

6 October 2023

## **IC-257386-J2P5**

### **Request**

You asked us:

*"I the interest of fairness and transparency in the case, I would like the ICO to confirm whether the DWP has requested one opportunity from ICO to justify her position. I would also like the ICO to provide me with copy of the correspondence sent to DWP which gives the DWP one opportunity to justify her position."*

We received your request on 13 September 2023.

Please note that whilst the case was initially set up as a subject access request (SAR), we have handled the majority of your request under the Freedom of Information Act 2000 (the FOIA).

Regarding your personal data, I can confirm that your name was included in the letter to the DWP. All other information contained on the letter is not your personal data, and so we have considered it under FOI.

### **Our response**

I can confirm that we hold information in scope of your request.

However, we are withholding the information under s31(g) of the FOIA. Further information on this can be found below.

### **Information withheld**

#### **FOIA section 31(g)**

The information you have requested 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..."*

*(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 the DWP 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 DWP and may damage our ability to conduct and conclude the investigation 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 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 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;
- There is public interest in us being able to maintain effective and productive relationships with the parties we communicate with. It is essential that organisations continue to engage with us in a constructive and collaborative way without fear that the information shared between us will be made public if it is inappropriate to do so; and
- the public interest in maintaining the ICO's ability to conduct the investigation into complaints as it thinks fit.

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

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



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