

**Date:** 25 August 2023

**IC-249166-Z2F7**

## Request

You asked us:

*"I request whatever information you can provide under your usual FOI obligations within recognised statutory timescales.*

*There is currently a national movement known as 'auditing', where specific locations are visited by someone who is overtly filming with a view to provoking a reaction, which they then upload to global platforms such as YouTube. During this process, no consideration is given to the privacy rights of the individuals whose personal data is included when posting such videos online.*

*An email has emerged involving 'Case Reference: IC-239110-S3S6', signed by Richard Neal*

*Lead Case Officer from your organisation, that states and I précis:*

*'..auditors are likely to be classed as data controllers and subject to UK GDPR, as even if acting in an individual capacity, their videos are being made available to an indefinite number of people and they need to consider the privacy rights of individuals personal data that they upload.'*

*Auditors reject that they have any GDPR obligations despite targeting any number of different organisations such as Job Centres, police station public desk areas, council offices, filming those visiting/working there then uploading all manner of personal information including people's faces all with apparent impunity. Clearly, such organisations have their own GDPR obligations and the staff attempt to manage the actions of the person recording both vision and sound. An example:*

[https://www.youtube.com/watch?v=yPecOTQT\\_gs&t=1s](https://www.youtube.com/watch?v=yPecOTQT_gs&t=1s)

*I am attempting to establish if the email I quoted earlier is genuine, so please can you confirm if recording and uploading video and audio as above equates to*

*individual auditors being data controllers and therefore, are equally subject to and bound by GDPR?"*

We received your request on 3 August 2023. To the extent that your request is a request for recorded information, we have handled your request under the Freedom of Information Act 2000 (the FOIA).

## **Our response**

You have closed your request with the following question:

*"I am attempting to establish if the email I quoted earlier is genuine, so please can you confirm if recording and uploading video and audio as above equates to individual auditors being data controllers and therefore, are equally subject to and bound by GDPR?"*

I have interpreted the first part – *"I am attempting to establish if the email [you] quoted earlier is genuine"* – as a request for confirmation that we hold a recorded information about a communication from Richard Neal on case reference IC-239110-S3S6 that matches the description you have provided.

The remainder of your request is a request for advice and opinion. We do not provide advice or opinion via WhatDoTheyKnow. You should contact our public advice team to ask whether auditors recording and uploading videos are data controllers subject to GDPR. You can contact them here: [Advice Services for Members of the Public](#).

In relation to the part of your request that I have interpreted as an information request, we neither confirm nor deny that we hold the information you have requested. Further information has been provided below.

## **FOIA section 40(2) 'neither confirm nor deny'**

We neither confirm nor deny that we hold the information you have requested. 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"*

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 held on the data protection complaint IC-239110-S3S6, including any advice provided at the conclusion of that complaint, is in our view the personal data of the person making the complaint. 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 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. Therefore, the information you have requested, if held, would be exempt from disclosure.

Section 40(5B) states:

*"(5B) 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"*

I consider confirmation or denial would contravene the data protection principles because it would reveal personal data in that it would reveal factual information pertaining to an individual's data protection complaint. Therefore, our response to your request is we can neither confirm nor deny that we hold the information you have requested.

This concludes our response to your 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



Information Access Team  
Strategic Planning and Transformation  
Information Commissioner's Office, Wycliffe House, Water  
Lane, Wilmslow, Cheshire SK9 5AF  
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