

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2025

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

Decision (including any steps ordered)

1. The complainant has requested information relating to an FCA investigation into Collateral UK. FCA relied on section 30(3) FOIA to neither confirm nor deny whether it held the requested information.
2. The Commissioner's decision is that parts 1-2 do not constitute valid requests for information under section 8 FOIA. The FCA is entitled to rely on section 30(3) to neither confirm nor deny if the information at parts 3-6 is held. For part 7 of the request the Commissioner does not consider that the FCA was entitled to neither confirm nor deny whether it held the requested information.
3. The Commissioner therefore requires the FCA to take the following steps to ensure compliance with the legislation:
 - Issue a fresh response to part 7 of the request which confirms or denies that the requested information is held. If the requested information is held, it should either be disclosed or the FCA should issue a fresh refusal notice explaining why it is exempt from disclosure.
4. The FCA must take these steps within 30 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of FOIA and may be dealt with as a contempt of court.

Request and response

5. On 2 April 2024 the complainant made a request to the FCA in the following terms:

“Collateral (UK) Ltd

The business plan initially supplied to the FCA by the directors of Collateral stated “Lenders can use the search functionality to determine which loans they are interested in, look at the available documents and then if they wish, pledge transferring money to the loan signing the Lender Fact Sheet (online or offline) via bank transfer or online card payment into the Client Money Account.”

In the Collateral Terms and Conditions it was stated ““Client Money Account” refers to a bank account where cleared funds which you deposit with us as a potential Investor are held on your behalf to enable you to make a loan.”

On 12/10/2016 the FCA asked the directors of Collateral for details of the Collateral Client Account and full details of the client account activity.

On 18/11/2016 during a meeting between the FCA and Collateral there was confusion over the client account figures presented. Peter Currie said that the FCA were establishing that only client money was held in the client account.

The client account issue was not chased any further with the conversation diverting into ‘deposit taking’.

On 22/06/2017 the directors finally supplied details of a client account. This was a Santander account not the Nat West account that had been used previously.

The FCA hold documents that show that up until 23/05/2017 Collateral used a Nat West Account that was used as both a business and client account. This account was used not only to make payments to Peter, Andrew and Chey Currie but was also the source of illicit loans and other payments.

- 1) Why did the FCA not ensure that Collateral was operating to CASS rules?
- 2) Why was the client account issue allowed to run for so long without resolution?

- 3) Did the FCA fully investigate the Nat West account?
 - 4) If the FCA did fully investigate the Nat West account what action was taken?
 - 5) If the FCA did not investigate the Nat West account, why not?
 - 6) Did the FCA inform any other Government agencies or the police regarding issues with the Nat West account?
 - 7) Why did the Nat West transactions not feature in the charges against the Currie brothers?
6. The FCA responded on 16 May 2024 refusing to either confirm or deny if it held information relevant to the parts 3-7 of the request on the basis of section 30(3) FOIA. For parts 1 and 2 it stated it did not consider these were valid requests for information. It upheld this position on 4 September 2024 following an internal review.

Scope of the case

7. The complainant contacted the Commissioner on 15 August 2024 to complain about the FCA's response and its delayed internal review. The complainant contacted the Commissioner again on 4 September 2024 after the internal review response was issued to confirm they wanted to continue with their complaint.
8. The Commissioner considers the scope of his investigation is to determine if the FCA has correctly applied section 30(3) to refuse to confirm or deny if it holds information for parts 3-7 of the request and whether parts 1-2 constitute valid requests for information.

