

8 December 2023

Reference number: IC-273058-N4P8

Request

You asked us: *"...I note the excerpt in the minutes above records that there has been a 'meeting with the ICO'...Please can you send me information confirming the nature and detail of this 'meeting', including the advice or Recommendations made by the ICO."*

We understand the excerpt you have provided has been taken from Potto Parish Council's (PPC) website.

We received your request on 26 November 2023.

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

Our response

Having searched our records, we can confirm that we hold information in the scope of your request.

We can confirm that the ICO attended a meeting with PPC on 23 October 2023.

Any advice, or recommendations, made by the ICO are withheld under the exemptions provided by Section 31 and 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."

Section 132(2) lists circumstances in which a disclosure can be made with lawful authority, however none of them apply here. As a result, the information is exempt from disclosure.

In relation to Section 31, we can rely on section 31(1)(g) of the FOIA where disclosure:

"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 31(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...

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ..."

Section 31 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

To release the information you have requested could prejudice the ICO's ability to complete any regulatory work we have for PPC in an appropriate manner. Disclosure at this stage would discourage our ongoing discussions between the ICO and PPC and may damage our ability to conduct and conclude any work fairly and proportionately.

When we are exercising our regulatory functions, which includes providing advice to data controllers and public authorities about data protection and FOIA matters, there is an expectation that such conversations will be treated with

confidentiality. Disclosure of this material would signal to such organisations that the ICO does not treat requests for advice and guidance as confidential and would likely result in organisations engaging with us less or being more guarded when they do so. As the regulator, our work into the legislations we oversee is continuous and ongoing and involves liaising with multiple organisations at any one time. Less engagement would make it much harder for us to disseminate and influence good practice in the legislations we oversee, which could potentially lead to a more 'hazardous' data protection landscape.

Disclosure of the requested information could create a negative bias towards PPC. This, in turn, could distract from the any regulatory work we are completing. This bias could also create a prejudice towards PPC should we conduct any future regulatory work into them. Should any external bodies also develop a prejudice, it would be grossly unfair to PPC as they would not be treated impartially.

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 PPC has responded to the ICO's enquiries; and
- increased transparency in the way in which the ICO conducts its regulatory work into complaints that we receive.

The factors in withholding the information are:

- The public interest in maintaining all organisations' trust and confidence that their replies to the ICO's enquiries will be afforded an appropriate level of confidentiality.
- The public interest in organisations being open and honest in their correspondence with the ICO without fear that their comments will be made public prematurely or, as appropriate, at all.
- The public interest in maintaining the ICO's ability to conduct regulatory work into complaints as it thinks fit.
- The public interest in the ICO being able to maintain a communications channel with all organisations. A lack of, or reduced, communications channels inhibits our work into the legislations we over see which is not in the public interest.
- Disclosure at this stage would discourage ongoing discussions between the ICO and PPC and may damage our ability to conduct and conclude our

regulatory work fairly and proportionately.

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

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](#) on our website.

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 sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

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](#)