

26 October 2023

Case Reference IC-258587-T6Y7

Review of response to information request

I write further to your email of 5 October in which you requested a review of the handling of your request dealt with under the reference number IC-258587-T6Y7.

Section 45 of the Freedom of Information Act 2000 (FOIA) requires the publication of a code of practice, designed to assist public authorities handle requests under the FOIA.

This guide recommends that public authorities put in place an internal review process for FOIA responses, which our guide suggests should be triggered whenever a requester expresses dissatisfaction with the outcome of a request they have made.

The purpose of an internal review is to look again at your request, at our response, and to check that any exemptions applied were appropriate.

As a result we have conducted an internal review of our response to your information request. I am a Senior Information Access Officer 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 17 September we received a request from you which sought the following information:

"the number of valid FOI Section 50 complaints received by the ICO in the last year that did not receive a response that fell under either Section 50(3a) or Section 50(3b)."

On 5 October we responded by advising you that as the information was made available on our routinely updated online datasets, the information was exempt from disclosure under sections 21 and 22 of the FOIA.

Review

Your review request made the following comments:

I would like to request an internal review. I have looked at the spreadsheets as directed and it is not possible to determine my request based on the information provided in the spreadsheets.

To satisfy my request it needs to be clear:

- a) which are valid FOI requests*
- b) which have been refused under Section 50(3a)*
- c) which have been given a decision under 50(3b)*

That is not possible using those spreadsheets.

It is established in Dransfield GIA/399/2020 that there are only two paths available for a valid Section 50 appeal, and that it is mandatory for the Commissioner to follow one of those paths. Section 50(3a) requires the Commissioner to give one of four reasons not to pursue the Section 50 complaint, those being:

- (a) that the complainant has not exhausted any complaints procedure which is provided by the public authority in conformity with the code of practice under section 45,*
- (b) that there has been undue delay in making the application,*
- (c) that the application is frivolous or vexatious, or*
- (d) that the application has been withdrawn or abandoned.*

There is no option to 'informally resolve' a valid complaint, without citing one of these reasons and issuing a Section 50(3a) notice.

Yet there are cases listed in 202101-202103-foi-eir, as an example, where it is not possible to determine what has happened to the case under Section 50. For example: [you provide extracts from our datasets].

It is not necessary to cite the above judgement, merely the legislation which it references, which does indeed outline the options open to the Commissioner for not proceeding to a formal decision notice in response to a complaint. However, the legislation does not specify how such information is reported by the Commissioner.

The [FOI Complaints Datasets](#) are published with a [Case Outcome Descriptions](#) documents. Under the 'Action Taken: Informally Resolved' section, it clearly stipulates that a complainant may have 'agreed to withdraw the complaint... following input by the case officer.' This clearly satisfies (d) of the above legislated criteria. Similarly, if information is disclosed by a PA, and the complainant does not insist on a formal decision notice (when asked by the case officer), the complaint has been implicitly withdrawn; again satisfying (D). This description is mirrored in the section under 'No Further Action: Informally Resolved'.

In the third example extract you cite a case which is recorded as closed under 'No Further Action: and No action: Unassigned.' I agree that the closure state of this case is not explicitly clear and must fall under one of several closure reasons according to the descriptions document, namely:

- NO ACTION – May be used at In Progress and Investigation status
- o VEXATIOUS – If case is closed under section 50(2)(c)
- o FRIVOLOUS – If case is closed under section 50(2)(c)
- o UNDUE DELAY – If case is closed under section 50(2)(b)
- o ABANDONED – If case is closed under section 50(2)(d)

However, I should clarify that the legislation requires us to "*a) notify the complainant that he has not made any decision under this section as a result of the application and of his grounds for not doing so...*" [emphasis added]

The legislation does *not* require us to record the specific closure criteria as outlined in the legislation, nor publish such data.

Our casework management systems from which our datasets are extracted have specific closure criteria which may differ from the specific information communicated to the complainant at the closure of their complaint. This means that, where the automatically searchable information we have published is not sufficient to provide a response to your request, we could manually interrogate the closure letters for each case recorded as 'No Further Action: No Action: Unassigned.'

I therefore consider that, though acting on a reasonable assumption that the requested data was published on our website, our original response was inadequate and I uphold your review. I shall now offer a revised response to your request.

Revised response

I have identified 125 cases defined as 'No Further Action: No action: Unassigned' in the final published quarter of our datasets. Assuming that this figure is consistent across all four quarters to capture the year you are interested in, we would need to interrogate approximately 500 cases. Assuming each case takes at least three minutes to search (and a sampling exercise demonstrated that some required longer), this would require approximately 25 hours' worth of searching to complete.

As you may be aware section 12 of the FOIA makes clear that a public authority (such as the ICO) is not obliged to comply with an FOIA request if the authority estimates that the cost of complying with the request would exceed the 'appropriate limit'. The 'appropriate limit' for the ICO, as determined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 is £450. We have

determined that £450 would equate to 18 hours work.

Your request is therefore refused under section 12 of the FOIA.

Advice and Assistance

Whilst it would be possible to refine your search to, for example, one quarter of data, in order to bring it within the cost limit, such information would not be representative of the information we hold and therefore of questionable value.

As you were informed in our initial response, the ICO publishes the automatically extractable information in relation to FOI casework closures and this offers a sufficient picture of our case closure statuses to the public. Were you to attempt to refine your search to bring it within the cost limit, it is likely that we would consider such a request to be frivolous and a grossly oppressive burden on the resources of the ICO relative to the value of the information produced.

This concludes my review and revised response.

Complaint procedure

If you consider that your request for personal data has not been dealt with correctly under data protection legislation, you have a right of appeal to this office in our capacity as the statutory complaint handler under the GDPR and Data Protection Act 2018.

To make such an application, please write to our public advice and data protection complaints department at the address below, or visit the '[Make a complaint](#)' section of our website.

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/>.