

10 August 2023

## **ICO Case Reference IC-248507-F9X9**

### **Request for information**

Request received 31 July 2023:

*"Under the freedom of information act please confirm how long you took to assign and then investigate Mr Farage's complaint".*

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

### **Our response**

We can neither confirm nor deny that we hold information in scope of your request. This should not be taken as any indication of whether we hold this information. Please see below for further details.

### **Section 40 FOIA – Personal information**

Ordinarily, a public authority has a duty to confirm or deny whether it holds requested 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:

*"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"*

You have requested information held concerning a complaint made by a named individual. This information, if held, would constitute personal data as it relates to an identified natural person. Section 40(2) of FOIA exempts disclosure of the personal data of others, subject to conditions.

Section 40(3A)(a) highlighted above details one of these conditions. In my 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.

However, while I consider that information in scope of your request, if held at all, would be exempt information, I have also 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. Confirmation or denial of whether we hold the information you have requested would:

- a) constitute the personal data of a third party, because it would reveal whether they had contacted us to make a formal complaint, as well as further details about the status of the complaint, if there was one, and any work we had done in relation to it; and

b) disclosure would break the first principle of data protection as detailed above.

We consider that data subjects who contact us to make data protection complaints have a reasonable expectation that we would not release into the public domain any information about their complaint from which they are identifiable, including information which would reveal whether they had made a complaint to us about a specific issue.

With the above in mind, our response to your request is that we can neither confirm nor deny that we hold the information that you have requested. This should not be taken as any indication of whether we hold this information or not.

### **Further information**

You may be interested in the [ICO statement on banks sharing and gathering personal information | ICO](#) on our website.

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 [accessicoinformation@ico.org.uk](mailto:accessicoinformation@ico.org.uk), or at the address below.

Your request for internal review should be submitted to us within 40 working days of your receipt of this response. Any such request received after this time will be considered only 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 and Compliance team at the address given, or visit our website at [Official information concern | ICO](#).

## **Your information**

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

The length of time we keep information is laid out in our [retention and disposal policy](#).

Yours sincerely

Information Access Team

Risk and Governance Department

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

T. 0303 123 1113 F. 01625 524510 [ico.org.uk](http://ico.org.uk) [twitter.com/iconews](https://twitter.com/iconews)

For information about what we do with personal data see our [privacy notice](#)