

22 June 2023

IC-234960-H6G8

Request

You asked us:

"under the FOIR of whom did he make targeted enquiries and why are there no notes in relation to PCS."

We received your request on 25 May 2023.

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

Our response

I have consulted with the relevant areas of the ICO and I can confirm that we hold the information in scope of your request, however this information is being withheld at this time. I have explained the reasoning for this below. The part of your email 'why are there no notes in relation to PCS is not a request for information under FOIA.

Information Withheld

We have withheld the information in scope 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.

As with many sectors, our research into care home providers is still ongoing as documented in the ICO25 document [here](#) on our website. To release the information you have requested could prejudice the ICO's ability to conduct future research investigations in an appropriate manner. Disclosure at this stage would discourage our ongoing discussions between the ICO and care home providers that we have engaged with, and other care home providers in the future. It may damage our ability to conduct and conclude any investigations fairly and proportionately.

Disclosure could also jeopardise the ICO's ability to obtain information relating to this case or others in the future.

Disclosure 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 future investigation processes.

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 way in which care home providers have responded to the ICO's enquiries;
- increased transparency in the way in which the ICO conducts its research and sectoral reviews.

The factors in withholding the information are –

- the public interest in maintaining organisations' trust and confidence that their replies to 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 their comments will be

made public prematurely or, as appropriate, at all;

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.

This concludes our response.

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 and EIR. 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

Andrew Burkitt
Senior Information Access Officer