

Mr Mark Griffiths
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From: Niki Sharp
Assistant Director

SENT VIA EMAIL

Direct line: 020 3738 6018

Our ref: IAT-FOI-0859-21

30 April 2021

Dear Mr Griffiths

Request for information under the Freedom of Information Act 2000 ('the FoIA')

Thank you for your email of 5 April 2021.

The request

In your email you requested:

Please can you provide an update on the current investigation into leasehold property mis selling, this can include an expected timeline of future public announcements.

This is being treated as a request for information under the FoIA.

The CMA's response

The CMA holds information falling within the scope of your request. However, this information is, as set out below, exempt from disclosure under:

- section 21 of the FoIA, as being reasonably accessible to you by other means;
- section 31(1)(g) of the FoIA (law enforcement); and
- section 44(1)(a) of the FoIA, on the basis that it is subject to a prohibition on disclosure.

Section 21

Information regarding the current status of our leasehold investigation, is available on our case page. You can find the information you are seeking at: [Leasehold - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

In summary the CMA has opened enforcement cases against four developers. These included Countryside Properties and Taylor Wimpey, for using possibly unfair contract terms, and Barratt Developments and Persimmon Homes over the possible mis-selling of leasehold homes. The CMA has sent 'consultation letters' to Countryside Properties and Taylor Wimpey and is also investigating certain firms who bought freeholds from those developers. The CMA is continuing to investigate Barratt Developments and Persimmon Homes.

The case page will also be updated when any future updates or public announcements are made. The timings of any updates be will be dependent on the progress of the above matters.

I have set out further information about the enforcement process generally at the end of this letter, in the section headed 'Advice and assistance under section 16'.

Section 31(1)(g)

In addition to section 21 (above) and section 44(1)(a) below, we consider that section 31(1)(g) would apply. That is, the CMA considers that disclosing more detailed information about the CMA's ongoing enforcement cases, above and beyond that which appears on the CMA's case page, would be likely to prejudice the exercise of its functions.

The relevant CMA functions in this matter are contained in Part 8 of the Enterprise Act 2002 ('the EA 2002') which enables the CMA to conduct investigations in respect of consumer protection law.

Those functions are exercised for the purposes contained in section 31(2) of the FoIA namely:

- (a) ascertaining whether any person has failed to comply with the law;
- (b) ascertaining whether any person is responsible for any conduct which is improper;
- (c) ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

Prejudice

The CMA considers that disclosure of the requested information would be likely to prejudice the exercise of its functions because/for the following reasons:

- Premature disclosure of information relating to investigations, including the CMA's investigative strategy and timings, would be likely to prejudice the conduct of those investigations and seriously undermine the effectiveness of action taken by the CMA to protect the public, because (for instance) it may allow parties to frustrate or delay the CMA's investigations (including through the potential concealment or destruction of evidence), or weaken the CMA's position where it is engaging with parties.
- Those conducting investigations also need to be able to use their professional judgement objectively, on the basis of all the available information, free from the risk of inappropriate pressure and requests for premature disclosure from external parties who are not aware of all the relevant circumstances and who may have private interests at stake.

Public interest test

As the exemption at section 31(1)(g) is a qualified exemption, it is also subject to a public interest test, which requires the CMA to determine whether in all the circumstances of the case, the public interest in withholding the information outweighs that in disclosing it.

Factors in favour of disclosing the requested information which the CMA has considered include:

- the CMA acknowledges the general public interest in ensuring public access to information about its performance of its functions in the interests of openness and accountability.
- There is a public interest in the CMA disclosing the requested information so that the CMA is transparent in the exercise of its functions and accountable to the public in ensuring that law enforcement purposes are pursued appropriately. This is acknowledged in the CMA's transparency statement: *Transparency and disclosure -statement of CMA's policy and approach: CMA6.*

Factors in favour of withholding the requested information which the CMA has also considered include:

- The CMA considers, however, that there is a very strong competing public interest in maintaining public confidence in the CMA's ability effectively to undertake its law enforcement role.
- The CMA considers that there is a very strong public interest in ensuring that robust systems are in place to prevent and detect offences and other unlawful conduct, as well as conduct that is improper or would justify regulatory intervention. It is essential therefore to maintain the ability of the CMA to conduct such investigations and take enforcement or regulatory action effectively, and to engage as necessary with those involved.
- The CMA must be able to carry out its core law enforcement and regulatory functions properly and effectively and the CMA considers that the disclosure of the requested information would be likely to undermine its ability to do so.

