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Mr Williams
via email

28 February 2020

Our Ref: FOI6759

Your Ref:

Dear Mr Williams

Freedom of Information: internal review

Thank you for your email dated 4 November 2019, asking the Financial Conduct Authority ("FCA") to review its decision of the same date in response to the information you requested under the Freedom of Information Act 2000 ("the Act").

Your original request, dated 9 September 2019, was for the following information:

"In the FCA's guide to the adjustment period for secure customer authentication (<https://www.fca.org.uk/firms/strong-customer-authentication>) the FCA includes an item on eIDAS certificates for TPPs using open banking access.

Please provide:

- 1. Documentation and communications showing what the FCA have assessed as being 'equivalent' to eIDAS, e.g. which criteria are used to judge 'equivalentness'.*
- 2. Documentation and communications relating to how the Open Banking Implementation Entity's privately issued certificates were judged to be equivalent to eIDAS - i.e. how they were judged against the criteria mentioned above."*

In our original response, dated 4 November 2019, we confirmed that we hold information that falls within the scope of your request. We explained, however, that we were not able to disclose any of this to you as the following sections of the Act applied:

- Section 43 (Commercial interests); and
- Section 44 (Prohibition on disclosure by virtue of section 348 of the Financial Services and Markets Act 2000 ("FSMA")).

Internal review

As you may be aware, we would normally aim to complete a review within 20 working days. In this case I regret the review has taken considerably longer, for which I apologise. We are currently experiencing a very high volume of incoming requests and are having to prioritise them in date order. In addition, as I explain more fully below, I have spent considerable time seeking to establish what, if anything, reasonably falls within the scope of your request.

However, I have now had an opportunity to review our decision of 4 November 2019 and the extensive comments and points you make in your email of the same date.

Preliminary

I believe it may be helpful if I mention that, on 5 February 2020 we published an update on Strong Customer Authentication ("SCA"). Further detail can be accessed on the FCA website via the link below:

<https://www.fca.org.uk/firms/strong-customer-authentication>

As part of my review we have undertaken a further assessment of the information we hold. I have also discussed your request, at length and in great detail, and I have revisited how this was interpreted and handled by us at the first stage.

Outcome

I agree that the first part of your request was not clearly answered in our response of 4 November 2019. If I may answer your question now, there are no such documents or communications "*showing what the FCA have assessed as being 'equivalent' to eIDAS, e.g. which criteria are used to judge 'equivalentness'.*"

We were aware of a risk that a number of Third Party Providers (TPPs) would not be able to obtain an eIDAS certificate by 14 September 2019. We were also aware that a number of TPPs were using certificates issued by the Open Banking Implementation Entity (OBIE), as this was the identification method used by a number of Account Information Service Providers (APSPs). For the reasons stated in our website publication (i.e. to minimise the disruption of services to customers) we encouraged firms to continue to use existing methods of identification for a short period. However, as we were aware that there may be providers of secure identification certificates other than OBIE, we considered it appropriate to refer to "equivalent" certificates, and only refer to OBIE certificates as an example. By equivalent, we simply meant equivalent purpose, namely secure identification. Whether or not a certificate was already being used for this purpose was a matter of fact. We did not make any assessment of equivalence or develop any criteria as we did not anticipate that we would be making such an assessment.

Given there are no documents that fall within the first part of your request, I have spent considerable time seeking to establish what, if anything, reasonably falls within the second part of your request. I regret to inform you that I have concluded that, as there is no information that falls within the first part of your request, it follows that there is no information falling within the second part of your request.

Before reaching this conclusion, I took into account what you were told in response to your original request. I have concluded that our response to the original request was in error in informing you that the FCA held relevant documentation, for which I apologise. I have also

spent considerable time trying, in the interests of transparency, and in the spirit of the Act, to adopt a wider interpretation of your request, so that documents could be disclosed to you if they could reasonably be considered to fall within your request. However, all attempts at doing so have faced the problem of knowing where to draw the line, with the consequent risk that an arbitrary approach would be taken to what is and what is not relevant, with a related risk that documents that might be considered relevant on one wider interpretation are excluded under a different wider interpretation. To be clear, I do not consider your initial request to require clarification: it is sufficiently precise to have led me to the conclusion that no documents fall within scope.

Conclusion

I realise that you may be disappointed to learn that the information you requested does not exist. If you are not content with the outcome of the internal review, you have a right of appeal to the Information Commissioner at the following address: *Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Telephone: 01625 545 700, Website: www.ico.org.uk.*

Yours sincerely

A handwritten signature in black ink, appearing to read 'PP Cross', written in a cursive style.

Pam Cross
Internal Reviewer