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Mr Steven Franks
Via email

20 December 2019

Our Ref: FOI6787

Your Ref:

Dear Mr Franks

Freedom of Information: internal review update

I refer to your email dated 21 October 2019 asking for an internal review of the Financial Conduct Authority's ("FCA") response of the same date to your request made under the Freedom of Information Act 2000 ("the Act"). Your request is as follows:

1. *"Please provide a numeric breakdown of the numbers of staff that left the General Insurance & Protection (Retail Supervision) teams between 1 September 2015 and 31 March 2019, to include those staff that left the FCA and also transferred internally to other areas. Please provide a breakdown by year.*
2. *Please provide an organisation chart showing the senior and middle management roles and names that were attached to the Retail Supervision area during the period above."*

In our original response dated 21 October 2019, for point 1 of your request we provided you with some information about the numbers of individuals who left the General Insurance & Protection Department within the specified date range. However, we were not able to provide you with all the information requested where the number of leavers is fewer than 10. For point 2 of your request we provided you with copies of the organisation charts but redacted the names of staff. I will not repeat the arguments here but simply outline that we informed you that the exemption in section 40 (Personal data) of the Act is engaged.

Internal review

I now turn to your request for us to reconsider our decision regarding supplying you with the information you are seeking. As you may be aware, we would normally aim to complete a review within 20 working days. In this case, the review has taken longer, for which I apologise.

I have reviewed our response of 21 October 2019 and the points you make in your email of the same date. In particular, you explain that you believe the information provided confirms the numbers for the entire division and not just the retail supervision team.

In respect of point 1 of your request I believe it may be helpful if I clarify that the title General Insurance & Protection (Retail Supervision) teams does not exist in our organisation. The information we previously provided to you relates to the Supervision – Retail and Authorisation ("SRA") Division - General Insurance ("GI") & Conduct Specialists ("CS") sub division. The GI&CS sub division comprises the following departments, of which the first is relevant to your request:

- SRA GI&CS Retail
- SRA GI&CS Wholesale
- SRA GI&CS Conduct Specialists
- SRA GI&CS Sector & Themes
- SRA GI&CS Director's Office

I can therefore confirm that the relevant numbers for the SRA GI&CS Retail department are as follows:

Date Range	Left the FCA	Internal Transfer	Total
01/09/2015 – 31/12/2015	0	3	3
01/01/2016 – 31/12/2016	4	13	17
01/01/2017 – 31/12/2017	3	3	6
01/01/2018 – 31/12/2019	4	7	11
01/01/2019 – 31/03/2019	0	2	2
Total	11	28	39

Please note that the internal transfer figures include individuals on long term absence, such as maternity leave, who are moved for reporting purposes to a central HR team for the duration of their period of absence.

In respect of point 2 of your request you have not raised any concerns about our previous response. However, for completeness I consider that section 40(2)(b) continues to apply to the names of staff which we have redacted. I have provided a fuller explanation of this in Annex A to this letter.

I realise that you may be disappointed not to receive all the information you have requested, but I hope this letter explains clearly my decision. 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 'JP Bolton'.

John Bolton
Internal Reviewer

Annex A

FOI6787: information withheld in response to the request for information, dated 21 September 2019, made to the Financial Conduct Authority ("FCA") under the Freedom of Information Act 2000 ("the Act") by Mr Steven Franks

For point 2 of your request our initial response of 21 October 2019 provided you with copies of 17 versions of the organisational charts for the SRA-GI&CS sub-division but advised that that we are unable to provide you with the names of staff as this is exempt from disclosure under the exemption in section 40(2) of the Act.

Section 40(2) of the Act provides that "Any information to which a request for information relates is also exempt information if ... (a) it constitutes personal data which do not fall within subsection (1), and (b) either the first or the second condition below is satisfied".

In order to apply this exemption, the key question we have to consider is whether public disclosure by the FCA of the requested information would entail the disclosure of the personal data of an individual in breach of Principle 1 of the General Data Protection Regulations ("GDPR") including the data protection principles of Article 5 and the Data Protection Act 2018 ("DPA") as to disclose such information to the public at large would not be lawful or fair to the individuals concerned. The first data protection principle requires that any disclosure of information is lawful and fair and transparent and that at least one of the conditions in schedule 9 of the DPA is met.

I would also mention that you may wish to be aware of a Court of Appeal decision (<http://www.bailii.org/ew/cases/EWCA/Civ/2014/92.html>) involving Efifiom Edem and the FSA/Information Commissioner. In this instance Mr Edem had requested the names of three FSA staff involved in investigating complaints about a particular firm be disclosed. The Court of Appeal found '*A name is personal data unless it is so common that without further information, such as its use in a work context, a person would remain unidentifiable despite its disclosure*' (§20).

The Court of Appeal therefore ordered that the three names should not be disclosed as they constituted the personal data of these individuals. In addition, their employment by the FSA in a particular capacity, at the relevant time, was sufficient to identify them.

I consider that the information we hold relates to the employment arrangements of both current and former FCA staff. I have therefore considered whether the disclosure of the withheld personal information would be fair. In doing so I took into account the following factors:

1. the individuals' reasonable expectations of what would happen to their information;
2. whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals concerned;
3. whether the legitimate interests of the public in disclosure were sufficient to justify any negative impact to the rights and freedoms of the individuals concerned; and

4. given the importance of protecting an individual's personal data the 'default position' is in favour of protecting the privacy of the individual.

Firstly, if I may explain, by comparing the various organisational charts it would be possible to identify those individuals who have either left the FCA or transferred to another business area. If a series of organisational charts for different areas within FCA were then obtained across the same time frames it would be possible to combine the information by building up a "mosaic" or "jigsaw" effect to trace an individual's career history.

Those individuals who have now left the FCA have a reasonable expectation that the personal information relating to their former employment status should be protected. To breach this expectation is not 'fair' (as noted in the first principle of Article 5 of the GDPR), or 'necessary' or 'lawful' (where none of the conditions in Article 6(1) of the GDPR have been met).

Moreover, disclosure would constitute an unwarranted interference in their private lives as it fails to consider the use to which the information might be put. I am therefore of the view that the release of any such information may be detrimental to the individuals concerned and personal distress would be likely to be caused if this led to comment and/or speculation about the individuals. In addition, current staff have a reasonable expectation that the personal information relating to their employment should be protected and not be made available to the public at large other than in respect of their grade and the high level business unit in which they work – please see [here](#). We do not routinely publish information about the specific departments to which individuals are assigned.

I also consider that disclosure would be unfair, as it would attract "undue" attention to the various individuals. If the names of the leavers (as previously mentioned it would be possible to identify them through a making a series of similar requests for organisational charts) were disclosed, this would attract a level of scrutiny and attention which would be unfair to the individuals involved, who may have moved on to other roles, and could also potentially impact both their private and professional lives. Incorrect assumptions or misleading inferences may also be made about the reasons for individuals leaving the FCA.

I am therefore satisfied that the withheld information is the personal data of the various individuals and that releasing the names of individuals appearing on organisational charts is sufficient to potentially identify them and would contravene one of the conditions under section 40(3)(a)(i) of the Act.

Section 40 is an "absolute" exemption, and so it is not necessary to consider the public interest for and against disclosure of the information falling within this exemption. I am therefore satisfied that section 40 has been applied correctly to point 2 of your request.