email specifically refers to "allegations" and "evidence to support my allegations". The FCA considered that the complainant was further seeking to overburden and harass the FCA by raising issues that have previously been considered elsewhere.
28. Looking at the requests in the round, and against the backdrop of the many previous and current requests which the complainant had submitted, together with their other correspondence, the FCA was satisfied that the purpose of the requests was to overburden the FCA and cause harassment and distress to staff.
29. The FCA concluded its internal review by confirming that it considered that the three requests are vexatious. The FCA explained that whilst each of the requests has some value, the value is limited. Taking the requests as a whole, particularly examining the contents of the complainant's request for an internal review, the FCA said that the complainant is also continuing to challenge the FCA for an alleged failure to act or wrongdoing without any clear and logical basis for doing so. Furthermore, the FCA said, two of the requests are predicated upon these baseless allegations and are not actually seeking the disclosure of any information it holds but are simply restatements of the unfounded allegations in a binary question format.
30. The FCA noted that it had explained above its conclusion that a vast amount of resource was being utilised in processing the requests (when also considered alongside the complainant's other requests and correspondence). The FCA had also explained its conclusion above that the purpose of the requests is to overburden and harass the FCA, and to cause distress to the FCA's employees. Having weighed the value of the requests against the burden, motive, and harassment to the FCA, the

FCA confirmed its judgement that the requests are a disproportionate, manifestly unjustified, inappropriate or improper use of FOIA because the burden, motive and harassment outweigh the requests' value.

31. The Commissioner considers that the FCA's internal review (and submission to him) make a strong case for the requests being vexatious. Such value as the requests may have has been undermined by the frequency, breadth, and tone of the requests in this case. The FCA has previously explained to the complainant that the FSMA prevents it from disclosing information of the type that the complainant is seeking. (The complainant need only review the number of published decisions the Commissioner has made upholding the FCA's reliance on section 44 of FOIA (prohibitions on disclosure) in relation to the FSMA to appreciate that that is the case.)
32. In addition the FCA says it has previously addressed the complainant's concerns as far as it is able in correspondence in December 2021 and February 2022. It appears to the Commissioner that the complainant is attempting to keep live a matter that the FCA has addressed as comprehensively as it is able to within the limits of the FSMA. The Commissioner also agrees that responding to the complainant's voluminous requests would cause a burden to the FCA that is disproportionate to the requests' value at the point that the FCA applied section 14(1). Finally, the Commissioner also agrees that the cumulative effect of the requests, especially given their tone, would be to distress and harass FCA staff. As such, the Commissioner's decision is that the FCA was entitled to refuse the complainant's requests as vexatious requests under section 14(1) of FOIA.

Right of appeal

33. 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
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Cressida Woodall
Senior Case Officer`
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix

Request submitted 16 January 2022

FREEDOM OF INFORMATION REQUEST 1.

"In a letter sent to me by the FCA's [redacted] dated 21st December 2021, he states:

"In April 2017, UBD opened an investigation related to Aymya. In June 2017, the Aymya enquiry, which included your March 2017 intelligence, was escalated into this investigation. Subsequent to this, the FCA became aware of a pre-existing investigation by another law enforcement agency which included activity which was purportedly being undertaken by Aymya. In order to avoid the risk of prejudice to that investigation, the FCA's investigation into Aymya was subsequently closed in July 2017."

Please provide the name of the law enforcement agency referred to by [redacted] in the above.

FREEDOM OF INFORMATION REQUEST 2.

In a letter sent to me by the FCA's [redacted] dated 21st December 2021 he states:"In addition, regarding Blackmore, I have reviewed evidence that shows the FCA shared intelligence about this entity with other law enforcement agencies in July 2017. The underlying details of this intelligence, which would have included your March 2017 communications were, however, unfortunately not shared due to human error."

Please provide the names of all of the law enforcement agencies referred to by [redacted] in the above extract.

FREEDOM OF INFORMATION REQUEST 3.

Please provide the information to demonstrate when reports and intelligence that were provided by me and others, and that were not shared with the law enforcement agencies referenced in [redacted] letter of December 21st 2021, were eventually shared with said law enforcement agencies.

FREEDOM OF INFORMATION REQUEST 4.

