

7 September 2023

## **IC-254963-G8J3**

### **Request**

You asked us:

*"I understand that the ICO carried out a data protection follow up audit in regards to the Child Maintenance Service this year (please see link below). However, I respectfully ask that you please publish your full findings in relation to the aforementioned Government body, as it is in the public interest.*

[Child Maintenance Service \(DWP\) | ICO](#)"

We received your request on 28 August 2023.

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

### **Our response**

We can confirm that we hold information in scope of your request. We hold a full report relating to our audit of the Child Maintenance Service (CMS) in March 2022, we also hold a follow up report which was carried out in January 2023.

Having reviewed these reports, it is clear that the follow up report must be read in conjunction with the full report to make sense of the information contained within it. We have therefore considered whether we can disclose both reports.

Upon careful consideration, we consider that both reports are exempt from disclosure under section 31 of the FOIA. Further information about this is provided below.

### **FOIA section 31**

This exemption applies when disclosure would or would be likely to prejudice our ability to carry out our regulatory function.

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)."*

The purposes contained in sections 31(2)(a) and 31(2)(c) are:

*"(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 ..."*

These purposes apply when the Information Commissioner is considering whether a data controller has properly complied with its obligations in respect of data protection legislation.

The exemption at section 31 is not absolute, and so we must consider the prejudice or harm which may be caused by disclosure of the requested information, as well as applying a public interest test to consider whether the public interest favours disclosure.

We believe that disclosure of the requested information would be likely to prejudice our ability to effectively carry out our regulatory function.

We take the view that to release the information you have asked for could prejudice the ICO's ability to engage with the CMS in the future. The audit process requires full cooperation from the data controllers concerned to assess whether the organisation is following good data protection practice. In this case, the engagement from the CMS was not compulsory; it was carried out voluntarily and with an understanding of confidentiality. Often organisations must disclose to the ICO sensitive information that, for very legitimate reasons, they would not expect to be disclosed into the public domain. If public authorities cannot have confidence that the ICO will not disclose such information in response to FOI requests where it is inappropriate to do so, this would have a detrimental effect on the efficacy of the audit process.

Disclosure could also jeopardise the ICO's ability to obtain information from other organisations, be it relating to this matter or something else, thus damaging our ability to carry out our regulatory functions in future. To ensure full and honest exchange of information, data controllers must have confidence that the ICO will not disclose information where inappropriate to do so. Harm could be caused to the ICO's regulatory function if parties were reluctant to enter into such engagement.

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 the ICO conducts data protection audits and how we follow up with those organisations;
- disclosure would help to demonstrate that the ICO is complying with its duties by overseeing the performance of data controllers; and
- increased transparency in the specific data protection measures in place at the CMS.

The public interest factors in withholding the information are:

- the public interest in maintaining the confidentiality of information and evidence considered as part of our auditing process;
- the public interest in ensuring that data controllers are not deterred or inhibited from participating fully and candidly with the auditing process, either as part of this audit or future audits;
- ensuring that the ICO can have effective and productive relationships with the data controllers we regulate and that they continue to engage with us in an open, cooperative and collaborative way without fear that information they provide to us will be made public prematurely or, as appropriate, at all;
- the public interest in the ICO not disclosing information about the specific measures that the CMS have in place to protect the security of personal data where such a disclosure could undermine the effectiveness of those measures.

Having considered these factors we have taken the decision that the public interest in withholding the information you seek outweighs the public interest in disclosure.

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,



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