Reasons for decision

Section 8 – request for information

9. The FCA argued that the requests at parts 1 and 2 were not valid requests for information as they were asking the FCA to express a view or inviting comment following a review of exchanges between the FCA and the named individuals/firms.
10. Section 8 defines a valid request for information under the Freedom of Information Act 2000 (FOIA) as a request which:
 - is in writing,

- states the name of the applicant and an address for correspondence, and
 - describes the information requested.
11. FOIA gives a general public right of access to recorded information held by public authorities. The questions asked in parts 1 and 2 do not describe the recorded information that is being sought. That being said, the Commissioner has considered whether answering these questions would require the creation of new information in the form of an explanation or commentary. The FCA argued it would, but the complainant considered no new information would need to be created as the information formed part of the trial bundle.
12. The Commissioner's [guidance](#) states:
- "The Act only covers recorded information you hold. When compiling a response to a request for information, you may have to draw from multiple sources of information you hold, but you don't have to make up an answer or find out information from elsewhere if you don't already have the relevant information in recorded form."
13. For part 1 the request asked why the FCA didn't ensure Collateral was operating to CASS rules. The Commissioner's view is that this is asking for an explanation from the FCA and it is unclear what recorded information would be expected to be held that would answer a question of why something was alleged not to have happened.
14. Similarly, for part 2 the question asked is why an issue was allowed to continue for so long without resolution. This implies some mismanagement on the part of the FCA and again it is not clear what recorded information would realistically be held or be expected to be held. Part 2 seems to be clearly inviting comment and the Commissioner doesn't consider either of these questions to be valid requests for information under section 8 FOIA.

Section 30 – prejudice to investigations

15. Section 30(3) of FOIA provides an exclusion from the duty to confirm or deny whether information is held in relation to any information which, if held, would fall within any of the classes described in sections 30(1) or 30(2) of the FOIA.
16. These relates to information that may be exempt if it has at any time been held by the public authority for the purposes of investigations conducted to determine if a person is guilty of an offence or should be charged with an offence.

17. The Commissioner considers that the phrase 'at any time' means that information can be exempt under section 30(1) or 30(2) of the FOIA if it relates to a specific ongoing, closed or abandoned investigation.
18. Consideration of section 30(3) is a two-stage process. First, the exemption must be shown to be engaged. Secondly, as section 30 is a qualified exemption, it is subject to the public interest test: whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held.
19. The first step is to address whether, if the FCA holds information falling within the scope of the complainant's request, it would fall within the classes specified in section 30(1) or 30(2) of the FOIA.
20. The FCA considers the information, if held, would fall within one of the classes specified in section 30(1), information held for the purpose of determining if a person should be charged with an offence or for the purpose of investigations which may lead to a decision by the FCA to institute criminal proceedings.
21. The requests relate to Collateral (UK) Ltd ("Collateral"). It operated a peer-to-peer lending platform via a website and Collateral stated it held an interim permission from the FCA to carry on regulated activities. Collateral did not hold any valid authorisation or permission to carry on regulated activities. When challenged by the FCA Collateral Companies ceased its lending activities and the lending platform became inoperative in February 2018. The FCA opened an investigation formally in March 2018 and in January 2022 the two Directors of Collateral (Peter and Andrew Currie) were charged with two counts of fraud and one count of money laundering. [In May 2023](#)¹ Peter Currie was convicted of two counts of fraud and one count of money laundering and Andrew Currie was convicted of one count of fraud and one count of money laundering.
22. At the time of the request the criminal investigation and proceedings had concluded. However, proceedings under the Proceeds of Crime Act 2002 relating to the convicted individuals were [ongoing](#)².
23. The FCA has confirmed that under sections 167 and 168 of the Financial Services and Markets Act 2000 ("FSMA"), it may open:
 - general investigations where it considers there is good reason to conduct an investigation into the nature, conduct or state of the

¹ [Two brothers convicted for taking £750,000 out of failed investment firm | FCA](#)

² [FCA commences criminal proceedings in relation to Collateral \(UK\) Ltd | FCA](#)

person's business or a particular aspect of that business, or into the ownership or control of an authorised person; and