Please provide information relating to the law enforcement agencies referred to in FOI's 1 & 2, and as to when or if they subsequently communicated to the FCA as to the conclusions of their investigations.

FREEDOM OF INFORMATION REQUEST 5.

Please provide the information, that was concealed from my DSAR response, that demonstrates the intelligence and reports that I submitted to the FCA in March 2017 to the FCA UBD or other department, as per the confirmation of

[redacted] in this letter of 21st December and that of [redacted] of the FCA whistleblower team in March 2017 when they were first reported. Both [redacted] and [redacted] claim my personally written evidence and reports were escalated but I have not been provided with any information proving this, despite it being disclosable under UK data laws.

I look forward to your prompt response.

Please be aware that I am making various MP's and APPG's aware of these FOI requests, so please refrain from any attempts to unlawfully defer, ignore or delay responses to them."

Request submitted 15 July 2022

"Please find below one follow up FOI Request and new FOI Requests.

1. (Follow Up FOI Request). I refer you to the attached document that is a letter from [redacted] sent to me as a reponse to my FOI Request.

It is a combination of disingenuous, misleading, false and ham fisted efforts to avoid actually answering the specifics of the request and conceal prior FCA failures and dishonesty. I have challenged [redacted] reponse and simplified my challenge to the simplest of requests. However, [redacted] has repeatedly failed to respond. I Therefore make the formal Freedom of Information request follow up here:

It is my position, and that of [redacted] and that of various other financial and compliance experts that it is a breach of FSMA and FCA codes for ANY firm, regulated/authorised or otherwise to market and/or sell non-regulated investment products to non-sophisticated investors.

THEREFORE, my reports to the FCA in March 2017 demonstrated multiple breaches of FSMA and FCA Codes by Ayma and Blackmore Bond, all of which put Blackmore Bond and their partner firms very much within The FCA regulatory perimeter, authority and powers and that existed at that time.

WHEREAS, you personally and the FCA as a body have been making representations that everything pursuant to Blackmore Bond was, and had always been beyond the FCA perimeter, authority and powers since the collapse of Blackmore Bond in April 2020.

I therefore ask again, are you and the FCA making representations that you know to be false, or are myself, [redacted] and various other professionals wrong?

New Freedom of Information requests

2. In 2013 the FCA launched an investigation into various alleged misconduct within the FX Market. This lead to final notices and fines being issued by the

FCA in November 2014 against 5 banks, and with the investigation of a 6th Bank, Barclays, ongoing and with a final notice and fine issued against Barclays in May 2015. The period for which the conduct and/or other failures for which these fines and notices were issued occurred between 2007-2013.

It is understood by me that the FCA investigation involved the requested disclosure of all relevant information (Including transcripts of chat groups in which their FX traders were involved) from only a small number of banks.

The Euromoney poll was accepted as the established and credible rating of banks in FX (Notwithstanding that Deutsche Bank also topped most of the rankings in polls or data produced by other parties for FX). During that period between 2007-2013 Deutsche Bank was ranked Number 1 in all but one of those years in the Euromoney FX polls. This included the overall ranking and rankings in multiple categories including market share.

HOWEVER, Deutsche Bank was the ONLY bank in the top 7 banks within those Euromoney polls that was not issued with a Final Notice or fine by the FCA in respect to the FX misconduct, failures etc for which those other banks were fined.

A) From which banks did The FCA request a full disclosure of information for the purpose of this FX investigation?

Was it only the 6 banks that were ultimately fined or were others also requested to provide a full disclosure?

B) Was Deutsche Bank one of the banks identified by the FCA and requested to provide a full disclosure of all relevant information for the purpose of this investigation?

If Deutsche Bank were not requested to provide the same full disclosure as those 6 banks that were fined, can the FCA provide information as to why?

C) Deutsche Bank were fined for FX wrongdoing by various other regulators in numerous jurisdictions, alongside and in addition to the same 6 banks that were fined by the FCA? Why were Deutsche Bank not fined and issued a Final Notice by The FCA?

D) It has been established in the [redacted] case in the U.S.A and in a New York Court in the overturning of his conviction for LIBOR 'fraud', that the FCA made knowingly false representations to the Court, and also that the FCA appear to have accepted a 'bribe' or other inducement from Deutsche Bank so as to whitewash from regulatory final notices the names of several senior Deutsche Bank executives, including the then CEO Anshu Jain. Names that were included in the draft Final Notice just 8 days prior to this, and all of whom were implicated in the manipulation of LIBOR.

