

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 October 2015

Public Authority: The Financial Conduct Authority (FCA)

Address: 25 The North Colonnade
Canary Wharf
London
E14 5HS

Decision (including any steps ordered)

1. The complainant has requested the most up to date list of countries the FCA deem to present a high money laundering risk and the date this list was last updated. The FCA provided the complainant with the date the list was last updated but refused to provide the requested list under section 27(1)(a) and (b) and section 31(1)(g) with subsection (2)(a),(b),(c) and (d) FOIA.
2. The Commissioner's decision is that the FCA has correctly applied section 27(1)(a) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 13 May 2015 the complainant requested information of the following description:

"Please can you disclose your most up to date list of countries you deem to present a high money laundering risk and include the date the list was last updated."
5. On 11 June 2015 the FCA responded. It confirmed when the information requested was last updated but withheld the requested list under section 27(1) FOIA.
6. The complainant requested an internal review on 11 June 2015. The FCA sent the outcome of its internal review on 9 July 2015. It upheld its

original position.

Scope of the case

7. The complainant contacted the Commissioner on 10 July 2015 to complain about the way his request for information had been handled.
8. During the course of the Commissioner's investigation, in addition to section 27(1)(a) and (b) FOIA, the FCA also applied section 31(1)(g) with subsection (2)(a),(b),(c) and (d) FOIA to the withheld information.
9. The Commissioner has considered whether the FCA correctly applied the exemptions it has cited to the withheld information.

Reasons for decision

Section 27(1)

10. Section 27(1) provides that –

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice–

(a) relations between the United Kingdom and any other State,

(b) relations between the United Kingdom and any international organisation or international court,

(c) the interests of the United Kingdom abroad, or

(d) the promotion or protection by the United Kingdom of its interests abroad."

11. The FCA has argued that 27(1)(a) and (b) FOIA are applicable in this case.
12. The Commissioner has first considered the application of section 27(1)(a) FOIA.
13. The FCA has argued that it is important for the UK to be able to have an effective regulatory regime in the financial services sector, which continues to be an important part of the UK economy. It said that disclosure of the withheld information would or would be likely to have an inhibiting effect on the UK's relations with some of the countries

listed, which over time would reduce their willingness to engage with the UK.

14. In order for a prejudice based exemption, such as that set out in section 27(1), to be engaged the Commissioner considers that three criteria must be met:
 - firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
 - secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged must be real, actual or of substance;
 - thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; there must be a real and significant risk. With regard to the higher threshold, this places a stronger evidential burden on the public authority.
15. With the above in mind, the Commissioner has considered the withheld information and the FCA's submissions in support of its reliance on section 27(1)(a).
16. The FCA has argued that disclosure would or would be likely to prejudice its relations with states that appear of the requested list. The Commissioner considers that the prejudice claimed does relate to the applicable interests set out in section 27(1)(a) FOIA.
17. The FCA provided the Commissioner with further arguments identifying the particular harm it considers may arise from disclosure of the withheld information in this case, these arguments are detailed in the Confidential Annex attached to this Notice.
18. From the evidence he has seen, the Commissioner is satisfied that there is a causal relationship between the potential disclosure of the withheld information and the interests which section 27(1)(a) is designed to protect.
19. With respect to the likelihood of prejudice occurring, the FCA said that it considered that disclosure in this case would be likely to prejudice future relations between the UK and some of the countries named on the

withheld list and would prejudice the UK's future relations with some of the Countries named on the list. Further arguments in relation to this are set out in the Confidential Annex attached to this Notice.

20. Having duly considered the arguments put forward by the FCA, and having viewed the withheld information, the Commissioner is satisfied that there would be a real and significant risk of prejudice if some of the withheld information were to be disclosed. In relation to some of the withheld information the Commissioner accepts that, in the circumstances of this case, the higher threshold of likelihood is met.
21. He therefore finds the exemption engaged in relation to the information withheld by virtue of section 27(1)(a). The Commissioner has therefore gone on to consider the public interest test.

