

Date: 9 October 2023

## Case Reference IC-254335-Z9X9

### Review of response to information request

I write further to your email of date in which you requested a review of the handling of your request dealt with under the reference number IC-254335-Z9X9

As a result, we have conducted an internal review of our response to your information request which was handled under the above reference number. I am a Group Manager 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 23 August 2023 we received a request from you which said:

*Could you please provide me with ALL working link to all ICO audits, along with follow ups, in relation to the Humberside Police DPA, SAR, FOIA and the Humberside Police Publication scheme. If you do not have a working link because you have not yet published this information could please provide the information directly to me. Furthermore the iCO fined the Humberside Police for a breach of DPA (losing a sample from a woman after she was sexually abused which involved the Cleveland Police), could you please provide me with a like to what action was taken by the ICO. If you do not have a working link because you have not yet published this information could please provide the information directly to me.*

We responded on 12 September providing links to the information which was already in the public domain whilst advising that Section 21 technically applied to that information as it was already reasonably accessible to you.

However, The full audit and follow up reports were withheld from disclosure under Section 31(1)(g) of the FOIA. As was stated in the initial response, this is an exemption relating to information which, if disclosed, would or would be likely to cause prejudice to our ability to regulate the laws we oversee. The response then went on to discuss the public interest test in respect of this exemption and concluded that it fell in favour of withholding the information.

### Review

On receipt of the response, you requested an Internal Review as follows:

*I am writing to request an internal review of Information Commissioner's Office's handling of my FOI request 'Audit information'.*

*Please provide information about the perceived prejudice and the causal link to the release of information. As you may be aware, the prejudice test requires the authority to demonstrate that prejudice that is 'real, actual, or of substance' can be demonstrated to be a likely causal outcome of the release of the requested information. ICO guidance says that if 'the harm is only trivial, the exemption would not be engaged', and also advises on the meaning of 'would or would be likely to'.*

*([https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fico.org.uk%2Fmedia%2Ffor-organisations%2Fdocuments%2F1214%2Fthe\\_prejudice\\_test.pdf&data=05%7C01%7Cicoaccessinformation%40ico.org.uk%7C4bc99833a01f43f8487c08dbb3d093a8%7C501293238fab4000adc1c4cfefba21e6%7C1%7C0%7C638301480645798908%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IjE6IjEhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=%2BZ9INyExSQQK9%2FQ8pXgHHAoWGo0zIVbQqInSy%2FwT8gE%3D&reserved=0](https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fico.org.uk%2Fmedia%2Ffor-organisations%2Fdocuments%2F1214%2Fthe_prejudice_test.pdf&data=05%7C01%7Cicoaccessinformation%40ico.org.uk%7C4bc99833a01f43f8487c08dbb3d093a8%7C501293238fab4000adc1c4cfefba21e6%7C1%7C0%7C638301480645798908%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IjE6IjEhaWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=%2BZ9INyExSQQK9%2FQ8pXgHHAoWGo0zIVbQqInSy%2FwT8gE%3D&reserved=0)).*

*Furthermore, for whatever reason you failed to mention this audit altogether.*

*"Action we've taken/  
Audits and overview reports/  
Humberside Police follow up  
Humberside Police*

*Date*

*01 June 2023*

*Type*

*Follow up audit*

*Sector*

*Criminal justice*

*The ICO has carried out a follow up of the data protection audit performed at Humberside Police with its consent."*

The purpose of this review is to look again at your request and the response that was provided to you, to ensure it was correct and that any exemptions applied were appropriate. I can confirm that I have reviewed the correspondence on the information request and will respond to the comments made.

#### Public Interest Test

In respect of the use of Section 31(1)(g), with which you disagree, I will reiterate that the withheld information consists of reports following audits into the data protection practices of Humberside Police. We find that disclosing this information would harm our ability to conduct such audits in the future, which are undertaken voluntarily. Data controllers would likely be reluctant to provide detailed information about their processing activities if they had concerns about such information being released to the

wider public. With this in mind and in respect of the use of Section 31(1)(g), I have looked again at the public interest test.

#### Arguments in favour of disclosing the information

- Increased transparency in the way in which the ICO carries out its investigations.
- Evidence of what was located and advised with this particular audit investigation, and who it had been in contact with.
- The significant public interest in understanding what the audit uncovered and the impact on individuals.
- The public interest in the outcome of this audit investigation, due to the nature of the public authority, the number of residents in its boundary and the nature of the issues it discusses.

#### Arguments in favour of maintaining the exemption

- Disclosure of this information would be likely to prejudice the discharge of the ICO's regulatory function in vital areas, including its ability to influence the behaviour of data controllers and to take formal action.
- There is a public interest in maintaining the ICO's ability to conduct audits investigations as it sees fit without undue external influence and with the ability to make decisions without a high degree of scrutiny which might affect its decision making or divert its resources.
- There is a public interest in the ICO being able to maintain effective and productive relationships with the various parties it communicates with. It is essential that organisations continue to engage with the ICO in a constructive and collaborative way without fear that the information they provide to it will be made public prematurely, or at a later date, if it is inappropriate to do so.
- There is a strong public interest in the ICO being an effective and efficient regulator. The potential piecemeal disclosure of information following audit investigations would be likely to result in caution from the involved organisations. This could lead to the ICO having difficulties furthering future investigations. Consequently this would prejudice its ability to deliver its regulatory objectives.
- The published audit information on this matter has explained in broad terms the work that has been undertaken in this area. The detail already satisfies the public interest, and this goes some way to address the public interest in transparency about the ICO's work.

#### Public Interest Test

I consider that there is a strong public interest in the ICO being effective in its role as a regulator and carrying out its statutory functions – such as the standard audits it undertakes. There is also a strong public interest in not disclosing information which would be likely to impede the ICO's ability to carry out its functions effectively. I consider that the public interest in audits in question, and in the ICO being open and transparent in its role as regulator, is met through the related information that the ICO has published on its website.

Therefore, on balance, I consider that the public interest in favour of disclosure is again outweighed by the public interest in favour of maintaining the application of the section 31(1)(g) exemption, with subsection (2)(a) and (c).

#### Follow Up Work

You have made the following statement:

*"Furthermore, for whatever reason you failed to mention this audit altogether...*

*Humberside Police follow up... Date 01 June 2023"*

The original response did state that the withheld information consists of reports following audits into the data protection practices of Humberside Police. The report you have referenced in this statement was one such follow up audit. Therefore I can confirm that any information not already in the public domain is covered by the Section 31(1)(g) exemption as explained in the original response.

For these reasons, your review is not upheld.

#### **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/>