

27 November 2023

IC-268299-B9Q6

## **Request**

You asked us:

*"Under the principles of open justice I request that you provide to me copies of any materials submitted by the ICO to the tribunal in the above-listed appeal, arising from ICO decision IC-204725-R6L4.*

*I would be grateful if you would also provide the materials submitted by the Home Office and by Guardian News & Media Ltd, or alternatively, email contact information for their representatives."*

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

## **Our response**

We have searched our systems based on the information you have provided and can confirm that we hold information within the scope of your request.

The materials submitted to the tribunal are exempt from disclosure under section 32 of the FOIA. Therefore, we are withholding this information from disclosure.

Section 32(1) of the FOIA states:

"Information held by a public authority is exempt information if it is held only by virtue of being contained in –

- a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
- b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
- c) any document created by –
  - (i) a court, or
  - (ii) a member of the administrative staff of a court,for the purposes of proceedings in a particular cause or matter."

Section 32 is a 'class' based exemption and is 'absolute', which means that if the nature, or class, of the information held falls within the scope of the exemption it need not be provided in response to a request under the FOIA. Therefore we do not need to consider whether disclosure of the information in question would prejudice the functions of the ICO or other parties to the appeal, nor is it necessary to consider any public interest test.

Additionally, the contact information for the counsels for the Home Office and Guardian News & Media Ltd is exempt from disclosure because it is personal data.

Section 40(2) of the FOIA exempts information if it is personal data belonging to an individual other than the requester and it satisfies one of the conditions listed in the legislation.

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 General Data Protection Regulation (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 data subjects. We have therefore taken the decision that disclosing this information would be unlawful, triggering the exemption at section 40(2) of the FOIA.

You may, however, be able to obtain this information by contacting the Home Office and Guardian News & Media Ltd directly.

Additionally, you may be able to contact the relevant court directly to [apply for a copy of documents from the tribunal](#).

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  
Risk and Governance Department, Corporate Strategy and  
Planning Service  
Information Commissioner's Office, Wycliffe House, Water  
Lane, Wilmslow, Cheshire SK9 5AF  
[ico.org.uk](http://ico.org.uk) [twitter.com/iconews](https://twitter.com/iconews)

Please consider the environment before printing this email  
**For information about what we do with personal  
data see our [privacy notice](#)**