The CMA has weighed up the public interest factors in favour of disclosure and those in favour of withholding the requested information and has concluded that the balance lies in withholding the requested for the following reason:

Having considered its responsibilities to be open, transparent and accountable in its work, but also the need to:

- avoid prejudice or likely prejudice to investigative work;
- ensure that CMA staff are able to conduct investigative work free from inappropriate external pressure,

the CMA has reached the conclusion that the balance of the public interest lies in favour of withholding the requested information because disclosure would undermine its effectiveness in performing its law enforcement functions.

Section 44(1)(a)

Section 44(1)(a) of the FoIA provides that information is exempt from disclosure where its disclosure is prohibited by another statutory provision. The statutory prohibition relevant to this case is found in the EA 2002 and applies to information about individuals and businesses that has come to the CMA in connection with its work.

Section 237(2) of the EA 2002 prohibits the disclosure of 'specified information' which relates to the affairs of an individual or the business of an undertaking, during the lifetime of the individual or while the undertaking continues in existence. Information is 'specified' if it has come to the CMA in connection with the exercise of

its functions under the EA 2002 or functions conferred by other legislation as set out in section 238(1).

The information you have requested is 'specified information' because it has come to the CMA in connection with the exercise of its functions under the EA 2002, namely to engage with businesses, gather information and carry out investigations with a view to ending or preventing infringements of consumer law under Part 8 of the EA 2002; or refers to, discusses or is otherwise inextricably linked to specified information.

More specifically, and as alluded to above, one of the CMA's functions is to investigate potential breaches of consumer law and take action where appropriate. In particular, the CMA has civil enforcement powers under Part 8 of the EA2002 which allow it to engage with a business (usually before taking court action) to bring to an end, or prevent, infringements of consumer law. The CMA may accept undertakings from a business instead of taking court proceedings to stop them from breaching certain consumer laws. Otherwise, the CMA may apply to the court for an enforcement order against a business which breaches certain consumer laws. The CMA gathers information and carries out investigations in order to exercise or to consider whether to exercise its powers under Part 8 of the EA2002.

Advice and assistance under section 16

The CMA is under a duty under section 16 of the FoIA to provide requesters with advice and assistance so far as it would be reasonable to expect it to do so. In this regard, we would like to draw your attention to the CMA's consumer enforcement process, as set out in CMA58 [Consumer protection enforcement guidance: CMA58 - GOV.UK \(www.gov.uk\)](#) and to the associated Transparency Statement available on the same web page. These provide an overview of how the CMA uses consumer enforcement law and uses its investigatory powers and also the CMA's enforcement processes and its approach to transparency on cases and projects.

As you will see from those documents and our public updates on the leasehold investigation, we have opened cases against two house builders (Barratt Developments and Persimmon Homes) relating to possible breaches of consumer protection law in respect of mis-selling issues (as well as separate cases against additional parties in respect of ground rent issues).

Since case opening, we have been collecting information from a number of sources, including those house builders. How the cases then proceed will depend on our assessment of the evidence gathered, and we would ordinarily publish an update to our case page when decisions on next steps have been taken.

Internal Review Process

If you do not accept the outcome of your request for information, you may seek an Internal Review of the CMA's decision by writing to:

Information Management Team
Ninth Floor
Competition & Markets Authority
Cabot House
25 Cabot Square
London
E14 4QZ

You may alternatively send an e-mail to internalreview@cma.gov.uk. If you do not seek an Internal Review within 40 calendar days of the date of the CMA's response to you the CMA will consider that you are happy with the CMA's response and will not be obliged to offer a review of your request outside this timeframe.

In requesting an Internal Review, please provide your reasons why you believe your request for information should be considered afresh by the CMA. Your reasons will assist the Reviewer in addressing your concerns about how your request was handled.

The CMA will deal with your request for a Review within 20 working days of receipt or, if this is not possible, advise you of a date by which the CMA expects to have completed the Review.

You are also entitled to complain to the Information Commissioner, but the Commissioner may ask you to complete the CMA's Internal Review process before taking on your complaint:

The Information Commissioner
FOI/EIR Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Yours sincerely

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