

23 May 2024

IC-297883-Y7G2: Internal Review Response

I write further to your email of 1 May 2024, in which you expressed dissatisfaction with the response to your recent information request, processed under case reference IC-297883-Y7G2.

My name is Sarah Coggrave and I am a Senior Information Access Officer. I can confirm that I have had no prior involvement in the handling of this request. My role is to review the application of the Freedom of Information Act (2000) FOIA in relation to your request.

Section 45 of the Freedom of Information Act 2000 (FOIA) requires the publication of a code of practice, designed to assist public authorities handle requests under the FOIA.

This guide recommends that public authorities put in place an internal review process for FOIA responses, which our guide suggests should be triggered whenever a requester expresses dissatisfaction with the outcome of a request they have made.

Review

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 understand that your dissatisfaction relates to our response to the following points of your request:

- 1) How many staff working for the Commissioner are currently suspended?*
- 2) Of those people, what is the longest period of time a person has been suspended for? Please note that I am not requesting the reason for the suspension, just the length of time.*

The request handler issued a neither confirm nor deny (NCND) response in relation to these points. When provided with this response, you raised several points which I will address individually below.

The original response does not explain how disclosure of the statistical information I requested would lead to identification. If you said '2 people, one for three months', I would have no way of identifying them.

After reviewing this further I am of the opinion that NCND is not the most appropriate response to these two parts of your request. Providing the information requested in relation to point 1 of the request would not enable individuals to be identified with any degree of certainty. Therefore I am satisfied that we can disclose the fact that two people were suspended at the time your request was made.

I also agree that members of the public, on the whole, are unlikely to be able to make inferences about individuals if we disclosed the information requested in part two of your request. However, the ICO's [draft anonymisation guidance](#) notes that "You should also consider whether the specific knowledge of others, such as doctors, family members, friends and colleagues could be sufficient additional information that may allow inferences to be drawn."

ICO staff, their family or friends, or anyone else who might engage with them, may possess knowledge which, in conjunction with the information requested, could be used to identify individuals and/or make inferences about them (i.e. [the 'mosaic' or 'jigsaw' effect](#)). This might include knowledge about individual absences from work, and/or any timings of performance, conduct or other issues that might be linked with a suspension. In either case such information could, in conjunction with the length of the longest suspension, be used to identify one of the two suspended individuals.

For this reason, I consider that the information requested in your second point should be withheld using Section 40(2). Disclosure of this data would break the first principle of data protection - that personal data is processed lawfully, fairly and in a transparent manner. There is no strong legitimate interest that would override the prejudice that disclosure would cause to the rights and freedoms of the individuals concerned. I have provided further details of my reasoning in response to your next point.

I can foresee circumstances where a person who works for the Commissioner may already know that a colleague has been suspended but does not know for

exactly how long. If the Commissioner puts this information into the public domain, that might lead to someone inside the ICO becoming aware of this additional personal data that they did not already know. But if this was the case, it would not be prejudicial to the suspended person.

The first data protection principle states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless – (a) at least one of the conditions in schedule 2 is met, and (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

In deciding whether disclosing the information would be unfair, I have taken into account:

- the nature of the information;
- the reasonable expectations of the data subjects of what would happen to their personal data; and
- the consequences of disclosure on those data subjects.

Information relating to internal disciplinary matters (including suspensions) carries a strong general expectation of privacy. This was recognised by the Information Tribunal in the case of *Rob Waugh v Information Commissioner and Doncaster College* (EA/2008/0038, 29 December 2008) when it said at paragraph 40 that: ‘there is a recognised expectation that the internal disciplinary matters of an individual will be private. Even among senior members of staff there would still be a high expectation of privacy between an employee and his employer in respect of disciplinary matters.’

ICO staff would not reasonably expect information to be disclosed about their suspension. While disclosing the number of staff suspended in itself does not enable individuals to be identified, disclosing the length of time of the longest current suspension could, as it may be possible to calculate the identity of the person by cross referencing this with other known information, such as any corresponding periods of leave, or circumstances that can be tied to specific dates.

