

25 July 2023

IC-240901-M6Q5

Review of response to information request

I write to you in response to your request for a review of the handling of your request dealt with under the reference number IC-240901-M6Q5.

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 27 June 2023 we received a request from you which sought the following information:

"Dear @ICOnews I'd like to request a copy of the interview or prepared statement given by Deputy Commissioner Stephen Bonner as reported here <https://mishcon.com/news/ico-warns-of-fines-for-companies-who-do-not-get-cookie-banners-right>"

On 30 June 2023 we responded by advising you that the information was being withheld under section 21 of the FOIA - information accessible to applicant by other means. The basis for this was that whilst the information was behind a paywall, it was still assessed to be reasonably accessible to the applicant.

Review

I have reviewed the response provided to you and I do not agree that section 21 of the FOIA was applicable in this case. As such, your internal review has been upheld.

Since the time that the original response was provided to you we have received permission from MLEX to disclose a copy of the article. I have attached it to this response..

It is important to note that section 21 explicitly sets out that information may be considered to be '*reasonably accessible to the applicant even though it is accessible only on payment*'. In this instance, following further enquiries as to the nature of the subscriptions available with MLEX, we have determined that the information you have requested is not reasonably accessible in this case. However, in other similar circumstances where a paywall exists, section 21 may still apply as it may still be considered to be reasonably accessible by other means. In such situations it would need to be assessed on a case-by-case basis as to whether the information is considered to be reasonably accessible. For instance, copies of many publications are available for free in digital or hard copy via a local library.

It should also be noted that section 43, commercial interests, may also apply in similar circumstances where a paywall exists. This is because disclosing paywalled information through a FOIA response may harm the commercial interests of an organisation that uses a paywall as a part of their business model. This would also need to be assessed on a case-by-case basis to understand whether or not it is in the public interest to disclose the information through a FOIA response.

This concludes the internal review.

Complaint procedure

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/>.

Yours sincerely

Senior Information Access Officer



Information Access Team
Risk and Governance Department, Corporate Strategy and
Planning Service
Information Commissioner's Office, Wycliffe House, Water
Lane, Wilmslow, Cheshire SK9 5AF
ico.org.uk twitter.com/iconews
Please consider the environment before printing this email
**For information about what we do with personal
data see our [privacy notice](#)**