

10 February 2023

IC-213777-X3D7

Request

On 31 January 2023 you asked for the following information relating to our decision to publish complaints and concerns datasets:

1. The trigger for the decision to publish named complaints/concerns data. And if so details of the public interest.
2. Whether any assessment was undertaken to ascertain what impact this could have on controllers/ processors.
3. Whether an assessment was undertaken to determine whether the publication of this information was in line with the ICO's obligation to promote economic growth under the Deregulation Act 2015.
4. Whether controllers/ processors on the list be notified that the complaint has been received by the ICO before it is included on the list or whether this could this list be the first time they become aware of the complaint going forwards.

Your request has been handled under the Freedom of Information Act 2000 (the FOIA). As you are probably aware, this legislation provides public access to recorded information held by a public authority unless an appropriate exemption applies.

Response

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

In relation to parts one and two of your request, please find attached report on the proactive disclosure of complaints and concerns datasets. This was presented to the Director of Corporate Planning, Risk and Governance on 11 November 2021. One reference to legal advice has been redacted. This information is legally privileged and is exempt under section 42 of the FOIA, which is explained in further detail below.

We have also withheld a document in its entirety. This is legal advice that was obtained in relation to the lawful authority for publishing casework. This information is also withheld under section 42 of the FOIA.

We did not carry out an assessment in relation to the Deregulation Act 2015, so this information is not held.

In relation to the final part of your request, we do advise data controllers about our published datasets. Our standard closure letter to data controllers contains the following wording:

The ICO publishes basic details about the complaints, investigations and self-reported data breaches it handles. These details include the name of the organisation concerned, the dates that we opened and closed the case, and the outcome. Examples of published data sets can be found at this link: [Complaints and concerns data sets | ICO](#).

We do not include personal data in the published datasets and will anonymise the names of sole traders etc prior to publication. We also do not publish cases concerning domestic CCTV complaints and may not publish certain other cases if we feel it is not appropriate to do so in the circumstances.

If you wish to raise an objection to us publishing a case in the datasets, whether or not we have published it yet, please contact us explaining your reasons for this at accessicoinformation@ico.org.uk. We will only agree to this in limited circumstances where we are satisfied that the interests of the parties involved would override the ICO's obligations to publish this information.

However, if we close a case without contacting the data controller they may not receive prior notification about the datasets.

Information withheld – FOIA section 42

The legal advice we obtained in relation to the published datasets is subject to legal professional privilege and is withheld in accordance with section 42 of the FOIA.

Section 42(1) of FOIA states:

"Information in respect of which a claim to legal professional privilege... could be maintained in legal proceedings is exempt information."

There are two types of privilege covered by the exemption at section 42. These are:

- Litigation privilege; and
- Advice privilege.

We find that the information in scope of your request is subject to advice privilege. This covers confidential communications between the client and lawyer, made for the purpose of seeking or giving legal advice.

Section 42 is not an absolute exemption, so we must consider whether the public interest favours withholding or disclosing the information.

The factors in favour of lifting the exemption include:

- The public interest in the ICO being open and transparent;
- The public interest in transparency about the legal advice that was considered in reaching a decision.

With the public interest factors in favour of maintaining the exemption including:

- The disclosure of legally privileged information threatens the important principle of legal professional privilege;
- Maintaining openness in communications between client and lawyer to ensure full and frank legal advice;
- The disclosure of legal advice could have a chilling effect on both policy officers and legal advisers by dissuading them from discussing such matters in the future in the knowledge that it could potentially be made public.

Taking into account the above factors we conclude that the public interest lies in maintaining the exemption.

This concludes our response to your request.

FOI review procedure

If you are dissatisfied and wish to request a review of our decision or make a complaint about how your request has been handled you should write to the Information Access Team at the address below or e-mail icoaccessinformation@ico.org.uk.

Your request for internal review should be submitted to us within 40 working days of receipt by you of this response. Any such request received after this time will only be considered at the discretion of the Commissioner.

If having exhausted the review process you are not content that your request or review has been dealt with correctly, you have a further right of appeal to this office in our capacity as the statutory complaint handler under the legislation.

To make such an application, please write to our Customer Contact Team at the address given or visit our website if you wish to make a complaint under the FOIA.

Your information

Please note that our [Privacy notice](#) explains what we do with the personal data you provide to us and what your rights are. This includes entries regarding the specific purpose and legal basis for the ICO processing information that people that have provided us with, such as an [information requester](#).

The length of time we keep information is laid out in our retention schedule, which can be found [here](#).

Yours sincerely



Information Access Team
Risk and Governance Department, Corporate Strategy and
Planning Service
Information Commissioner's Office, Wycliffe House, Water
Lane, Wilmslow, Cheshire SK9 5AF
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