It is reasonable for staff to expect that information about these matters would be held in confidence, would not be disclosed without their consent and would only be used in connection with any relevant processes.

The scenario you describe, i.e. that individuals other than the person suspended may be aware of the suspension, is of course a possibility. However, the consequences of confirming the length of that suspension may vary depending on the scenario. For example, someone may become aware of a suspension but not what led to this, or they may be unaware of exactly when the suspension began. Confirming dates will effectively disclose when the suspension started, and may enable those with knowledge of any relevant circumstances to make inferences about why the person was suspended. In another scenario, someone may not know about the suspension, but may have knowledge about conduct/performance issues (for example) and/or leave associated with a particular staff member, and disclosure of the suspension length may enable them to draw conclusions (e.g. that a specific person has been suspended).

Either way, there are various inferences that may be drawn from disclosure. While this is likely to be restricted to individuals with relevant knowledge, disclosure could nonetheless impact on the wellbeing of any suspended individuals, their relationships with others, the outcome of any relevant internal processes for them (e.g. investigations) and their long term employment prospects at the ICO and elsewhere. Suspension may not in all cases indicate wrongdoing (a person may be suspended while a matter is investigated, for example), and the affected person would reasonably expect any relevant processes to be conducted with confidentiality, even more so while the suspension is still ongoing.

While I appreciate that the request reflects a genuine, legitimate interest in matters relating to the suspension of ICO staff, I do not consider that this outweighs the possible harms to individuals who may be identifiable if we disclose information about individual suspensions (such as how long a suspension has been in place) in response to requests such as this.

ICO staff will know if a colleague is absent from work. If they are not aware that an absent colleague has been suspended, knowing that an unnamed person has been suspended for a certain period of time will not confirm to them that a particular absent person has been suspended. If they know that a particular colleague has been suspended, they are also likely to know for long. The most this would reveal is exactly how long if a colleague did not already know. But they would need to know that the colleague in question was suspended in order to match that knowledge to what would have been disclosed.

Information about suspensions is restricted, even to ICO staff, and even colleagues of a suspended staff member may not be made aware of the full reasons for a period of absence.

The length of a suspension may be linked to other events and processes, or a specific length of absence as outlined above. This is particularly relevant for long term absences and it is likely to be easier to match individuals to absences longer than a few weeks (for example) than it would be for shorter periods. Based on the time the request was made, if we disclosed the length of absence, anyone could deduce the date that the longest suspension began, and ICO staff or anyone with knowledge of a particular person may be able to match any details they already have with the start date and length of absence.

Of course, I do not know if this is the concern that led to the refusal to confirm or deny, as the person who wrote the original response did not take the trouble to explain why this decision was made.

In response to this point I considered Section 16 (duty to provide advice and assistance). Although the request handler could not necessarily have anticipated the specific points you have raised via the internal review request, I appreciate some additional explanation may have been useful to help in understanding the decision they made. I have provided an explanation in relation to the revised response proposed as part of this review, but in case you remain dissatisfied with the outcome and our reasoning, the relevant next steps have been provided at the end of this letter.

I put it to you that if a person has inside knowledge of existing suspensions or absences, the information that would be released would add very little to what they already know. That very limited additional knowledge will not be prejudicial to their interests. If a person does not have inside knowledge, receiving confirmation of whether anyone is currently suspended and if so, for how long, will not give them enough information to identify who those people are.

As mentioned above, I agree that disclosing the number of suspended staff members does not enable identification of individuals, and this is why the relevant figure has been provided. However, I disagree that this argument also applies to the length of the longest suspension (which could enable identification), nor do I agree that disclosure would have little or no impact on the interests of the suspended individual. My reasoning for this has been outlined within the responses to your previous points above.

For these reasons, I have partially upheld your request for review and have revised the response accordingly. This concludes my response to your internal review request.

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/>

Your rights

Our [privacy notice](#) explains what we do with the personal data you provide to us and what your rights are, with a specific entry, for example, for [an information requester](#). Our retention policy can be found [here](#).

Yours sincerely,



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