

18 July 2023

IC-242514-M7G7

Request

You asked us:

"How many of the 92 Case Officers and 52 Lead Case Officers have been previously employed by the Police force?"

We received your request on 4 July 2023.

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

Our response

The ICO can neither confirm nor deny that it holds the information that you have requested as the duty in section (1)(a) (Right of Access) does not apply by virtue of section 40(5) of the FOIA (Personal Information).

Section 40 is an absolute exemption and does not require a public interest test to justify its use however I have provided further explanation below.

Section 40 – Personal Information

Ordinarily, a public authority has a duty to confirm or deny whether it holds information and to provide that information to the applicant, unless an exemption applies.

Section 40(2) FOIA states:

"Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which does not fall within subsection (1), and*
- (b) the first, second or third condition below is satisfied."*

Section 40(3A), which sets out one of the three conditions, states:

"(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

- (a) would contravene any of the data protection principles, or*
- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded."*

Finally, section 40(5B)(a) states:

"The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

- (a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—*
- (i) would (apart from this Act) contravene any of the data protection principles."*

You have requested information held concerning the employment history of Case Officer's working at the ICO, in particular whether they have previously worked for a police force. This information, if held, would constitute the personal data of those individuals as it relates to an identified natural person. Section 40(2) of FOIA exempts disclosure of the personal data of others, subject to conditions.

Section 40(3A)(a) details one of these conditions. It is our opinion that this condition would be met in this case because disclosure of the information you have requested, if held at all, would break the first principle of data protection – that personal data is processed lawfully, fairly and in a transparent manner. This conclusion has been reached taking into account our [policy on disclosure of staff details under the FOIA](#), which sets the expectations to both staff and members of the public concerning what information we will typically release about ICO staff under the FOIA.

However, while I consider that information in scope of your request, if held at all, would be exempt information, I have considered whether our duty to confirm or deny even arises in the present case, I conclude that it does not. Section 40(5B)(a)(i) is engaged because confirmation or denial of whether any ICO Case Officer's have previously worked for a police force would (1) constitute their

personal data and (2) disclosure would break the first principle of data protection as detailed above.

With the above in mind, I do not consider the duty to confirm or deny whether we hold the information arises and therefore our response to your request is we can neither confirm nor deny that we hold information about whether any Case Officer's have previously been employed by a police force.

This concludes our response to your request.

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,