The public interest test

22. Section 27(1) is a qualified exemption and is subject to a public interest test. This means that, even where its provisions are engaged, it is necessary to decide whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.

Public interest arguments in favour of disclosing the requested information

23. The FCA argued that there is a public interest in favour of transparency and in furthering the public's understanding of how the UK develops and implements financial services regulatory matters in addressing issues which may represent a threat to the FCA's operational objectives, in particular its financial crime objective. However it said that it said that there is a variety of information on high risk jurisdictions available publicly (links for which were provided to the complainant).
24. It said that disclosure may also help the public in making decisions about their dealings or potential dealings with the countries, markets, firms and individuals that are, or may be, operating in, promoting, or selling financial services schemes and/or products.
25. It argued that disclosure would increase public awareness and enhance the understanding of the FCA's own regulatory and supervisory processes in relation to the UK's interaction with, and assessment of, other countries in the fight against financial crime.

Public interest arguments in favour of maintaining the exemption

26. The FCA argued that it is strongly in the public interest that the UK has effective relations with other countries. It said that the UK's relations with the world at large is an important one, for example for the smooth and efficient operation of the regulatory, supervisory and consumer regimes in the financial services industry, both in the UK and world-wide.
27. It said that there is a strong public interest in the FCA being able to carry out its functions effectively without fear of prejudicing international relations, in addressing issues which may represent a threat to the FCA's statutory financial crime objectives.
28. It argued that disclosure of the withheld list without a proper understanding of the context and the nature of the tools the FCA uses in collating information relating to countries named, has the potential to unnecessarily prejudice the UK's relations with these countries.
29. It said the withheld information was recent, which therefore strengthens the public interest arguments in favour of maintaining the exemption.

Balance of the public interest arguments

30. When balancing the opposing public interests in a case, the Commissioner is deciding whether it serves the public interest better to disclose the requested information or to withhold it because of the interests served by maintaining the relevant exemption. If the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure, the information in question must be disclosed.
31. Although FOIA does not list the factors that would favour disclosure, the Commissioner has suggested that among the factors that would weigh in favour of disclosure are:
 - furthering the understanding and participation in the public debate of issues of the day;
 - promoting accountability and transparency of public authorities for decisions taken by them; and
 - promoting accountability and transparency in the spending of public money.
32. He has also taken into account the presumption running through FOIA that openness is, in itself, to be regarded as something which is in the public interest.

33. In the Commissioner's view, there are a number of powerful public interest arguments in favour of disclosure in this case. In that respect he accepts that there is a public interest in transparency which will enhance the understanding of the FCA's own regulatory and supervisory processes in relation to the UK's interaction with, and assessment of, other countries in the fight against financial crime.
34. However, the public interest against disclosure is in avoiding prejudice to international relations, specifically between the UK and countries named on the withheld list.
35. In the Commissioner's view it is strongly in the public interest that the UK maintains good international relations. He considers that it would not be in the public interest if there were to be a negative impact on the effective conduct of international relations as a result of the release of the information at issue in this case.
36. The Commissioner would however note that he is sceptical of public interest arguments surrounding any misunderstanding that disclosure would cause due to a lack of context because a public authority is able to provide context and background, alongside disclosure, as it deems appropriate.
37. However from the evidence he has seen, the Commissioner is satisfied that disclosure of the withheld information represents a significant and real risk to the UK's relations with some of the countries named on the list and that in relation to some of the countries named, the prejudice is more likely than not to occur. The Commissioner is satisfied that such a broad prejudicial outcome is firmly against the public interest and he has therefore concluded that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
38. In light of that conclusion, the Commissioner has not gone on to consider the FCO's application of section 27(1)(b) or section 31(1)(g) with subsection (2)(a), (b), (c) and (d) to the same information.

Right of appeal

39. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

40. 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.
41. 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
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