

ICO Disclosure Log Response to Request

Reference: IRQ0469307

Date of response: 13/11/2012

Response

Further to our acknowledgement of 19 October 2012 we are now in a position to provide you with a response to your request for information of the same date.

As you know we have dealt with your request in accordance with your 'right to know' under section 1(1) of the Freedom of Information Act 2000 (FOIA), which entitles you to be provided with a copy of any information 'held' by a public authority, unless an appropriate exemption applies.

Request

You requested:

Please provide me with a copy of any search warrant(s) and explanatory material relating to the warrant(s) issued to the ICO or an agent acting on behalf of the ICO in relation to its research and investigation into the existence of a database of construction industry workers or any other employee "blacklist". In particular, please release the warrant and explanatory material issued with respect to the raid (or raids) on the office(s) of the Consulting Association in 2008-9.

Information Held

I can confirm that we hold recorded information which falls within the scope of your request. The information that we hold which falls in the scope of your request is:

- The warrant application.
- A copy of the information support of the application.

- Nine appendices attached to the above application.
- A copy of the warrant issued.

Information Provided

The letter and application are attached with some redactions. The information that has been withheld is exempt under Section 40(2)(a)(i) by virtue of Section 40(3)(a)(i) of FOIA. Section 40(2) of FOIA allows a public authority to withhold information from a response to a request under the FOIA when the information requested is personal data relating to someone other than the requestor, and its disclosure would contravene one of the Data Protection principles.

The information that has been redacted is the name of a para-legal employed at the time of the warrant application. We consider that due to the grade of this post such a disclosure would be unfair and in breach of the first Data Protection principle which states that – *"Personal data shall be processed fairly and lawfully ..."*

The copy of the report containing the information in support of the warrant application is also provided in redacted form. This information has been withheld in reliance on the provisions of Section 44 of the FOIA which places prohibitions on disclosure and is an absolute exemption which does not require a consideration of the public interest test of the type required by the qualified exemptions.

Section 44(1)(a) of the FOIA states;

*'(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it -
(a) is prohibited by or under any enactment'*

The enactment in question is the Data Protection Act 1998 (DPA) and specifically Section 59 of the DPA. Section 59 states that neither the Commissioner nor his staff shall disclose;

"any information which :

- a. has been obtained by, or furnished to, the Commissioner under or for the purposes of the information Acts.*
- b. relates to an identified or identifiable individual business, and*
- c. is not at the time of disclosure, and has not been available to the public from other sources,*

unless the disclosure is made with lawful authority."

Section 59(1) DPA is worded as follows:

(1) No person who is or has been the Commissioner, a member of the Commissioner's staff or an agent of the Commissioner shall disclose any information which
(a) has been obtained by, or furnished to, the Commissioner under or for the purposes of the information Acts,
(b) relates to an identified or identifiable individual or business, and
(c) is not at the time of the disclosure, and has not previously been, available to the public from other sources,

unless the disclosure is made with lawful authority.

Section 59(2) explains that there are five circumstances when the ICO could have lawful authority to disclose; this is an exhaustive list. The circumstances are:

"(a) the disclosure is made with the consent of the individual or of the person for the time being carrying on the business,
(b) the information was provided for the purpose of its being made available to the public (in whatever manner) under any provision of this Act,
(c) the disclosure is made for the purposes of, and is necessary for, the discharge of –
(i) any functions under this Act, or
(ii) any Community obligation,
(d) the disclosure is made for the purposes of any proceedings, whether criminal or civil and whether arising under, or by virtue of, this Act or otherwise, or
(e) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest."

I will set out how each provision is made out in this case.

Section 59(1) (a) is satisfied because the information was seized by the ICO for the purposes of the information Acts. The Information Acts consist of the Data Protection Act 1998 and by amendment the Freedom of Information Act 2000 (you can read the annotated Data Protection Act 1998 on our website in the Legislation section). The ICO would not have received this information had it not been the regulator of the DPA and seized this information as part of a criminal investigation.

As section 59(1)(b) applies to the 'information Acts' and therefore the meaning of the word 'business' must be assessed in the context of those Acts to include public authorities; we can conclude that Ian Kerr trading as the Consulting Association is therefore an identifiable business and section 59 (1) (b) is satisfied.

In relation to section 59 (1) (c), the information has not been

disclosed to the public and therefore this does not provide a route to disclosure.

Section 59 (2) (b) provides circumstances where lawful authority could be achieved. We can say that in relation to (a) we do not have consent from the consulting association to disclose this information and in relation to (b) the information was not provided to the ICO for the purpose of being made public.

In relation to (c) we must consider whether this applies in any way without reference to the ICO having received an information request because section 44 (1) FOIA sets out that 'Information is exempt information if its disclosure (*otherwise than under this Act*)'. We find that we are not required to disclose this information in order to discharge a function under the information Acts or a Community obligation.

Further, in relation to (d) a disclosure would not be for the purposes of proceedings.

Finally, we turn to (e). We should clarify that the public interest threshold here is very high, not least because disclosure in contravention of section 59 by the Information Commissioner or his staff may constitute a criminal offence (s.59 (3)).

We maintain that there is a strong public interest in information seized as part of a criminal investigation by the Information Commissioner, to enable him to carry out his statutory duty, remaining confidential and that this information will not be disclosed without lawful authority. We consider that to do so would undermine the regulatory function and powers of the Information Commissioner's Office.

In terms of the nine indexes some are being provided in their entirety and some are being withheld in reliance on Section 59 as set out above. We have listed below which are being withheld and which are being provided:

Appendix 1 – Schedule 1 of the Data Protection Act 1998 – Provided in full.

Appendix 2 – Section 7 – 14 The Data Protection Act 1998 – Provided in full.

Appendix 3 – WITHHELD - Section 44 of FOIA.

Appendix 4 – WITHHELD – Section 44 of FOIA.

Appendix 5 – WITHHELD – Section 44 of FOIA.

Appendix 6 – Article on Pfizer Dismissals - Provided in full.

Appendix 7 – S7 Employment Relations Act 1999 – Provided in full.

Appendix 8 – WITHELD – Section 44 of FOIA.

Appendix 9 – Statement of Diana Shields Evidencing Fax Number – Provided in redacted form. Information exempt under Section 44 as above.

A copy of the warrant is provided in full.

I hope this information is of help and assistance. If however you are dissatisfied with the response you have received and wish to request a review of our decision or make a complaint about how your request has been handled you should write to the Information Governance Department at the address below or e-mail informationgovernance@ico.gsi.gov.uk

Your request for internal review should be submitted to us within 40 working days of receipt by you of this response. Any such request received after this time will only be considered at the discretion of the Commissioner.

If having exhausted the review process you are not content that your request or review has been dealt with correctly, you have a further right of appeal to this office in our capacity as the statutory complaint handler under the legislation. To make such an application, please write to the First Contact Team, at the address below or visit the 'Complaints' section of our website to make a Freedom of Information Act or Environmental Information Regulations complaint online.

A copy of our review procedure is available [here](#).

Yours sincerely

Charlotte Powell
Information Governance Manager