

30 January 2024

IC-280991-H7T1

Request

In summary, you asked us:

"Can the ICO please provide any information held that might explain why the CAA is able to simultaneously not hold information that belongs to the ATT, but also withhold information on a cost basis?"

[...]

Please provide any legal advice sought that the ICO used to uphold the decision that information held by the ATT is not held by the CAA."

Your request referred to Decision Notices issued by the ICO under references IC-223330-G2F3 and IC-268851-X5C1.

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

Our response

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

For clarity, we will answer each of your queries in turn.

"Can the ICO please provide any information held that might explain why the CAA is able to simultaneously not hold information that belongs to the ATT, but also withhold information on a cost basis?"

We can confirm that we hold information in scope of this aspect of your request, but that this information is withheld under Section 44 of the FOIA. More information will be provided about this below.

The subject of your request is the content of two Decision Notices issued by the ICO. Decision Notices are issued as the ICO's final decision on a complaint brought to us about how an organisation has handled an FOI request.

As explained in our [guide to how we deal with FOI complaints](#), we ask complainants for copies of their original request, any responses they received from the public authority, and the result of the internal review. We then contact the public authority for further information. The ICO then makes a decision based on the information provided by both the complainant and the public authority. Further detail about this is given on the webpage linked above.

This means that our Decision Notices are based on information provided to us specifically for the purpose of investigating the complaint.

The information in scope of this part of your request is withheld under the provisions of section 44 of the FOIA which places prohibitions on disclosure. This exemption is an absolute exemption, which does not require a consideration of the public interest test of the type required by the qualified exemptions.

Section 44(1)(a) of the FOIA 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 and specifically section 132(1) of part 5 of that Act. This 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."

We can confirm that in respect of these conditions:

- The information was provided to the Commissioner in order to carry out their role as regulator of the Information Acts.
- The information relates to identifiable individuals, that is, the complainants of each case, as well as an identifiable business, specifically the CAA
- The information is not, and was not previously, publicly available from other sources.

As a result we cannot disclose the information unless we can do so with lawful authority.

Section 132(2) lists the circumstances in which a disclosure can be made with lawful authority, however we find that none of them apply here. As a result the information is exempt under the FOIA and withheld from our response.

However, the Decision Notices issued under IC-223330-G2F3 and IC-268851-X5C1 explain the arguments presented to the ICO by both the complainants and the CAA and the reasoning behind the ICO's decisions.

"Please provide any legal advice sought that the ICO used to uphold the decision that information held by the ATT is not held by the CAA."

We can confirm that we do not hold any information within the scope of this part of your request. That is, the ICO did not seek legal advice in relation to the decision that information held by the ATT is not held by the CAA.

As stated above, Decision Notices are issued after considering evidence provided by both complainant and public authority.

No other information has been redacted or withheld from disclosure.

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



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