

23 November 2023

IC-267526-R8L4

Request

You asked us:

"Please provide copies of all correspondence between London Borough of Hackney and the ICO in the annual year of 2022 relating to FOI cases that did not result in a Decision Notice and as such, there is no record of published on your website."

We received your request on 28 October 2023.

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

Our response

Please find attached information in scope of your request as far as we are able to do so. This contains correspondence that was sent from the ICO to the London Borough of Hackney (LBH) in 2022 concerning FOI complaints that did not result in a decision notice.

We have considered whether we can provide you with a copy of the correspondence that we have received from LBH. The correspondence that we have received from LBH in relation to these complaints is exempt in accordance with section 44 of the FOIA. Additionally, we have also withheld some of the correspondence that we have sent to LBH in accordance with section 31 of the FOIA.

As you will notice, we have also withheld the personal data of third parties, this information is exempt pursuant to section 40(2) FOIA.

Further explanation regarding the exemptions engaged has been provided below.

FOIA section 40(2) – personal information

We have applied some redactions to the attached bundle and withheld some documents pursuant to section 40 of the FOIA. The information that you have requested relates to complaints made to the ICO by members of the public. The correspondence between the ICO and LBH about these complaints therefore contains their personal information of the complainants and staff at LBH.

We find that the condition at section 40(3A)(a) applies in this instance: that disclosure would breach one of the data protection principles. The principles are outlined in the UK GDPR with the relevant principle on this occasion being the first principle as provided by Article 5(1): that personal data shall be processed lawfully, fairly and in a transparent manner.

We do not consider that disclosing this information into the public domain is necessary or justified. There is no strong legitimate interest that would override the prejudice to the rights and freedoms of the relevant individuals. We have therefore taken the decision that disclosing this information would be unlawful, triggering the exemption at section 40(2) of the FOIA.

FOIA section 44 and DPA section 132 – prohibitions on disclosure

The correspondence that we have received from LBH in response to complaints that have been raised to the ICO about them is withheld under section 44 of the FOIA.

Section 44(1)(a) states:

"(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it - (a) is prohibited by or under any enactment"

The enactment in question is the Data Protection Act 2018. Section 132(1) of part 5 of that Act states that:

"A person who is or has been the Commissioner, or a member of the Commissioner's staff or an agent of the Commissioner, must not disclose information which—

(a) has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions,

(b) relates to an identified or identifiable individual or business, and

(c) is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources, unless the disclosure is made with lawful authority."

The withheld information relates to an identifiable organisation and was provided to the ICO in the course of our function as a regulator. We have considered whether we have lawful authority to disclose this information under the FOIA and in this case we do not. The Commissioner and his staff risk criminal liability if they disclose information without lawful authority. The right of access under the FOIA is not sufficient to override these important factors and the information that LBH has sent to the ICO in relation to these complaints is therefore withheld.

FOIA section 31 – law enforcement

In addition, we have also withheld some of the correspondence that we have sent to LBH in relation to these complaints. This is an exemption relating to information which, if disclosed, would be likely to cause prejudice to our ability to regulate the laws we oversee.

Specifically, 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)."

In this case the relevant purposes contained in subsection (2) are 31 (2) (a) and 31 (2) (c) which state:

"(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 or not a data controller has met its obligations in respect of data protection legislation.

Section 31 is not an absolute exemption and so we must consider the prejudice or harm which may be caused by disclosure of the information requested, as well as applying a public interest test by weighing up the factors in favour of disclosure against those in favour of maintaining the exemption.

We believe that disclosure of some of the correspondence that we have sent to LBH 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 LBH, and other public authorities, in the future. The ICO depends on the free and frank cooperation of data controllers to improve data protection practices and make decisions in response to complaints raised to the ICO. 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 our relationship with public authorities.

We have already established that we do not have lawful authority to disclose the information that LBH has sent to the ICO. We consider that disclosure of some of the information that we have sent to LBH would at least partially undermine the application of section 44, as it would reveal the confidential nature and content of these discussions. Disclosing a copy of some of our correspondence could send a message to LBH, or other data controllers, that confidential discussions may be shared without their consent. This may have the undesirable effect of making such data controllers guarded or less likely to engage with us meaningfully. As such, disclosure could have a detrimental impact on public confidence in the ICO's ability to handle complaints carefully, sensitively and confidentially.

With this in mind, we have then considered the public interest test for and against disclosure.

The factors in favour of disclosing the information are:

- Increased transparency, accountability and awareness of the way in which the ICO investigates complaints.
- Increased transparency and accountability of the way in which organisations respond to ICO enquiries.

- Increased confidence in the decisions of the ICO, and assurance that the ICO is acting in accordance with its regulatory obligations.

The factors in favour of withholding the information are:

- The public interest in maintaining trust and confidence that correspondence with the ICO will be afforded an appropriate level of confidentiality in current and future cases.
- The public interest in maintaining the ICO's ability to conduct investigations into complaints as it thinks fit.
- The public interest in transparency and accountability regarding the complaints that we received and how these are handled is already met to an extent by information we publish about our work in the form of decision notices and our complaints and concern datasets.

Having considered all factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

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
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](#)**