

**15 November 2023**  
**Internal Review Response**  
**Case Reference IC-257386-J2P5**

**Review of response to information request**

I write further to your email of 27 October in which you complained about the information governance legislation under which the request logged as case reference IC-257386-J2P5 was responded to. It was responded to under the FOIA process rather than the UK GDPR/DPA 2018.

As a result, we have conducted an internal review of our response to your information request. I am a Group Manager in the Information Access Team, and I can confirm that I have had no prior involvement in the handling of this request.

**Request and response**

On 13 September we received a request from you which said:

*Good afternoon, 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.*

You had initially made a SAR for this information. However, on reviewing the in-scope material, the Case Officer concluded that the information was not your personal data; and consequently, that it would be correct to respond under FOIA instead.

As you were requesting information pertaining to a live investigation, the information was withheld citing Section 31(g):

*"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 ..."*

## **Review**

On receipt of the response, you requested an Internal Review as follows:

*I write to refute the decision to process my requested under FOIA instead of under the initial SAR.*

*At no point did the ICO inform me that it was processing my request under FOIA.*

*The ICO decided to change course as an attempt to avoid providing me with my personal data.*

*In the past, the ICO have always provided me with copy of all communications between parties under SAR and never under FOIA.*

*Please comply with my SAR.*

The purpose of this review is to look again at your request and the response that was provided to you, to ensure it was correct and that any exemptions applied were appropriate. I can confirm that I have reviewed the correspondence on the information request and will respond to the comments made.

The Case Officer has explained that the information held by the ICO falling within the scope of this request does not constitute your personal data. One document is the letter of complaint which you supplied to the ICO which you will already have access to; and I have also noted that your name is on one other document. The rest of the documents constitute the information supplied by the DWP detailing the work they had undertaken in consideration of the original FOIA request. Though it was your request, it is important to note that FOIA requests are handled in a motive and applicant blind manner where the identity of the applicant is immaterial to the case.

Therefore, to be clear this information is not your personal data, and you have no right of access to it through the SAR process. I consider that the Case Officer was quite correct to consider the matter under the FOIA legislation instead. I cannot comment upon how your previous requests for information were handled as I am not aware of the circumstances. I will reiterate that requests are handled on a case-by-case basis.

For these reasons, your complaint is not upheld.

However, I am aware that since you made the initial request for information on September 13, the Decision Notice has been issued to the DWP, and consequently that case is now closed. Consequently, as the circumstances have now changed, you may choose to make a new FOIA request to us for the correspondence with the DWP. A new request will be considered accordingly.

## **Complaint procedure**

If you are dissatisfied with the outcome of this review, you can make a formal complaint with the ICO in its capacity as the regulator of the Freedom of Information Act 2000. Please follow the link below to submit your complaint:

<https://ico.org.uk/make-a-complaint/>

Yours sincerely

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