

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

### **Decision notice**

**Date:** 17 July 2023

**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 Binance and cryptocurrency from the Financial Conduct Authority ("FCA"). The FCA stated that it did not hold information within the scope of question 1 of the complainant's request and refused to disclose the information in question 2 ("the withheld information") under section 44(1)(a) FOIA (prohibitions on disclosure).
2. The Commissioner's decision is that the FCA has correctly applied section 44(1)(a) of FOIA in this case.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 11 January 2023 the complainant requested information in the following terms:-
  - "1) Please provide a list of meetings, including the meeting titles and dates, between Binance and the department/agency, concerning cryptocurrency, blockchain or digital assets. Please limit this to meetings where a member of the agency's senior leadership team was present. Please provide information for the period 1st June 2021 to the date of this request.

- 2) Please provide a copy of correspondence between Binance staff and members of the agency's senior leadership team concerning cryptocurrency, blockchain or digital assets for the period 1st June 2021 to the date of this request."
5. The FCA responded on 8 February 2023 and informed the complainant that it had interpreted 'senior leadership team' as meaning FCA Directors and above in responding to both questions 1 and 2 of their request.
6. In response to question 1, the FCA advised the complainant that it had carried out a thorough search of its recorded information and does not hold the information they have requested.
7. In response to question 2, the FCA stated that it holds some information that falls within the scope of this part of the request, however it considered this as exempt from disclosure as:
  - it constitutes 'confidential information' for the purposes of section 348 of the Financial Services and Markets Act 2000 ("FSMA");
  - and/or regulation 52A of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692, as amended).
8. The FCA therefore concluded that it was prohibited from disclosing this information under section 44(1)(a) of FOIA.
9. Following an internal review the FCA wrote to the complainant on 6 June 2023. It upheld the application of section 44(1)(a) FOIA, however it stated that it no longer considered section 348 of the FSMA to apply. Instead it considered that the information fell under regulation 52A of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692 ("the MLRs")) because the reviewer considers the FCA has received this information when carrying out a function under the MLRs, not FSMA.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 25 April 2023 to complain about the way their request for information had been handled.
11. The Commissioner has considered whether section 44(1)(a) FOIA was correctly applied to question 2 of the complainant's request in this case.

## Reasons for decision

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12. 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.

## Complainant's position

13. The complainant considers that, whilst section 44 of FOIA may apply to some of the withheld information, it is unlikely to apply to all of it, and the FCA should be able to disclose information in summary or aggregate form as per subsection (2) of regulation 52A of the MLRs. This provides that:

"Information referred to in paragraph (1) may be disclosed in summary or aggregate form, provided that no credit institution or financial institution is identifiable from the information disclosed."

## FCA's position

14. Regulation 52A of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692, as amended) ("the MLRs") prevents the FCA from disclosing confidential information it has received except in certain limited circumstances (none of which, according to the FCA, apply in this case).

15. In particular, subsection (1) provides that:

"No person working for a relevant supervisory authority, or acting on behalf of a relevant supervisory authority (or who has worked or acted for a relevant supervisory authority) may, except in accordance with this regulation, disclose any confidential information received in the course of their duties under these Regulations."

16. The FCA states that in respect of any information received in the discharge of its functions under the MLRs, falling within the scope of question 2 of the complainant's request, it would be confidential information received by the FCA. Disclosing such confidential information except in the circumstances permitted by the MLRs would breach regulation 52A of the MLRs and would constitute an offence under regulation 52B of the same Regulations. The FCA has clarified that the information it holds which falls within the scope of question 2 of the complainant's request would meet the test in regulation 52A of the MLRs, i.e., that it was confidential information received in the course of the FCA's duties under the MLRs.

17. The FCA also stated that any information it holds in the form of the FCA's own analysis, views and comments on any information received also contains "received" information embedded within it and thus is also covered by regulation 52A of the MLRs and section 44 of FOIA.
18. The FCA also addressed subsection (2) of regulation 52A of the MLRs as quoted in paragraph 13 above. The FCA does not consider that subsection (2) is a relevant consideration in this case because it would be impossible for it to make the information anonymous, or 'disclosed in summary or aggregate form' as it would relate to the third parties named in the complainant's request.

### **The Commissioner's position**

19. The Commissioner draws the complainant's attention to his guidance on section 44 of FOIA. Looking at the relevant provisions in FOIA and the MLRs and applying them to the facts of this case, the FCA will be a "relevant supervisory authority" which has received the information.
20. The information will be confidential as it was received in the discharge of the FCA's functions under the MLRs 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 summary form, the request and request for internal review does not frame the request in such a way.
21. The FCA has said no circumstances exist in this case which would permit disclosure, 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". The Commissioner has perused the relevant legislation and considers that in this case there are no circumstances which would permit disclosure of the withheld information by the FCA.
22. In summary, the Commissioner disagrees with the complainant's view that the withheld information is not confidential under regulation 52A of the MLRs. The withheld information will be "confidential information" under the MLRs, and disclosure is prohibited. The Commissioner

therefore considers that the FCA was correct to cite section 44(1)(a) of FOIA.

### **Other matters**

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23. The complainant requested an internal review of the FCA's response to their request on 8 February 2023. This was not provided until 6 June 2023, following the Commissioner's intervention. The Commissioner wishes to remind the FCA that internal review should be completed within 20 working days of being requested.

## Right of appeal

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24. 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)

25. 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.
26. 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**.....

**Deirdre Collins**

**Senior Case Officer**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**