

19 April 2023

Reference number: IC-227391-H2L9

Request

You asked us: *"I would however like to follow up my previous FOI request [IC - 220240-S5W1]. Please provide a more thorough description of what each of the four complaints consisted of. Please also provide more information on the process by which the ICO came to its decision in each instance."*

We received your request on 2 April 2023.

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

Our response

The FOIA makes it clear that public authorities are not required to create information in order to respond to a request. Therefore, in order to respond to this request, the ICO would need to disclose the information that was provided to us by the complainants and our responses to them and the data controllers.

Disclosing the information provided to us by the complainants, and our responses to them, would reveal personal information about the complainants. As such, it is exempt under Section 40 of the FOIA.

It is important to remember that a disclosure under FOIA is a disclosure to the world and the individuals that contact us would not expect the exact wording of their complaints, and our responses to them, to be placed into the public domain. Therefore disclosure of this information would break the first principle of data protection - that personal data is processed lawfully, fairly and in a transparent manner.

There is no strong legitimate interest that would override the prejudice that disclosure would cause to the rights and freedoms of the individuals concerned. Due to this, we are withholding the information under section 40(2) of the FOIA.

In relation to our responses to the data controller, we have withheld this under section 31(1)(g) of the FOIA. We can rely on Section 31(1)(g) of the FOIA where disclosure: *"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*" and "*(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise...*"

Section 31 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

As above, data controllers would not expect the wording of our replies to them to be disclosed into the public domain. The disclosure of this requested information would go against the expectation that the information they provide to us, and we provide to them, is in confidence. This would lead to a breach of trust which would see these, as well as other data controllers, being reluctant to engage with the ICO in the future. This would affect our ability to complete our regulatory functions, including enforcement of the law, which creates a prejudice to the ICO as well as to the public.

We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against. In this case, the public interest factors in disclosing the information are:

- Increased transparency in the way in which the ICO handles the data protection complaints we receive.

The factors in withholding the information are:

- The public interest in data controllers being open and honest in their correspondence with the ICO as this allows us to regulate unhindered.
- The public interest in maintaining data controllers' trust and confidence that correspondence between the ICO and them will be afforded an appropriate level of confidentiality.
- Disclosing information provided to us by members of the public would breach their trust and may result in individuals refusing to, or not wanting, to contact the ICO. This would mean individuals are unable to invoke their rights and would limit our understanding of the compliance of data controllers which is not in the public interest.
- The public interest in maintaining the ICO's ability to handle data protection complaints as it sees fit.

Furthermore, we believe that the transparency around the data protection complaints we receive is already achieved as these are published on our [data sets](#).

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

I can advise that the decisions the ICO makes about the data protection complaints we receive are in line with our [Service Standards](#).

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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