

10 November 2023

**Case Reference: IC-262685-Z0C0**

**Request**

*On 6 October 2023, you asked us: "[A member of staff at EDF Energy] has further stated that EDF have had discussions with the ICO in connection with this matter [smart meter installations], although as you can see there she has provided no written evidence to support this and as such, becomes hearsay. My natural query would be to request any telephone logs in respect of these conversations which took place and if so, can I make a Freedom of Information request for these documents given that the ICO are a public service?"*

*On 13 October 2023, we sent you a clarification email which stated "We have understood your request to be for communications between the ICO and EDF in relation to them sending out emails regarding smart meter installations, which we understand to be part of their responsibilities under the roll out duty 39.1. Please can you confirm if this is correct?"*

*You responded on 16 October with the following: "Yes, you are correct. I am asking for any recorded discussions/literature between the ICO and EDF regarding the roll out of clause 39.1. As you will see from the written information, it is their obligation...As EDF have stated that their have been discussions in connection with this between you and them, the reason for the request was to obtain further evidence."*

We received your request on 16 October 2023 as this was the date we received your clarification.

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

**Our response**

We are refusing the Freedom of Information request you have made because the amount of work involved in complying with it would place a grossly oppressive burden on our resources, meaning that we are able to rely on section 14(1) of the FOIA.

Section 14(1) FOIA states that:

*"14.—(1) Section 1(1) does not oblige a public authority to comply*

*with a request for information if the request is vexatious."*

The ICO's [guidance](#) explains that:

*"A single request taken in isolation... may be vexatious solely on the grounds of burden. That is, where complying with the request would place a grossly oppressive burden on your resources which outweighs any value or serious purpose the request may have."*

While we do not doubt that you have a genuine interest in the information you have requested, we have determined that the burden placed on our resources in complying with this request would outweigh the public interest in the requested information.

Our guidance further provides that, in order to refuse to respond to a request under section 14(1) due to burden alone, we should be able to establish that the requested information is voluminous, that we have real concerns about exempt information being contained within it, and that the exempt material is scattered throughout and cannot be easily isolated. I have provided further explanation of our consideration of this below.

In order to disclose the requested information, we would need to consider information from 189 complaint cases held on our case management system. This action is necessary as 'discussion/literature' could be held on any one of those cases.

Within these 189 cases, there will be multiple correspondence with the above data controllers. Each piece of correspondence will have to be read individually to determine if information in the scope of your request is held. Should any information be held, the ICO would then have to collate this information manually.

Should any information be held, as this information has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions, and because it would also relate to an identified or identifiable individual or business, it will be subject to the exemption provided by Section 132 of the Data Protection Act. This means the ICO will not be able to disclose the requested information into the public domain until we have consulted with EDF Energy.

These consultations could see large volumes of information being sent to EDF for them to consider. This action will be highly burdensome to both us and EDF. This

action could also damage the ICO's relationship with EDF. This, in turn, would have a negative effect on our ability to conduct our regulatory function, which is not in the public interest.

As well as this, the cases on our case management system will be brought to us by members of the public. This means that, should any information be held, it is highly likely that the collated information will be subject to the exemption provided by Section 40(2) of the FOIA. Should we get the consent to disclose information, an additional burden would be placed on the ICO as it is highly likely that redactions would need to be completed before this information could be disclosed into the public domain.

Please note, this is only considering the information held on our case management system. In order to completely consider the scope of this request, the ICO would have to undertake other reasonable searches. These would be done by conducting internal consultations with multiple different teams within the ICO. Again, it is probable that information in the scope of this request will be held, and it is probable that this information would be subject to exemptions including, but not limited to, Section 30, 31, 42 and 44 of the FOIA. As above, it is also likely that any information held would need to be externally consulted on, and have redactions completed, before disclosure would be possible.

Our guidance states that the threshold for applying section 14 FOIA on the basis of burden is a higher one than for section 12 FOIA, which allows a public authority to refuse to comply with a request if the necessary searches involved in doing so would take longer than 18 hours. We are relying on section 14 here because the burden is related to the time required for reviewing and redacting the relevant information, rather than searching for information that may be in scope.

Having taken a review of 10 cases, we can estimate that it would take three minutes to search for the information. This would equate to approximately 9.5 hours' worth of work.

Please note, the approximately 9.5 hours' would be increased as we would have to complete the searches on information held outside of our case management system.

Also, the above does not take into the account the time which would be needed to extract it from the case, consult on it and appropriately redact it. We estimate that this would take an additional seven minutes per case and it is certain that

the work required on some cases would take longer than the estimated 10 minutes.

While there is a general public interest in public authorities being transparent in their correspondence, we do not feel it is necessary to undertake such voluminous consultations with EDF, potentially, disclose this information into the public domain. As mentioned above, this could prejudice our ability to complete our regulatory functions which is not in the public interest.

We also do not believe that members of the public would expect their complaint cases to be read over and for the ICO to redact and, potentially, disclose the information within it. If members of the public became aware that this was a possibility, there is a probable chance that they may not raise their concerns with us. This impacts the ICO ability to complete its regulatory function which is not in the public interest.

We therefore advise that we are refusing to comply with this request under section 14(1) of the FOIA.

We can advise that, before we realised that 189 complaint cases would need to be manually reviewed, some searches were undertaken with some, but not all relevant, ICO teams, however, they did not hold any information.

We also reviewed the advice cases we hold on our case management system. Again, we did not hold any information and there is two possible reasons for this. Firstly, organisations are able to obtain advice from the ICO by phone, however, the ICO does not record phone calls. As such, if EDF have contacted us by phone, there would be no record of the advice given to them.

Secondly, having completed online searches, it seems that the roll out of smart meters began in 2016. Therefore, it is likely that if EDF did formally seek written advice from us, it would have occurred around that time. Due to this, we feel it important to explain that the ICO records written advice cases for two years and this is in accordance with our retention schedule. As such, any advice sought in 2016, or even prior to October 2021, would have since been deleted and would no longer be held by the ICO.

Lastly I would like to advise, should there have been any serious concerns about these EDF's marketing practices, the ICO would have taken [action](#) and this would have also been made public on our website as we issue the most fines for breaches of the Privacy and Electronic Communications Regulations (PECR).

Yours sincerely



Information Access Team  
Strategic Planning and Transformation  
Information Commissioner's Office, Wycliffe House, Water  
Lane, Wilmslow, Cheshire SK9 5AF  
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