

8 June 2023

ICO Case Reference IC-234341-Y3V7

Request

On 19 May 2023 you requested the following information, in relation to complaints made against Green 360:

please can the ICO: 3.1. kindly confirm if any other complaints are currently under review; and 3.2. if so, please provide copies of all the material that the ICO can share in relation to those complaints.

We have dealt with your request in accordance with the Freedom of Information Act (2000).

Response

In response to part 1 of your request, the answer is yes. We hold information about complaints made against this organisation and this includes matters which are still under review. In response to part 2 of your request, the information that we hold about this has been withheld.

Some of the information that falls within scope of your request involves third party personal data, and has therefore been withheld under the provisions of section 40(2) of the FOIA. Where information we hold does not involve third party personal data, we are withholding this in accordance with Section 31 of the FOIA. This is because our investigation into relevant matters is ongoing and disclosure could be prejudicial to this process.

More about the relevant exemptions can be found below:

Information withheld - FOIA section 40

When individuals make complaints about matters that concern their personal data, we consider the case files created to address this (including correspondence), to be the personal data of the complainant.

Even if names and contact details, for example, were redacted, the information held on the case could still be used to identify individuals, such as issues raised, dates and the nature of any correspondence exchanged about the matter. We can also consider whether any information disclosed might be combined with information already available, in order to identify individuals. This also includes information only available to a limited group of individuals (for example those who have had involvement with the complaint).

It is our view that members of the public who bring such complaints to us would not reasonably expect that we would disclose detailed information about their complaint into the public domain, which could be used to identify them. To do so would be in contravention of the first data protection principle. This requires personal data to be processed lawfully, fairly and in a transparent manner in relation to the data subject.

In the course of handling complaints we provide any other parties involved with sufficient information regarding the matters raised in order to look into the complainant's concerns. However, to disclose the requested information to the public would, in our opinion, be unfair and therefore in contravention of the data protection principle that requires personal data to be processed lawfully, fairly and in a transparent manner in relation to the data subject.

As a result, we have withheld some of the information within scope of your request in reliance on the exemption at Section 40(2) of the FOIA by virtue of Section 40(3A)(a).

Information withheld - FOIA Section 31

Some of the information you have requested relates to matters that are still under investigation. The exemption at Section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information "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 ..."

Clearly, these purposes apply when we are considering whether or not an organisation has met its obligations in respect of the legislation we regulate.

The exemption at section 31 is not absolute, and we must therefore consider the prejudice or harm which may be caused by disclosure of the information requested, as well as applying a public interest test by weighing up the factors in favour of disclosure against those in favour of maintaining the exemption.

Given that the information in scope relates to matters that are still under investigation, in considering the prejudice and/or harm that disclosure may cause we have taken into account the factors that would, in our view, impact on the release of the information at this stage.

Firstly, we take the view that to release the information you have asked for could prejudice the ICO's ability to investigate the relevant matters in an appropriate manner. For example, it is probable that any disclosure at this stage would prejudice our discussions with those involved. This is likely to damage our ability to investigate fairly and proportionately.

Disclosure could also jeopardise the ICO's ability to obtain information either relating to this case or others in the future. In our view harm could be caused if parties involved with complaints and issues raised in relation to an organisation were reluctant to enter into any further discussions, as a result of information about this being disclosed in response to information requests or even general enquiries. This is likely to result in these and other parties being reluctant to engage with the ICO in the future.

In addition, any information released at this stage could be misinterpreted, which in turn could distract from ongoing investigation.

With this in mind, we have then considered the public interest test for and against disclosure. In this case the public interest factors in disclosing the information are –

- Increased transparency in the way in which we investigate complaints; and
- The interest of the public in the complaints we receive about particular organisations.

The factors in withholding the information are –

- the public interest in maintaining the trust and confidence of those involved that their assistance with the ICO's enquiries will be afforded an appropriate level of confidentiality while our investigation is ongoing;
- the public interest in organisations and complainants more generally being open and honest in their correspondence with the ICO, without fear that details provided will be disclosed prematurely, or in some cases, at all;
- the public interest in maintaining the ICO's ability to conduct the investigation into complaints as it thinks fit, in line with the relevant legislation and without risk of prejudice.

Having considered these factors we have taken the decision that the public interest in withholding the information you have requested outweighs the public interest in disclosing it at this time.

Advice and assistance

Where appropriate, when our investigations have been concluded, some details about complaints may be published on our website where appropriate. Please see the links below for examples.

<https://ico.org.uk/about-the-ico/our-information/complaints-and-concerns-data-sets/>

<https://ico.org.uk/action-weve-taken/>

As mentioned above, any parties involved with individual complaints will be provided with information about this matter where appropriate, as part of the complaint handling process.

This concludes our response to your request.

Next steps

Please come back to us in the first instance if you would like a clarification or a review of the way your request has been handled. If you remain dissatisfied you can then request a review of our decision under the FOIA or make a complaint about how your request has been handled by writing to the Information Access Team at the address below or email 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 FOI Complaints & Appeals Department at the address below or visit our website if you wish to make a complaint under the Freedom of Information Act. A copy of our review procedure can be accessed from our website [here](#).

Your rights

Our [privacy notice](#) explains what we do with the personal data you provide to us and what your rights are, with a specific entry, for example, for [an information requester](#). Our retention policy can be found [here](#).

Yours sincerely,



Information Access Team
Risk and Governance Department, Corporate Strategy and
Planning Service
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