

ICO Disclosure Log – Response IRQ0569536

Request for information

Further to our acknowledgement, we are now in a position to provide you with a response to your request for information.

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

In your email of 30 January 2015 you asked us to provide you with the following information:

"I write with a request for information under the Freedom of Information Act.

My request is as follows:

** Please provide copies of all communications with the Ministry of Justice surrounding an alleged data protection breach involving discs containing information relating to the deaths of Mark Duggan, Azelle Rodney and Robert Hamill.*

I have been told the ICO was alerted to the alleged breach on January 22.

** If not included in the above, please provide copies of all security breach notification forms in relation to the case.*

** Please also provide copies of all communications involving Christopher Graham relating to the case from (and including) January 22 to today's date (January 30). By "involving" I mean sent or received by Mr Graham, including "copied in" communications."*

Information held

Please find attached copies of some of the information covered by your request.

The attached is the requested information held by Christopher Graham up to the date of the request. This comprises of emails sent internally at the ICO, emails from the MoJ to the ICO providing a link to the publicly available information concerning the 'alleged data protection breach' and certain newspaper articles that were held by us at the time of your request.

Please note that part of the information sent in an email on 29 January

2015 at 04:36 has been redacted because it was out of scope of your request. For the same reason we have redacted part of the email sent on 29 January 2015 at 16:19.

Information withheld

Section 31 FOIA

We are withholding some of the requested information held at the time of the request.

The exemption at section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information *"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)."*

The purposes referred to in sections 31(2)(a) and (c) are –

"(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 ..."

Clearly, these purposes apply when the Information Commissioner is considering whether or not a data controller has breached the Data Protection Act.

However, this exemption is not absolute. When considering whether to apply it in response to a request for information, there is a 'public interest test'. That is, we must consider whether the public interest favours withholding or disclosing the information.

In this case the public interest factors in favour of disclosing the information held by the ICO are –

- increased transparency in the way in which the Ministry of Justice has responded to the ICO's enquiries;
- increased transparency in the way in which the ICO conducts its investigations.

The factors in favour of withholding the information are –

- the public interest in maintaining public authorities' and data controllers' trust and confidence that their replies to the ICO's enquiries will be afforded an appropriate level of confidentiality, particularly while investigations are continuing;
- the public interest in data controllers being open and honest in their correspondence with the ICO about the way they have handled personal data, without fear that their comments will be made public prematurely or, if it is inappropriate to do so, at a later date;
- the public interest in maintaining the ICO's ability to conduct the investigation into a possible data breach as it thinks fit, without undue external interference or comment; and
- the public interest in maintaining the ICO's ability to decide when information about the matter can be made public, taking into account all the circumstances.

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. I am sorry, therefore, that in this instance we are unable to provide you with some of the information that you have requested.

Section 40(2) FOIA

We have withheld from the attached documents the names and contact details of certain individuals we corresponded with at the MoJ in order to protect their identities.

This personal information is exempt from disclosure to you under section 40(2) of the FOIA which, by virtue of section 40(3)(a)(i) 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 requester, and its disclosure would contravene the Data Protection Act 1998.

You will note that we have also withheld a name from an email sent on 29 January 2015 at 04:13. The data subject would hold a reasonable expectation that their name would not be released into the public domain and therefore disclosure would be unfair and contravene the first principle of the DPA.

Review procedure

I hope this provides you with the information you require. However, if

you are dissatisfied with this response 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 Access Team at the address below or email accessicoinformation@ico.org.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 our Customer Contact Team, at the address given 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 can be accessed from our website [here](#) .