

3 August 2023

## Request

On 24 July 2023, you requested the following information:

- 1. Please confirm how many Level F employees and above the Information Commissioner's Office has employed since 01 June 2022.*
- 2. Please confirm whether, since 01 June 2022, any Level F or Group Manager grade employees of the Information Commissioner's Office or above have been subject to, or are currently subject to;*
  - a. any internal investigations,*
  - b. any external investigations, or*
  - c. disciplinary actions.*
- 3. With regards to question 2. above, where either investigations or disciplinary actions have been pursued, please confirm;*
  - a. How many Level F officers or above were subject to investigations / disciplinary actions;*
  - b. What the outcome of these investigations / disciplinary actions were;*
  - c. Whether any disciplinary markers (e.g. warnings) were awarded to any officers at all, and if so what disciplinary markers were applied?*
  - d. Whether any disciplinary proceedings are ongoing and their anticipated date of completion.*
- 4. With respect to case IC-193862-D2Y3, received by the ICO on 26 September 2022, please confirm the outcome of the case and provide a full copy of the case, including any assessments of the case made by the ICO.*

On 26 July 2023 you added an additional point to your request:

*Please could you confirm whether any members of the ICO staff have been interviewed under caution by the ICO in relation to potential criminal offences*

*since 01 June 2022? If so, please could you confirm the case reference number they were interviewed under.*

We have dealt with your request in accordance with the Freedom of Information Act (2000).

## **Response**

We will address each part of your request below.

*1. Please confirm how many Level F employees and above the Information Commissioner's Office has employed since 01 June 2022.*

79 people have been appointed to roles graded F and above since 1 June 2022.

*2. Please confirm whether, since 01 June 2022, any Level F or Group Manager grade employees of the Information Commissioner's Office or above have been subject to, or are currently subject to;*

- a. any internal investigations,*
- b. any external investigations, or*
- c. disciplinary actions.*

We can confirm that the answer is yes to a., b. and c.

*3. With regards to question 2. above, where either investigations or disciplinary actions have been pursued, please confirm;*

- a. How many Level F officers or above were subject to investigations / disciplinary actions;*
- b. What the outcome of these investigations / disciplinary actions were;*
- c. Whether any disciplinary markers (e.g. warnings) were awarded to any officers at all, and if so what disciplinary markers were applied?*
- d. Whether any disciplinary proceedings are ongoing and their anticipated date of completion.*

10 members of staff working in roles graded F and above have been subject to investigations and/or disciplinary action during the period specified. Details relating to these cases, as requested in points b., c. and d. have been withheld in accordance with Section 40(2) of the FOIA due to the small numbers of people involved and the possibility that details about specific cases could be used to

make inferences about identifiable individuals. This information has been withheld in accordance with Section 40(2).

Although the individuals involved may not necessarily be identifiable to every member of the general public from the information requested, the ICO's [draft anonymisation guidance](#) notes that *"You should also consider whether the specific knowledge of others, such as doctors, family members, friends and colleagues could be sufficient additional information that may allow inferences to be drawn."*

Those involved or with knowledge of the individuals affected, may be able to use the case details in conjunction with other information to identify individuals from the data if disclosed. The request focuses on individuals within particular job grades who were undergoing particular processes during a specific time period. As only ten members of staff were subject to these processes, subdividing this further by outcomes and other details would increase the chances of individuals being identifiable.

We find that the condition at section 40(3A)(a) applies in this instance: that disclosure would breach one of the data protection principles. The principles are outlined in the General Data Protection Regulation (GDPR) with the relevant principle on this occasion being the first principle as provided by Article 5(1): that personal data shall be processed lawfully, fairly and in a transparent manner.

We do not consider that disclosing this information into the public domain is necessary or justified. There is no strong legitimate interest that would override the prejudice to the rights and freedoms of the relevant data subjects. We have therefore taken the decision that disclosing this information would be unlawful, triggering the exemption at section 40(2) of the FOIA.

*4. With respect to case IC-193862-D2Y3, received by the ICO on 26 September 2022, please confirm the outcome of the case and provide a full copy of the case, including any assessments of the case made by the ICO.*

Some information about this case, including the outcome, is already published in our data sets here:

[Data protection complaints - data sets](#)

The case is listed in the data set titled Data protection complaints Q3 2022/2023.

The information provided in this data set is exempt from disclosure in accordance with Section 21 of the FOIA, as it is already accessible to you.

The remaining information on the case has been withheld in accordance with Section 40(2). We consider information about individual complaints to constitute the personal data of the complainant, as well as any other identifiable individuals who may be involved.

A complaint case contains multiple identifying details. Even if names and contact details, for example, are redacted, associated correspondence contains information which may be used to identify individuals, such as issues raised, dates and the nature of the correspondence.