Did the FCA fail to investigate and fail to punish, Deutsche Bank in their FX investigation because of this 'LIBOR' related inducement or other similar inducement or agreement?

E) It has been established by evidence I obtained that Sajid Javid MP, when working at HM Treasury, applied pressure on the FCA in January 2013, if not at other times also, to manipulate the FCA's IRHP Review scheme on behalf the banks and with intent to limit the liabilities of the banks involved, and by way of the introduction of a new and retrospectively applied 'sophistication' criteria. The Independent Investigation of the FCA's IRHP Review conduct by John Swift QC also confirms that the banks put pressure on George Osborne, the then Chancellor, to intervene and limit their liability from this scheme, and that representatives from HM Treasury did interfere and seek to apply this very pressure sought by the banks. It is clear that Mr Javid was one of those representatives from HM Treasury that sought to interfere with an FCA redress scheme and investigation on behalf of the banks and so as to reduce their liability.

I also have evidence to prove that George Osborne, then Chancellor, interfered with the FX investigation issuing 'orders' or 'instructions' to The FCA, via Javid and/or others, to the effect that he wanted action taken and did not want the FX investigations to be lengthy like the LIBOR investigation.

Did Mr Javid, a former Deutsche Bank senior executive, or any party acting on his behalf, or on behalf of Osborne or HM Treasury, seek to interfere with the FCA's FX Investigation and in anyway seek to have Deutsche Bank excluded from the review and/or excluded from sanction, final notice and fines?

3. Can the FCA please provide information as to any complaints made to the FCA, or the discovery by The FCA of any concerns or issues, about former FCA Team Leader in Intelligence [redacted], particularly but not exclusively, any complaints specific to the handling of whistleblower reports or intelligence.

3.1. Can the FCA confirm or deny if any complaints, or the discovery by The FCA of any concerns or issues, about [redacted] involved his relationship or association or communications with [redacted], his former colleague at The FCA, after [redacted] had left the FCA and was working at BNP.

4. Was, or is, the FCA aware of any association, relationship or friendship resulting from their time together at the Metropolitan Police between former FCA Team Leader in Intelligence [redacted] and [redacted] the Lloyds Banking Group (LBG) investigator [former colleague of FCA, Head of Intelligence [redacted]] who investigated my whistleblower disclosures and produced what were falsified outcomes?

(I refer you to the report by FCA Supervision and its findings dated 24th October 2016 that confirm [redacted] report was falsified)

5. I recently received evidence confirming that the PRA took regulatory action against Lloyds Banking Group (LBG) as a result of the huge losses that LBG suffered in January 2015 as a result of the 'de-peg' by the Swiss National Bank (SNB) that saw the EUR/CHF price collapse from above the 'peg' level of 1.2000 to as low as 0.8500 in a matter of seconds. Losses that were the result of reckless risk taking by LBG and LBG's FX Options desk. I was still on the LBG payroll when these huge losses occurred and was an LBG shareholder. I was also the employee who discovered this reckless risk taking in March 2014 and made disclosures to my managers immediately upon this discovery, and was told that as a result of these disclosures that the reckless risk taking had been stopped. I am therefore both shocked and disturbed that this information as to regulatory action was concealed from me, all LBG shareholders and the public.

A) Please provide all information specific to the regulatory action or intervention taken by the PRA in respect to the huge losses suffered by LBG as a result of this reckless risk taking and the SBN 'De-peg'.

B) Please provide information to explain why both the losses and the PRA regulatory action or intervention was concealed from me, the whistleblower, shareholders and the public.

C) Did the PRA regulatory action or intervention involve the forced exits of [redacted] and [redacted] in 2015?

D) On what date were The FCA or PRA made aware of the huge losses?

E) On what date did the PRA or FCA take any action or issue any notice or sanction to LBG?

6. The exits of [redacted] and [redacted] [referenced in FOI 5 above] were announced by LBG on 1st October 2015 and 2nd October 2015 respectively, but that they were exiting 'at the end of the year', falsely implying that they were not leaving as a result of disciplinary action or regulatory action/enforcement, when clearly the reason for both exits were the huge losses sustained in January 2015.

