

19 December 2023

IC-272525-X7N1

Request

You asked us:

"Can you please provide me with the information (facsimiles) of:

- 1.- The recovery plan you set in motion in the context of ICO 25 so that you could resolve 80% of the FOI complaints within 6 months,*
- 2.- The tailored recovery plan you drafted for the Cabinet Office, who have consistently failed to adhere to the time-scales of the FOI*
- 3.- Any internal (memorandums or emails for employees) or external memorandums of understanding between ICO and the Cabinet Office that: "restrict, govern, or otherwise include instructions of any type regarding the use (or restrain in the usage) of Information Notices, Enforcement Notices, and s54 Certifications against the Cabinet Office"*

We received your request on 27 November 2023.

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

Our response

I can confirm that we hold information which falls within the scope of your request.

Please find attached a pdf document entitled FOI Backlog Paper. This is the information we hold which falls within the scope of part 1 of your request. Please note that there is an error on page 5 of this document. In the section labelled 'Consultees' Shemiah Thomas's job title is recorded as FOI Project Manager. This is incorrect; their correct job title is Programme Manager.

Regarding parts 2 and 3 of your request, while we can confirm that we hold some information which falls within scope of both of these parts of your request, we are withholding the information as it is exempt under section 31 of the FOIA.

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 subsection is 31(2)(c) which states –

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

Clearly, these purposes apply when the Information Commissioner has obtained or created information during an investigation.

The exemption at Section 31 is not absolute, and we need to consider the public interest test by weighing up the factors for and against disclosure of the information we hold, as well as any prejudice or harm which may be caused by disclosure.

This information forms part of a regulatory matter regarding our intelligence and monitoring of a live running process. We believe that disclosure of the information you have requested would be likely to disrupt our ability to engage with the Cabinet Office and work with them to progress investigations. This in turn would be likely to damage our ability to regulate and negotiate better and quicker outcomes for individuals exercising their right to access information in line with our regulatory duty.

This exemption is not absolute. When considering whether to apply it in response to a request for information, there is a 'public interest test'. That is, we must consider whether the public interest favours withholding or disclosing the information.

Public interest in favour of disclosure –

- There is a public interest in the ICO being open and transparent regarding our regulatory activities. Such openness and transparency helps to promote public awareness and understanding of the ICO's regulatory functions.
- There is a public interest in the ICO publishing information which would help to demonstrate that it is complying with its duties.

Public interest in favour of maintaining the exemption –

- There is a strong public interest in the Commissioner ensuring that no information is disclosed prematurely in a way that would or would be likely to cause harm to a live regulatory matter;
- There is a public interest in maintaining our ability to conduct investigations and consider Regulatory action in line with established processes and procedures without the risk of prejudicing these investigations and any subsequent Regulatory action we may decide to take;
- There is a public interest in the ICO providing a cost effective and efficient regulatory function. This relies on the cooperation of those we regulate and we feel this is best achieved by an informal, open, voluntary and uninhibited exchange of information with these organisations. We feel that the cooperation of Public Authorities may be adversely affected if details that they provide us were routinely made public. This would be likely to make Public Authorities more cautious about providing information to us which would in turn prejudice the ICO's ability to deliver the levels of service required of it;
- There is a public interest in the ICO being an effective and efficient regulator. It is essential to the efficacy of the ICO as a regulator that we are able to express our views and opinions in confidence where we need to. We need a safe space to formulate our conclusions and in which to communicate with those we regulate.

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

Advice and Assistance

You may be interested to know that we publish quarterly performance scorecards which include commentary on the Cabinet Office backlog cases and progress made. These are available on our website:

[2023/24 Quarter 1 Management Board Scorecard](#)
[2023/24 Quarter 2 Management Board Scorecard](#)

You may also be interested in the [data sets](#) we publish regarding complaints we are currently handling and have handled from members of the public under section 50 of the FOIA. These data sets can be filtered by the 'Submitted About Account' which would allow you to locate cases relating to the Cabinet Office.

Warren Seddon, Director of Freedom of Information and Transparency, published a [blog](#) earlier this year which discusses how our FOI complaints teams worked on reducing the backlog and sets out some of the challenges which remained.

This concludes our response.

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