

18 January 2024

IC-278327-M8B9

Request

'It is evident by virtue of the official Parliamentary record that at the end of February 2021, your office was contacted by a representative or representatives of Government - In this respect, I would refer you to oral evidence given by the then Prime Minister's Chief Advisor, on 26th May 2021, in which it was stated as follows,

"At the end of February, I had got the Cabinet Office to call the ICO and basically put out a notice that just said, "If you are working on covid, assume that what you are doing is legal, in terms of GDPR." That was a completely extraordinary thing; no one even knew if that itself was legal—it almost definitely wasn't."

The above is a verbatim extract taken from the oral evidence (which is supplemented and confirmed by official video-recorded evidence) recorded in paragraph Q1064 of an official Parliamentary transcript which is on public record and accessible at <https://committees.parliament.uk/oralevidence/2249/html/>

In the circumstances, please provide;

(1) Copies of all correspondence and records of communication (electronic or otherwise passing between the Govt (in this case, it appears to be The Cabinet Office involved) and your ICO's Office and also in relation to internal communications within the ICO's Office which relate to this matter and

(2) Provide confirmation that the ICO's Office does, in fact, have a duty and responsibility to remain independent and impartial, or, given what is referred to above, otherwise and alternatively confirm and clarify the position of the ICO's Office in terms of it's supposed independence, or otherwise - by way of assistance, I would suggest that a formal statement in this respect would perhaps serve this purpose well.'

We received your request on 25 December 2023.

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

The second part does not constitute a valid request for recorded information. The FOIA does not require us to create new information in response to a request.

Our response

It is not possible to definitively confirm whether or not the requested information is held, because conducting the relevant searches would breach the cost limit envisaged by section 12 of the FOIA. Section 12(2) of the FOIA states that a public authority is not obliged to confirm or deny if requested information is held if the estimated cost of establishing this would exceed the appropriate cost limit.

Section 12 of the FOIA makes clear that a public authority is not obliged to comply with an FOIA request if the authority estimates that the cost of complying with the request would exceed the 'appropriate limit'.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 stipulates that the 'appropriate limit' for the ICO is £450. We have determined that £450 would equate to 18 hours work.

You have asked for all correspondence and records of communications with the Government - as well as any internal communications - about 'this matter'. 'This matter' could apply to any information held about our regulatory approach during COVID, which is an extremely broad request and could involve information held by various teams carrying out regulatory work during the pandemic.

Even taking a narrow interpretation of your request – that is, "this matter" being a note of the telephone call and any immediate correspondence substantively referencing it, would still require a substantial amount of time to locate.

The work required to definitively ascertain whether this information were held or not would be in excess of the 18 hours which would accrue a charge of £450 or less, triggering the provisions of section 12 of the FOIA.

Advice and assistance

Having carried out the necessary consultations I have concluded that it is unlikely we hold information in scope of your request, because those working on our COVID response at the time do not recall such a telephone call having taken place.

Further, emails are deleted after one year in line with our retention policy, so any

information that was not saved for record keeping purposes would no longer be held.

We have refused your request under section 12 rather than state that there is no information held only because we cannot definitively rule out the existence of information without manually searching through a huge amount of information.

However, I have provided some information below that may be of interest to you because it outlines the regulatory approach we took in 2020:

The ICO's statement about the [regulatory approach taken during the pandemic](#).

Guidance for organisations on [data protection and COVID](#).

A [report](#) by the previous Information Commissioner, Elizabeth Denham, on the ICO's response to COVID.

You may also be interested in the section of our website that details our [decision making structure](#).

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



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