

29 June 2023

By email: [REDACTED]

Dear [REDACTED]

Official Information Act 1982 Request (OIA) – Section 25 and 44 of the FMA Act

Thank you for your email dated 1 June 2023, requesting for information about the FMA’s use of its legislative powers under sections 25 and 44 of the Financial Markets Authority Act (FMA Act), specifically you requested for:

1. *“How many times the FMA has issued a section 25 notice in 2019, 2020, 2021, 2022 and 2023 to date*
2. *How many underlying cases were there each year for these section 25 notices?*
3. *How many of the section 25s issued in that same period, broken down by calendar year, came with a confidentiality order (as per section 44 of the act)?*
4. *For the s25 notices that came with a confidentiality order as per s44: Could you give us an idea of the type of entity each of the notices was issued to in that same period - ie is it an individual investor or an entity? Any more general detail you can give? Could you please give us an idea of the reason why each notice was issued in that same period - ie criminal investigation; data gathering; etc?”*

OIA response

We have considered your request under the Official Information Act 1982. Please see below table providing a breakdown of the information you requested. Please note that this is an estimate based on records we have available in our systems.

Year	Number of S25 Notice issued	Number of matters/ underlying cases the s25 notices issued were related to/ issued for	Number of matters that s44 (confidentiality order) issued with s25 notices	Type of subjects that s25 notices were issued to with a confidentiality order
2019	171	40	5	1 related to an individual and 4 to entities
2020	190	44	8	All orders related to entities
2021	216	52	9	2 related to individuals, and 7 related to entities
2022	222	45	11	All orders related to entities
2023 (as at 8/6)	171	36	5	1 related to an individual and 4 to entities

Your query - question 4

Given the information available in our records, we are only able to inform you of whether the section 25 notice was issued with a confidentiality order to an individual or an entity in the above table. Additionally, we also provide further information as to why s25 notices and confidentiality orders might be issued by the FMA **below**.

Section 25 of the Financial Markets Authority Act 2011 (FMA Act) gives the FMA the power to require a person to supply information, produce documents, or give evidence. To issue a section 25 notice we must consider it necessary or desirable for performing or exercising our functions, powers or duties. As a result, all Section 25 notices the FMA issued, were generally for the purpose of gathering information, documents or evidence.

Confidentiality orders are issued by the FMA most commonly in relation to specific investigations. These orders are used either where there is a particular need to preserve confidentiality in order to protect complainants or witnesses in connection to a case, or where confidentiality is important in order to preserve the integrity of an investigation, such as where there is a risk of contamination of evidence or unconscious tainting of evidence between witnesses, or of deliberate collusion between witnesses. The FMA's power to issue confidentiality orders is set out in the FMA Act and is similar to powers held by other regulators.

I hope the above information assists you. You have the right to complain to the Ombudsman regarding our assessment of your OIA request, in accordance with section 28 of the Official Information Act. Information about how to make a complaint is available at www.ombudsman.parliament.nz or phone 0800 802 602.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nath', with a stylized flourish underneath.

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Senior Legal Counsel