We can also consider whether any information disclosed might be combined with information already available, in order to identify individuals. This also includes information only available to a limited group of individuals (for example those who have had involvement with or knowledge of the complaint). Please also see the link to our anonymisation guidance, provided on the previous page.

Complainants who approach the ICO would not have the expectation that their correspondence with us would be released in response to a FOIA request. Disclosures under the FOIA are disclosures to the world at large, therefore we must consider whether any legitimate interest in the information outweighs the rights of any individuals involved.

We find that the condition at section 40(3A)(a) applies in this instance: that disclosure would breach one of the data protection principles. The principles are outlined in the General Data Protection Regulation (GDPR) with the relevant principle on this occasion being the first principle as provided by Article 5(1): that personal data shall be processed lawfully, fairly and in a transparent manner.

We do not consider that disclosing this information into the public domain is necessary or justified. There is no strong legitimate interest that would override the prejudice to the rights and freedoms of the relevant data subjects. We have therefore taken the decision that disclosing this information would be unlawful, triggering the exemption at section 40(2) of the FOIA.

*Please could you confirm whether any members of the ICO staff have been interviewed under caution by the ICO in relation to potential criminal offences since 01 June 2022? If so, please could you confirm the case reference number they were interviewed under.*

We are unable to confirm nor deny whether or not we hold information that falls within scope of this part of your request.

Section 30(1) states that:

*"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-*

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-*
  - (i) whether a person should be charged with an offence, or*
  - (ii) whether a person charged with an offence is guilty of it,*
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or*
- (c) any criminal proceedings which the authority has power to conduct."*

Section 30(3) confirms that we are not required to confirm or deny that we hold information if it would be exempt from disclosure under any of the criteria set out above. However, we must carry out a public interest test to weigh whether the public interest favours confirmation or denial.

In this case the public interest factors favour are:

- There is public interest in confirming whether or not ICO staff have been questioned under caution in relation to potential criminal offences
- There is a public interest in the ICO being open and transparent about its consideration of this type of case

The factors against are:

- There is a public interest in ensuring that parties interviewed in relation to criminal offences engage with this process as fully as possible. Confirming whether or not interviews have taken place and any details about relevant cases (if held) could enable inferences to be made about particular interviewees and/or investigations, as it could indicate whether or not a specific course of action has been undertaken in relation to an individual or investigation, and whether or not a particular matter has been investigated. Confirming or denying this could discourage individuals from cooperating with investigative processes if we routinely confirm details about this in response to FOI requests, particularly if such details relate to matters that are still under investigation;

- There is a public interest in other parties more broadly, cooperating with the ICO in relation to criminal and other matters. If we routinely confirm details about these processes when it is not appropriate to do so, they may be discouraged from engaging fully with the ICO;
- There is a strong public interest in the ICO being able to conduct criminal investigations and other processes (e.g. legal and other connected matters) effectively and without risk of prejudice;
- There is a public interest in preserving the integrity of other NCND responses. If we only use NCND for example, when the information is held, but state 'no information held' in other cases, use of NCND in responses will be meaningless if it implies that information is held; and
- The public interest is served by our commitment to publish noteworthy criminal investigations in due course as published in [Communicating our Regulatory and Enforcement Activity Policy](#).

Having considered the public interest for and against confirming or denying whether the information is held, we have concluded that the factors in favour are outweighed by those against, therefore we neither confirm nor deny whether the information is held in relation to this part of your request.

### **Advice and assistance**

While we can consider further requests for information about investigations and disciplinary proceedings relating to ICO staff, due to the small numbers involved, it is likely that Section 40(2) may be applicable.

If you are interested in our work on particular cases (such as the data protection complaint linked to in your request), you may find it helpful to explore the data sets we have linked to on page 3. On this part of our website you can also view information about investigations and personal data breaches.

Please note that exemptions may apply to information associated with criminal investigations. Information about action we've taken in relation to these and other cases is published here:

[Action we've taken](#)

This concludes our response to your request.

## Next steps

Please come back to us in the first instance if you would like a clarification or a review of the way your request has been handled. If you remain dissatisfied you can then request a review of our decision under the FOIA or make a complaint about how your request has been handled by writing to the Information Access Team at the address below or email [icoaccessinformation@ico.org.uk](mailto:icoaccessinformation@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 FOI Complaints & Appeals Department at the address below or visit our website if you wish to make a complaint under the Freedom of Information Act.

A copy of our review procedure can be accessed from our website [here](#).

## Your rights

Our [privacy notice](#) explains what we do with the personal data you provide to us and what your rights are, with a specific entry, for example, for [an information requester](#). Our retention policy can be found [here](#).

Yours sincerely,



Information Access Team  
Risk and Governance Department, Corporate Strategy and  
Planning Service  
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Lane, Wilmslow, Cheshire SK9 5AF  
[ico.org.uk](http://ico.org.uk) [twitter.com/iconews](https://twitter.com/iconews)  
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