

Date: 27 February 2024

Case Reference IC-282563-L5B8

Review of response to information request

I write further to your email of January 31, 2024, in which you requested a review of the handling of your request dealt with under the reference number IC-282563-L5B8.

As a result, we have conducted an internal review of our response to your information request which was handled under the above reference number. I am a Group Manager in the Information Access Team, and I can confirm that I have had no prior involvement in the handling of this request.

Request and response

On January 15, 2024, we received a request from you which said:

I am asking for disclosure of all information held by ICO on which basis ICO has concluded that " As far as the ICO is concerned, Birmingham City Council remains both a public authority for the purposes of the FOIA and a data controller for the purposes of data protection legislation." I am asking for disclosure of all information held at ICO relating to ICO's authority for assessing or make finding of which entities are or are not a public authority, or who qualifies as a data controller. A list of legal duties and responsibilities on part of ICO for purposes of assessment and determination of status of any entity whose legal capacity or status as a public authority is materially affected by legal measures, such as in BCC case. Absent any affirmative resolution procedure in place reinstating BCC's former status, what authorities ICO relies on to identify which entities constitute a " public authority" in real time . which part of ICO is responsible for monitoring and adapting ICO terms of operation with developments in law. Which part of ICO is responsible for overseeing , safeguarding, and securing effective enforceability of ICO decisions. What disinformation ICO has to show for mitigating legal liability arising from any ICO's decision which proves not enforceable for lack of preparatory work to alien ICO services with the state of the law as it is in real time(i.e. if ICO issue a fine or court issues a compensation or cost order on DPA or FOI matters following an ICO decision concerning BCC post 5.9.23, what disregarded information are to be noted by ICO in justification).

The initial response on this case took into account that you had already asked an almost identical request recently (case IC-279881-D2B5). You were provided with a full response to that request which confirmed that as far as the ICO is concerned, Birmingham City Council remains both a public authority for the purposes of the FOIA

and a data controller for the purposes of data protection legislation. This is not altered by the installation of Government Commissioners.

Despite being advised that the ICO does not hold any information in respect of the ICO's relationship with Birmingham City Council, because it has not changed, you repeated the request. Consequently, the initial response to this case IC-282563-L5B8, was refused citing Section 14(1) which does not oblige the ICO to issue a further response.

Review

On receipt of the response, you requested an Internal Review as follows:

I would like to ask ICO for followings.

- *A review of response provided to my FOI request.*
- *A formal apology for abusive language adapted accusing me of fixation.*
- *To Secure errors noted above not prejudicing my data protection rights.*

As regards FOI request of mine, my email of 15.1.24 clearly asks for concrete (sic) information and in no way, I was seeking there to argue any legal position or standing of ICO which as a legal entity ICO may wish to adapt on matters related to legal standing of a separate entity (BCC) ; therein I asked for :

- *A list of legal duties and responsibilities on part of ICO for purposes of assessment and determination of status of any entity whose legal capacity or status as a public authority is materially affected by legal measures, in other words I am asking ICO to disclose sources , references and what ever ICO relies on to define its role and applicable duties and responsibilities, for purposes of assessment and determination of status of any entity whose legal capacity or status as a public authority is brought to ICO awareness.*
- *What authorities ICO relies on to identify which entities constitute a " public authority"*
- *which part of ICO is responsible for monitoring and adapting ICO terms of operation with developments in law*
- *Which part of ICO is responsible for overseeing , safeguarding, and securing effective enforceability of ICO decisions*
- *Information held by ICO on which basis ICO has concluded that " As far as the ICO is concerned, Birmingham City Council remains both a public authority for the purposes of the FOIA and a data controller for the purposes of data protection legislation."*

The purpose of this review is to look again at your request and the response that was provided to you, to ensure it was correct and that any exemptions applied were appropriate.

I can confirm that in respect of your first point, I have reviewed the correspondence on the information request and will respond to the comments made. I am replying accordingly below.

In your second point, you have requested an apology for "*abusive language adapted accusing me of fixation.*" The language and phrases used in the response are lifted from the S.14 Guidance for FOIA. In particular it states: Section 14(1) is designed to protect public authorities by allowing you to refuse any requests which have the potential to cause a disproportionate or unjustified level of disruption, irritation, or distress... The purpose of Section 14...must be to protect the resources (in the broadest sense of that word) of the public authority from being squandered on disproportionate use of FOIA..."

