

7 November 2023

Case reference IC-262955-N0M8

Dear [REDACTED],

I write further to your email of 25 October 2023, in which you requested an internal review of our response to your information request, which we handled under the above case reference number.

My name is Sarah Coggrave and I am a Senior Information Access Officer in the Information Access Team at the ICO. I have been asked to review the way we handled your request for information. I can confirm that I have had no prior involvement in the handling of this request.

You requested the following information:

- *Any and all ICO case logs, meeting minutes relevant and part of the Facewatch decision making process that concluded in March 2023. Specifically who Stephen Bonner, Emily Kearney and John Edwards sought advice from when Policing Minister Chris Philip MP wrote to the ICO in February 2023.*
- *Documents showing how ICO key performance indicators and service management targets are measured and recorded internally at the ICO.*
- *Internally issued ICO policy and policy guidelines regarding complaint handling against the ICO and its staff itself.*
- *Internally issued ICO policy and policy guidelines regarding data protection and information rights complaints received by the public."*

Some of this information was withheld under the exemption at section 21 of the FOIA, and other information was withheld in accordance with Section 31, 40(2), 42 and 44.

You have raised the following concerns about our response:

- You disagree that Section 21 is engaged, and that advice on how to locate the information has not been provided, specifically that the links provided

in our response are 'inactive/broken' and do not provide access to the documents

- You state that [REDACTED] the public interest test has been incorrectly applied in relation to the above
- You also state that a detailed written explanation of the ICO's decision has not been applied.

My review will focus on these points.

FOIA Section 21

Section 21 exempts information which is reasonably accessible to the applicant through means other than a request under the FOIA.

Our guidance states that before applying section 21, we must consider if the applicant can actually and reasonably access the information they requested. This means checking that:

- the information in the public domain matches what the applicant asked for;
- precise directions have been given to the applicant to enable them to find it; and
- this information is reasonably accessible to the applicant, based on their particular circumstances

I have checked the information and can confirm that it exists, falls within scope of your request and is already available in the public domain via our website.

I have also checked each of the links that the request handler has provided in your response. I can find no fault with any of these, and each signposts to information that falls within scope of your request. It is reasonable for the request handler to have assumed that, as you are contacting us via email, that you have internet access, and that by providing links in a format that works within commonly used software and browsers that you would be able to access the information.

I have provided the full links below so that you are able to copy or type these directly into your browser and verify for yourself that the information exists and is accessible.

Links that relate to the first point of your request:

<https://ico.org.uk/about-the-ico/our-information/disclosure-log/ic-228367-g3d4/>
<https://ico.org.uk/about-the-ico/our-information/disclosure-log/ic-239056-y9n6/>
<https://ico.org.uk/about-the-ico/our-information/disclosure-log/ic-248456-k5k5/>

Link that relates to the second point of your request:

<https://ico.org.uk/about-the-ico/our-information/annual-reports/>

Links that relate to the third part of your request:

<https://ico.org.uk/media/about-the-ico/service-standards/4018506/ico-service-complaints-policy.pdf>
<https://ico.org.uk/about-the-ico/our-information/our-service-standards/>
<https://ico.org.uk/make-a-complaint/complaints-and-compliments-about-us/complain-about-us/>

Link that relates to the fourth part of your request

<https://ico.org.uk/about-the-ico/our-information/disclosure-log/ic-203074-k3y8/>

Please also note that Section 21 is an absolute exemption, which means it is not necessary for us to consider any public interest test.

Details of exemptions relating to information in the above links are detailed in the accompanying response letters (also available via the above links).

Please also note that we do not hold any information in relation to the following part of your first point: *'Specifically who Stephen Bonner, Emily Kearney and John Edwards sought advice from when Policing Minister Chris Philip MP wrote to the ICO in February 2023'*.

FOIA Section 42

Section 42 states that information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

This exemption is subject to the public interest test, which is provided in the following response (contained within the third link provided under point 1 of your request above):

<https://ico.org.uk/media/about-the-ico/disclosure-log/4026293/ic-248456-k5k5.pdf>

[REDACTED]

The concept of legal professional privilege (LPP) protects the confidentiality of communications between a lawyer and client. This helps to ensure complete fairness in legal proceedings. Privilege over information can be waived in a particular court case but still retained for the same information in other contexts and indeed in other court proceedings. In this context as we are considering disclosure of the information under FOIA, which concerns disclosures to the world at large rather than to a limited audience.

In an FOI context, LPP no longer applies if there has been a previous disclosure to the world at large and the information can therefore no longer be considered confidential. This does not apply here as the information has not been previously disclosed.

Section 42 is not an absolute exemption and requires a public interest test. I am satisfied that the public interest test in this case (as outlined in the letter I've linked to above) does not favour disclosure, for the reasons provided.

Other concerns

You state that a detailed written explanation of the ICO's decision has not been applied. The request handler's response was written with the assumption that you would be able to access the links provided, and which contain further information regarding the other exemptions applied. I consider this to have been a reasonable approach to the response, and for avoidance of doubt I have provided the full links, which provide you with an alternative way to access the information, and further details about relevant exemptions cited in the original response.

Complaint procedure

If you are dissatisfied with the outcome of this review you can make a formal complaint with the ICO in its capacity as the regulator of the Freedom of Information Act 2000.

To make such an application, please write to our Customer Contact Team at the address below, or visit the 'Make a complaint' section of our website:

<https://ico.org.uk/make-a-complaint/>

Please ensure you attach any documents requested to progress your complaint when submitting your complaint.

Your information

Please note that our Privacy notice explains what we do with the personal data you provide to us and what your rights are.

<https://ico.org.uk/global/privacy-notice/>

This includes entries regarding the specific purpose and legal basis for the ICO processing information that people that have provided us with, such as an information requester.

The length of time we keep information is laid out in our retention schedule, which can be found here:

<https://ico.org.uk/media/about-the-ico/policies-and-procedures/4024937/retention-and-disposal-policy.pdf>

As you can see I have continued to provide all links in full so that you can copy or type these into your browser in case clicking on them does not take you to the relevant pages.

Yours sincerely,



Sarah Coggrave

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For information about what we do with personal data see our [privacy notice](#).