

26 April 2023

IC-224200-M8H3

Request

You asked us:

"Could you please, under the FOI-Act, provide me with the FOI numbers + your/ICO reference numbers for concerns/complaints submitted to the ICO (under the FOI-Act) about a public-authority refusing disclosure on the ground of section 22(1) FOIA (i.e. exemption for Information intended for future publication), in the year 2022, + for those submitted in the year 2021, + for those submitted in (the months Jan, Feb, Mar of) the year 2023, to the ICO?"

Could you also please provide for each the date that it was submitted to the ICO/you? + could you please provide the text of each of the FOI-requests?"

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

Our response

We can confirm that we hold information within scope of your request.

Please find attached in CSV format the information you have requested. This includes the ICO case reference number, the relevant public authority's reference number, the date of submission to the ICO and the text of each request. We have also provided some further contextual information, such as the decision reached in each case and date of completion, where applicable.

Please note that we do not hold the relevant public authority's reference number in all cases where this was not provided to us in the course of handling the complaint.

Please also note that, while all of the cases relate to Section 22 as a legislative concern, this is not necessarily the only legislative concern raised by the complainant in each case.

We have technically withheld some information where it is already reasonably accessible to you under Section 21 of the FOIA.

We have also withheld some information under Section 31 of the FOIA where the relevant cases have not been completed and our investigations have not yet concluded.

Please see more information about why this information has been withheld below.

FOI Section 21

Where we have issued a decision notice in relation to an FOI complaint, we publish this in the [decision notices](#) section on our website. Each decision notice includes the text of the FOI request relevant to each complaint.

These decision notices are searchable by keyword and can be filtered by timeframe. By searching for the relevant ICO reference number you will be able to find copies of the decision notices in question.

The ICO does not issue a decision notice in every case – for example, we might not issue a decision notice where a complaint has been withdrawn by the complainant.

Because this information is reasonably accessible to you, technically it is withheld under section 21 of the FOIA. Section 21 states that we don't need to provide you with a copy of information when you already have access to it. Where the text of each FOI request has already been published, this has therefore not been included in the spreadsheet itself.

Where a given case has a decision notice associated with it, this has been noted in the spreadsheet provided to you for your reference.

FOI Section 31

We have withheld some information because it is exempt from disclosure under section 31(1)(g) of the FOIA.

We can rely on Section 31(1)(g) of the FOIA where disclosure:

"would, or would be likely to, prejudice – ... the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state:

"(a) the purpose of ascertaining whether any person has failed to comply with the law" and

"(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ..."

Section 31 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

Our investigation into these cases is still ongoing. To release the information you have requested could prejudice the ICO's ability to conduct the investigation in an appropriate manner.

Disclosure at this stage would discourage our ongoing discussions between the ICO and the relevant public authorities, and may damage our ability to conduct and conclude the investigations fairly and proportionately.

Disclosure could also jeopardise the ICO's ability to obtain information relating to this case or others in the future, and is likely to result in other parties being reluctant to engage with the ICO in the future.

Any information released at this stage could be misinterpreted, which in turn could distract from the investigation process. With this in mind, we have then considered the public interest test for and against disclosure.

In this case the public interest factors in disclosing the information are –

- increased transparency in the handling of FOI requests by the public bodies we regulate.
- increased transparency in the way in which the ICO conducts its investigations.

The factors in withholding the information are –

- the public interest in maintaining organisations' trust and confidence that the ICO's enquiries will be afforded an appropriate level of confidentiality,
- the public interest in organisations being open and honest in their correspondence with the ICO without fear that the relevant concerns will be made public prematurely or, as appropriate, at all;
- the public interest in maintaining the ICO's ability to conduct the investigation into complaints as it thinks fit.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it at this time.

This concludes our response to your information request.

Advice and assistance

You can find further general information on the cases we handle in the [complaints and concerns data sets](#) published on our website. These include [data sets of complaints under s50 of the FOIA](#).

We publish these data sets regularly. They include the ICO case reference number, the primary legislative reason for each decision (such as whether the case relates to section 22), the dates on which we received each complaint, our decision on each case, and the relevant public authority that each complaint was about.

Next steps

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days. You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint through our website](#).

Your information

Our [Privacy notice](#) explains what we do with the personal data you provide to us, and set out your rights. Our retention schedule can be found [here](#).

Yours sincerely



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