- specific investigations if there are circumstances suggesting that a firm or individual may have breached one or more of our rules or principles or may be guilty of certain offences.
24. The information requested in this case is seeking to establish specific details about the actions of the Curries and the investigation. Information that, if it was held, would have been held for the purpose of FCA's investigation into Collateral and its Directors and reveal information about the FCA's investigation such as whether specific entities were looked into and the scope of the investigation.
25. The Commissioner is satisfied that if the FCA did hold any information relevant to parts 3-6 of the request, it would hold it for the purposes of (specific) criminal proceedings that it has the power to conduct. Such information would be exempt by virtue of section 30(1)(a) or (b), and it follows that section 30(3) would therefore be engaged. As such, the Commissioner is satisfied that section 30(3) of the FOIA is engaged in this case.
26. However, for part 7 of the request the Commissioner is not convinced that the FCA has applied section 30(3) correctly. This part of the request asked why the Nat West transaction didn't feature in the charges against the Currie brothers.
27. This is asking the FCA if it can provide information to explain its position. It is not clear to the Commissioner how confirming or denying if it holds information to explain this issue would affect any ongoing investigation. It may be that disclosing any information held (if any exists) may have a more prejudicial affect and engage one of the sub-sections of section 30(1) but the Commissioner is not clear as to how confirming or denying the existence of any such information would impede any investigation or proceeding. As such the Commissioner does not consider that there is a basis to 'neither confirm or deny' if this information is held.

Public interest test

28. Section 30(3) is a qualified exemption. This means that the Commissioner must consider the public interest test contained at section 2 of FOIA and whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in confirming or denying whether the requested information is held. He has gone on to consider the public interest arguments in relation to parts 3-6 of the request.

Public interest arguments in favour of disclosure

29. The complainant has argued that details of the wrongdoings of Collateral Directors are already in the public domain and what remains unknown is the FCA's response. The complainant considers that the information might be considered 'sensitive' by the FCA as it is not compliant with its current narrative on the issue. But the complainant argues that questions remain regarding the action taken by the FCA and the subsequent loss of money by individual consumers.
30. The complainant points to the Commissioner's own guidance on the [public interest test](#)³ which states that:

"If there is a plausible suspicion of wrongdoing, this may create a public interest in disclosure. And even where this is not the case, there is a public interest in releasing information to provide a full picture."
31. It is argued that the request details potential further wrongdoings by the Directors of Collateral that did not feature in the FCA's charges and the reasons for this are not known to the public. The complainant strongly believes the FCA are using the 'neither confirm nor deny' provision of section 30 FOIA to cover up failures.
32. The FCA acknowledges there is a strong public interest in favour of transparency and in the public being made aware of any information the FCA may or may not have received in relation to the markets and firms and individuals operating in the financial services industry. This is particularly true where matters affect consumer assets and interests directly.
33. With regard to Collateral specifically, the FCA is of the view that the numbers of creditors and investors affected by the firm's failure and the amount of money involved do create a high level of public interest in the matter. The FCA considers there can be positive advantages to providing information where doing so would allay any public concern or contain speculation.
34. In this case providing confirmation or denial of details of the investigation would reassure the public about the effectiveness of the approach taken by the FCA. Public confidence may also be increased by allowing scrutiny of the FCA's performance and this may involve examining the decisions taken in particular cases.

Public interest arguments against disclosure

³ [The public interest test | ICO](#)

35. The FCA considers that if firms or individuals believed that information obtained or created as part of its regulatory functions would be disclosed or be confirmed as existing, it may lead to a lack of future cooperation. This would harm the FCA's ability to gather information.
36. The FCA argues it is strongly in the public interest that it has the space to carry out its regulation of the financial services sector unhindered and anything that runs contrary to this principle and dilutes the effectiveness of the FCA may ultimately lead to a decline in public confidence in the sector and the FCA's ability to carry out its functions.
37. Confirming or denying specific facts relating to a criminal investigation (or even confirming if such an investigation is being conducted) can lead to unhelpful speculation about the focus of such investigations and the reasons for this. The FCA states that during the course of an investigation information is likely to be gathered on multiple issues.
38. Confirming or denying if information exists on operational details of an investigation would be likely to prejudice ongoing or future investigations and proceedings. This is because disclosure would, for example, reveal investigative strategies, the types of information obtained and data relating to individuals/entities not under investigation. Taken out of context this could be misinterpreted or misused leading to multiple issues including undermining public confidence and affecting the way the FCA gathers information.

