

26 April 2023

IC-224603-S1X6

Request

You asked us:

- "1. Who does your Commissioner, John Edwards, report to in Government - I require specific named person?*
- 2. Who regulates the Information Commissioners Office in the UK - I require a specific named department?*
- 3. Who is the European regulatory contact for the Information Commissioners Office in the UK (if any)?*
- 4. Who should formal complaints on your Commissioner be raised with inside the ICO?*
- 5. Who should formal complaints on your Commissioner be raised with outside the ICO?*
- 6. Can you supply a copy of your Commissioner's code of conduct for his role?*
- 7. Can you tell me how many formal complaints have been raised against John Edwards both internally and external to the ICO since he took up post?*
- 8. Can you tell me how many current ongoing public court legal actions are underway where the ICO is the defendant?"*

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

Our response

We do hold information within the scope of your request.

We have answered your queries on a point by point basis below. Where appropriate, we have answered queries together. Where the information provided below is already reasonably accessible to you – for example, where it is published on our website, or otherwise in the public domain - technically it is withheld under section 21 of the FOIA.

- 1. Who does your Commissioner, John Edwards, report to in Government - I require specific named person?*
- 2. Who regulates the Information Commissioners Office in the UK - I require a specific named department?*

There is no single, specific named person that the Information Commissioner reports to. The Information Commissioner is directly accountable to Parliament.

The Information Commissioner's Office (ICO) is an executive non-departmental public body, sponsored by the [Department for Science, Innovation and Technology \(DSIT\)](#).

The Parliamentary and Health Service Ombudsman (PHSO) provides scrutiny and oversight of the service provided by the Commissioner, particularly the progression and handling of approximately 45,000 complaints the office deals with each year. For some of our more intrusive investigative powers we come under the inspection remit of the Investigative Powers Commissioner. They inspect us annually to ensure we are exercising these powers appropriately, including making the right judgments as to risk.

You can find more information in relation to [the decision making structure of the ICO](#), including the above explanations of bodies that hold the Information Commissioner's Office to account, on our website.

- 3. Who is the European regulatory contact for the Information Commissioners Office in the UK (if any)?*

There is no single European regulatory point of contact for the ICO.

Now that the UK has left the European Union, the UK is no longer subject to the EU General Data Protection Regulation (GDPR), and we are no longer part of the

European Data Protection Board structures. Though we have retained the GDPR in UK law as the UK GDPR, they are now two distinct pieces of legislation.

The ICO still co-operates and collaborates with European data protection bodies, maintaining bilateral relationships with EU data protection authorities on issues of mutual interest. We also continue to engage with the European Data Protection Supervisor.

The EU Commission is responsible for approving [adequacy decisions](#) in respect of the UK and assess whether the UK's level of data protection is 'essentially equivalent' to that which exists within the EU. The EU Commission must monitor developments in the UK on an ongoing basis. EU data subjects or an EU data protection authority can also initiate a legal challenge to adequacy decisions. The Court of Justice of the European Union would then have to decide whether the UK did provide essentially equivalent protection.

You can find more information about [data protection and the EU](#) on our website.

4. *Who should formal complaints on your Commissioner be raised with inside the ICO?*
5. *Who should formal complaints on your Commissioner be raised with outside the ICO?*

We have interpreted this request as meaning formal complaints by members of the public about the ICO, either within the ICO's own complaints resolution procedure (inside the ICO) or with the complaints procedure of external bodies (outside the ICO).

The Information Commissioner's Office acts on the delegated authority of the Information Commissioner in his capacity as a corporation sole.

If members of the public wish to raise a complaint about the ICO they can do so using our online complaint form [here](#). You can find information on our [service standards](#) and our [service complaint policy](#) on our website.

As aforementioned, complaints about our service can also be raised externally with the Parliamentary and Health Service Ombudsman by contacting their MP. Decision Notices we have issued regarding Freedom of Information Act complaints can be appealed at the First-tier Tribunal.

If your intent with item 4 was instead to ask about formal complaints internal to the ICO – that is, complaints made by staff members – please refer to the [Policies and Procedures](#) section of our website, particularly the Grievance, Dignity at work and Whistleblowing policies.

6. Can you supply a copy of your Commissioner's code of conduct for his role?

We have interpreted this request as being for a code of personal conduct specific to the Information Commissioner. The Commissioner does not have a specific personal code of conduct.

However, while the Information Commissioner is not a staff member, he is expected to adhere to the ICO staff code of conduct. You can find our [general staff code of conduct here](#).