A) Evidence I have proves that the decision to 'sack' [redacted] and [redacted] over these huge losses and the reckless risk taking and VAR manipulation that was involved, was taken by LBG in March 2015, a full seven months before their 'sackings disguised as normal' exits were announced. Were The FCA or PRA aware that LBG had deferred the announcement of their exits?

B) Did the PRA or FCA allow LBG to 'defer' the announcement of their 'sackings disguised as normal' exits?

7. It is my formal position based upon the evidence that I now have, that LBG deferred the announcement of the 'sackings disguised as normal' exits

until October 1st and 2nd respectively, so as to occur AFTER the end of my Employment Tribunal hearing that concluded the week before on September 24th. Indeed, LBG knew that to announce them in March 2015 when the decision was made to sack them, would have seriously undermined their defence of my Employment Tribunal claim, particularly given that one of my whistleblower disclosures had been made in March 2014 warning of this reckless risk taking that could result in huge losses for the bank, and that those huge losses had been crystalised in January 2015.

Impossible to deny my claim when the Head of FX was sacked for the very conduct and losses that I had made disclosures about almost a year before they had happened.

A) Does the FCA have any information that would refute this position?

B) The FCA was aware that I had made these very specific disclosures, and will have known how relevant the crystallisation of these huge losses and any PRA or FCA regulatory action or involvement was to justice being seen to be done, so please explain why the FCA concealed this regulatory action from me and from the Tribunal?

IMPORTANT: The FCA knew that LBG had not disclosed any of this to me or the Tribunal, and therefore knew that LBG was acting dishonestly and without integrity and with intent to defraud me and pervert the course of justice, and therefore had a duty to inform me or force LBG to disclose.

Please treat each number request as a separate individual FOI and respond to each separately and in 'Wagamama' fashion, whenever a response for each is ready."

Request submitted 16 August 2022

"I am forced to write to you again further to my email and FOI requests of 15th July 2022, and the BBC Panorama programme that is scheduled for 9.00pm this evening but available to watch now on Iplayer. I have watched the full programme and therefore must request the following:

1. I sent you this FOI follow up requests on 15th July having received no response to it when made months previously.

(Follow Up FOI Request). I refer you to the attached document that is a letter from [redacted] sent to me as a response to my FOI Request.

It is a combination of disingenuous, misleading, false and ham fisted efforts to avoid actually answering the specifics of the request and conceal prior FCA failures and dishonesty. I have challenged [redacted] response and simplified my challenge to the simplest of requests.

However, [redacted] has repeatedly failed to respond. I Therefore make the formal Freedom of Information request follow up here:

It is my position, and that of [redacted] and that of various other financial and compliance experts that it is a breach of FSMA and FCA codes for ANY firm, regulated/authorised or otherwise to market and/or sell non-regulated investment products to non-sophisticated investors.

THEREFORE, my reports to the FCA in March 2017 demonstrated multiple breaches of FSMA and FCA Codes by Ayma and Blackmore Bond, all of which put Blackmore Bond and their partner firms very much within The FCA regulatory perimeter, authority and powers and that existed at that time.

WHEREAS, you personally and the FCA as a body have been making representations that everything pursuant to Blackmore Bond was, and had always been beyond the FCA perimeter, authority and powers since the collapse of Blackmore Bond in April 2020.

I therefore ask again, are you and the FCA making representations that you know to be false, or are myself, [redacted] and various other professionals wrong?

It is more than 28 days since I submitted this FOI follow up and months since I originally submitted it. Given that the same representations were put forward by the FCA for the Panorama programme, and that I and every objective observer know to be false, it is of the utmost urgency that you now provide this information.

2. In the broadcast that the FCA knew was intended for the public, there was a statement included that was obtained from The FCA whereby the FCA is quoted as saying:

"It shared intelligence with the City of London Police in 2017".

WHEREAS, in a response by City of London Police to an FOI request I made in 2021 they clearly stated:

"A review of the 71 Action Fraud reports relating to Blackmore confirmed that none were reported by the Financial Conduct Authority."

And furthermore, in a letter received from The FCA, the FCA stated that reports and intelligence that included mine was NOT shared with law enforcement agencies "due to human error".

Can you please provide information to explain this discrepancy between the FCA's representations in the programme, and the facts, evidence and representations by City of London Police."