In using the vexatious exemption, officers have to consider all the circumstances in order to reach a judgement. This includes whether the request is vexatious in the sense of being a disproportionate, manifestly unjustified, inappropriate, or improper use of FOIA. The language used was lifted from this advice. Please click on the following link to view it: [What does section 14\(1\) of FOIA say? | ICO](#)

In your third point you have asked "*To Secure errors noted above not prejudicing my data protection rights.*" I am assuming that this makes reference to your opening statement where you state: "*I received an anonymous letter carrying ICO logo but signed by no one , the letter is address to no one , it has no addressee but contains my personal data that I have shared with ICO in course of a FOI request.*" The document in question is the initial response to this request and it is referenced as such. In addition it was attached to an email sent to your personal email account, the text of which makes it quite clear what the attachment relates to. Responses are anonymised in this way in order for the ICO to be able to publish them on our Disclosure Log without revealing the details of the requester and consequently their personal contact details and name.

I will now turn to the five further comments you make.

In the fourth point, you once again make reference to how the ICO determines legal capacity or status as a public authority. This is determined by the legislation, which is publicly available. Therefore Section 21 applies to this information as it is reasonably accessible to you. Please click on the following link: [Freedom of Information Act 2000 \(legislation.gov.uk\)](#)

I will reiterate that Birmingham City Council is the local government body responsible for the governance of the City of Birmingham in England, which has been a metropolitan district since 1974. This has not changed by the issuing of the Section 114 notice. There is a web page on the City Council's website which confirms their current position: [Businesses and section 114 | Birmingham City Council](#) The ICO does not hold any further information in respect of the legal and constitutional position of local authorities who have issued Section 114 Notices.

In your fifth point you ask once again what the ICO relies on to identify which entities constitute a "public authority". Once again, I must point you to the legislation: [Freedom of Information Act 2000 \(legislation.gov.uk\)](#). Therefore Section 21 applies to this information.

The information you have requested in points six and seven can be located on the "About the ICO" pages of our website. Please click on the following link: [About the ICO | ICO](#) Therefore Section 21 also applies to this information.

Finally, in point 8, you repeat your request: "*Information held by ICO on which basis ICO has concluded that " As far as the ICO is concerned, Birmingham City Council remains both a public authority for the purposes of the FOIA and a data controller for the purposes of data protection legislation."* I will repeat that this information is included in both the published legislation and the guidance. The links are below and as this information is reasonably available to you, Section 21 applies.
[Freedom of Information Act 2000 \(legislation.gov.uk\)](#)
[What is the Freedom of Information Act? | ICO](#)

The ICO's relationship with Birmingham City Council has not changed, therefore, as has been explained to you twice, no further information is available. I will reiterate that neither the S.114 Local Government Finance Act 1988 Notice, nor, the [Directions](#) under ss.15(5) and (6) of the Local Government Act 1999 affect Birmingham City Council's status and obligations as a data controller. They also do not affect the Commissioner's enforcement powers. For completeness, the Commissioner takes any decision as to whether to impose a fine (and the amount of any fine) in accordance with the data protection legislation and his [published guidance](#), as well as his [revised approach](#) to public sector enforcement.

Your further requests appear to be due to a misunderstanding of how local authorities operate after the issuing of a Section 114 Notice. You have then applied this misunderstanding to their relationship with the ICO. There are no changes. Therefore, no further guidance is required other than the legislation which identifies public authorities under Schedule 1 of FOIA. Birmingham City Council remains as the local government body responsible for the governance of the City of Birmingham. It remains both a public authority for the purposes of the FOIA under Schedule 1, and a data controller for the purposes of data protection legislation.

I do agree that you appear to have become fixated on this point, which is based on a misunderstanding of the relevant legal frameworks and the ICO's role, and we do not consider it an appropriate use of the ICO's resources to continue to debate this with you, nor is it within the spirit of the FOIA. Despite being advised twice to the contrary, you continue to argue your misconceived point. In addition, having reviewed earlier unrelated requests from you, there is a pattern of you carrying on misconceived arguments. In one case, IC-183888-M0V2, the Commissioner declined to consider the complaint further or issue a decision because he considered it to be frivolous. In that case as with this, you asked about the legal basis for various activities, despite being advised on several occasions that the parliamentary legislation provided the legal basis for the activities. Continuing to investigate this Internal Review is unlikely to result in any further information being disclosed, nor is it likely to resolve matters.

For these reasons, your review is not upheld.

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. Please follow the link below to submit your complaint:

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

Yours sincerely

Helen Sweeney

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