You may also wish to refer to HM Treasury's [Managing Public Money](#) guidance. As a public servant and accounting officer of his office, these principles also apply to the Information Commissioner.

7. Can you tell me how many formal complaints have been raised against John Edwards both internally and external to the ICO since he took up post?

John Edwards took up the role of Information Commissioner on 4 January 2022.

With regard to formal complaints raised externally to the ICO, it could be considered that any complaint regarding the ICO might be a complaint against the Information Commissioner, due to the Commissioner's status as a corporation sole.

The ICO sometimes receives data protection complaints and FOI complaints regarding its own information rights practices where it acts as a data controller or a public authority, and you can find these listed in the [complaints and concerns data sets](#) published on our website.

The ICO also handles service complaints that individuals may decide to raise about the ICO in its capacity as a regulator and service provider. The ICO currently receives between 30,000 and 40,000 cases regarding various data protection concerns per year. From 4 January 2022 to the date of your request, we received 419 service complaints.

However, as you have specified "John Edwards" as opposed to "the Information Commissioner", I have interpreted this request as being more specific to the Information Commissioner in his capacity as a natural person, rather than in his capacity as a corporation sole – that is, where service complaints may specifically identify the Commissioner as an individual.

I can confirm that we hold information that falls within scope of your request. However, finding the information that you have requested would exceed the cost limit set out by section 12 of the Freedom of Information Act 2000 (FOIA). The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 states that the 'appropriate limit' for the ICO is £450. We have determined that £450 would equate to 18 hours work.

Our case management system is unable to run a quick automated report on whether a service complaint specifically identifies the Commissioner, as this is not information we normally need for our purposes. This means that finding this information would necessitate a manual search of hundreds of cases.

Assuming that each search would take approximately 3 minutes to complete – and it is certain that some searches would take much longer than that – this would exceed the 18 hours which would accrue a charge of £450 or more, triggering the provisions of section 12 of the FOIA.

Regarding internal complaints about John Edwards in his capacity as a natural person, we can neither confirm nor deny whether we hold the information in question.

Ordinarily, a public authority has a duty to confirm or deny whether it holds information and to provide that information to the applicant, unless an exemption applies.

Section 40(2) FOIA states:

"Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which does not fall within subsection (1), and*
- (b) the first, second or third condition below is satisfied."*

Section 40(3A), which sets out one of the three conditions, states:

"(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

(a) would contravene any of the data protection principles, or

(b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded."

Finally, section 40(5B)(a) states:

"The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

(a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—

(i) would (apart from this Act) contravene any of the data protection principles"

The information you have requested concerning internal complaints about staff members. This information, if held, would constitute the personal data of those individuals as it relates to identified natural persons. Section 40(2) of FOIA exempts disclosure of the personal data of others, subject to conditions.

Section 40(3A)(a) details one of these conditions. In our view, this condition would be met in this case because disclosure of the information you have requested, if held at all, would break the first principle of data protection – that personal data is processed lawfully, fairly and in a transparent manner. This conclusion has been reached taking into account our [policy on disclosure of staff details under FOIA](#), which sets the expectations to both staff and members of the public concerning what information we will typically release about ICO staff under FOIA.

However, while I consider that information in scope of your request, if held at all, would be exempt information, I have considered whether our duty to confirm or deny even arises in the present case. I consider it does not, because, in my view, section 40(5B)(a)(i) is engaged because confirmation or denial of whether we hold information about internal complaints about staff members would (1) constitute the personal data of both the complainant and the individual complained about and (2) disclosure would break the first principle of data protection as detailed above.

With the above in mind, I do not consider the duty to confirm or deny whether we hold the information arises and therefore our response to your request is we

can neither confirm nor deny that we hold the information in question.

8. *Can you tell me how many current ongoing public court legal actions are underway where the ICO is the defendant?*

It is important to note that the ICO is not the “defendant” in Tribunal appeals arising out of regulatory action taken by the ICO.

However, we do deal with a small handful of judicial review applications and civil claims where the Commissioner can be described as the defendant.

I can confirm that the ICO currently has four such cases before the court. While the ICO is not the “defendant” in Tribunal appeals, we proactively publish information about appeals made to tribunal in our [Annual Reports](#). You can find the most recent published information about this in the [ICO Annual report 2021-22](#) on pages 48 – 49.

The HM Courts and Tribunals website also has information about [appeals against the Information Commissioner](#), including a [register of current tribunal cases](#).

This concludes our response to your information 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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