Balance of the public interest arguments

39. In reaching a view on where the public interest balance lies in this case, the Commissioner has taken into account the nature of the requested information as well as the views of both the complainant and the FCA.
40. The Commissioner accepts that it is important for the general public to have confidence in the FCA's investigative capabilities. Accordingly, there is a general public interest in disclosing or, in this case, confirming or denying whether a public authority holds information that promotes accountability and transparency in order to maintain that confidence and trust.
41. However, the Commissioner recognises that there is a very strong public interest in protecting the investigative capabilities of public authorities. The Commissioner considers that appropriate weight must be afforded to the public interest inherent in the exemption – that is, in this case, the public interest in the FCA being able to effectively conduct its function of carrying out criminal investigations.
42. The requests in this case are asking the FCA to confirm if it investigated specific entities and to confirm why it only raised charges for payments

from a certain date, indirectly asking the FCA to confirm details of its investigation strategies.

43. The FCA has a comprehensive [Enforcement Guide](#)⁴ with sections specifically referring to 'publicity'. This states:

"The FCA will not normally make public the fact that it is or is not investigating a particular matter, or any of the findings or conclusions of an investigation except as described in other sections of this chapter. The following paragraphs deal with the exceptional circumstances in which the FCA may make a public announcement that it is or is not investigating a particular matter."

44. Whilst the complainant may have reason to believe that the FCA would have looked into the Nat West accounts as part of its investigation, the extent to which this was done or not is not known and the FCA has a clear policy of not confirming specific details of its investigations.
45. The Commissioner considers that in order to require the FCA to go against its established position there would have to be exceptional circumstances.
46. In a previous [decision notice](#)⁵ relating to Collateral the Commissioner recognised:
- "...the public interest in promoting transparency and public understanding with regard to decisions made by public authorities. The FCA had stated that approximately 1,000 investors had put more than £15 million through Collateral before its collapse so there is a public interest in information that would shed light on the collapse of Collateral, the FCA's role in the proceedings and how decisions were made."
47. The information requested here would not necessarily assist in shedding light on the collapse of Collateral. The Commissioner is not wholly convinced that confirming or denying if specific accounts were investigated would assist in increasing public understanding of how decisions have been or will be made.
48. The section 30 exemptions exist to ensure the effective investigation and prosecution of offences. They recognise the need to prevent disclosures that would prejudice either a particular investigation or set of proceedings, or the investigatory and prosecution processes generally, including any prejudice to future investigations and

⁴ [The Enforcement Guide](#)

⁵ [ic-316363-g8p2.pdf](#)

proceedings. There is a very strong public interest inherent in this exemption.

49. The Commissioner had also previously found that disclosing information obtained or created during an investigation (or in this case confirming the existence or otherwise), may:

"... prejudice the successful conduct of proceedings by the FCA. There is a very significant public interest in avoiding that outcome and for this reason the Commissioner finds the public interest arguments in favour of maintaining the exemption to be more compelling with regards to the information identified that is directly linked to the investigation and continuing proceedings."

50. In terms of part 6 of the request specifically, if the FCA confirmed if a referral to a law enforcement agency or the police had been made, that confirmation would be very likely to reveal something about the investigation. Conversely, if the FCA denied that it had made a referral that could be interpreted to mean either that the FCA did investigate but did not think such steps were needed or the FCA did not investigate. Either response would reveal some detail about the investigation that is otherwise not known and may be prejudicial.
51. For these reasons, and having given due consideration to the opposing public interest factors in this case, the Commissioner's view is that the public interest arguments in favour of maintaining the refusal to either confirm or deny whether information is held outweigh those in favour of the FCA issuing such a confirmation or denial. Therefore, the Commissioner finds that the FCA was entitled to rely on the section 30(3) of the FOIA to neither confirm nor deny if the information in parts 3-6 of the request is held.

Other matters

52. There is no statutory requirement, under FOIA, for a public authority to offer an internal review, however, it is good practice (under the section 45 Code of Practice) and most public authorities choose to do so.
53. The Commissioner reminds the FCA that an internal review should be conducted in a timely manner, ideally within 20 working days or 40 in exceptional circumstances.

Right of appeal

54. 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

55. 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.
56. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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