

21 June 2024

**IC-309118-POT1**

**Request**

You asked us:

*"I'd like to request basic information for any complaints escalated to yourself regarding Southend on Sea City Council based at Civic Centre, Victoria Avenue, Southend On Sea SS2 6ER.*

*I'd like the information to include, where possible:*

- which areas/departments of Southend council the complaints relate to*
- how many complaints have been escalated to you over the last 24 months, broken down by volume, per month*
- how many of the complaints relate to a subject access request, and*
- what action the ICO took against Southend council to resolve the complaint e.g. warnings, enforcement action etc."*

We received your request on 24 May 2024. We have handled your request under the Freedom of Information Act 2000 (the FOIA).

## **Our response**

We have addressed your points separately for your convenience. We first address points 2, 3 and 4 of your request.

- *how many complaints have been escalated to you over the last 24 months, broken down by volume, per month*
- *how many of the complaints relate to a subject access request, and*
- *what action the ICO took against Southend council to resolve the complaint e.g. warnings, enforcement action etc.*

We can confirm that we hold information in scope of your request.

You asked for the number of complaints raised with the ICO regarding Southend-On-Sea City Council ("the Council") within 24 months of your request. We have interpreted this date range as being from 24 May 2022 to 24 May 2024. We can confirm that the ICO holds 140 total complaint cases within this date range.

The ICO proactively publishes general information about our complaints casework in our [complaints and concerns data sets](#) on our website. These data sets are published in .csv format by financial quarter, and are searchable.

These data sets include information about the date each complaint was received by the ICO, basic information on the primary legislative reason for the complaint (eg the right of access, which would cover subject access requests) and the outcome of the complaint.

We also proactively publish our decision notices and details of our formal regulatory action, including monetary penalties, reprimands and other enforcement activities, in the [Action we've taken](#) section of our website.

Where the information you have requested is already reasonably accessible to you via these means, technically it is withheld under section 21 of the FOIA. Section 21 states that we don't need to provide you with a copy of information when you already have access to it.

Where this information has yet to be published, we can confirm that it is intended for publication in the future. As it is intended for publication, it is exempt from disclosure under section 22 of the FOIA.

Our [complaints and concerns data sets](#) are currently available for the period up to the end of 7 October 2023 (Q3 2023/24). We regularly publish these on a quarterly basis in arrears and are currently working on publication of the next batch which will cover Q4 of 2023/24. The information that you requested that hasn't yet been published is therefore withheld under section 22 of the FOIA as it is intended for future publication.

As we have done for the previous quarters, we intend to publish data sets for Q4 of 2023/24 within the current quarter and the work is well underway for this, and then to publish the subsequent quarter according to the same schedule and so on.

Due to the volumes of casework that we process and the rigorous checks we need to carry out in order to ensure that personal data and other sensitive information is not disclosed inappropriately, the process for publication of datasets is not one that we can expedite more quickly.

Our commitment to publishing this data on regular basis is clear from the speed and consistency with which we have published this information over the past two years. As a result we find that it is reasonable to withhold it in response to your request pursuant to section 22 of the FOIA, as it is 'being held for future publication'.

Section 22 of the Act states that information is exempt from disclosure in response to an information request if:

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),*
- (b) the information was already held with a view to such publication at the time when the request for information was made, and*
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).*

In this case we find that the exemption at section 22 of the FOIA applies to some of the datasets requested. The exemption at section 22 is qualified by the public interest test, meaning that the information should be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

In this case the public interest factors in disclosing the information are:

- Promoting transparency by providing up to date information on the ICO's complaints handling work in response to requests.

The factors in withholding the information are:

- The ICO has a history of publishing this information on a regular basis and has committed to publishing relevant data sets in the near future (and at that point the information will be in the public domain anyway).
- Under the current schedule, information about closed cases is being published within the following financial quarter so this means that data is being made available while it is still recent and relevant and as quickly as it can be without compromising information security.
- The current process being employed is the most efficient way to make this data available without overly burdening resources and it is in the public interest that the ICO deploys its resources to provide services in the most efficient way.
- The rigorous checks that we undertake in order to publish the data sets are within the public interest as they ensure the efficacy of the data and avoid the potential for a data breach, and speeding the process along to the detriment of this would not be in the public interest.
- Earlier disclosure is not necessary to satisfy any pressing public interest at the present time.
- Controlling the release of this information helps us to ensure it is fair to those who have an interest in the information. Premature release may be seen as unfair and discourage further engagement by the organisation involved.

Having considered the public interest arguments, we have decided to withhold the information intended for publication in our data sets in reference to section 22 of FOIA.

*- which areas/departments of Southend council the complaints relate to*

We can confirm that we hold information that falls within the scope of your request. However, extracting the information would exceed the cost limit set out by section 12 of the Freedom of Information Act 2000 (FOIA).

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

It is important to note that an information rights complaint made to the ICO is not typically a complaint about a specific internal department. Under data protection legislation, the ICO considers each complaint as being about a [data controller](#); similarly, under the FOIA, we consider each complaint as being about a specific [public authority](#). Notably, the Council is both a data controller and a public authority.

This means that the ICO does not routinely need information about which specific department a given complaint relates to in order to carry out its regulatory function. As such, we do not require this information from complainants when submitting their complaints, and our systems are unable to perform a quick automated report of this information.

It is also important to note that the ICO is also not automatically privy to an organisation's internal structuring, as this is typically unique to each organisation's business needs.

As the specific department concerned in a data protection complaint is not information we normally need for our purposes, our case management system is unable to run a quick automated report on this type of information. To locate the information you have requested would require a manual search of 140 cases.

Based on a dip sample of ten cases, each manual search would take an average of seven minutes to complete – and it is certain that some searches would take much longer than that. This would equate to over 16 hours' worth of searching. This clearly exceeds the 18 hours which would accrue a charge of £450 or more, triggering the provisions of section 12 of the FOIA.

We further note that that, in several of the searches in our dip sample, we were unable to identify the specific departments involved in the complainant's concerns from the information held in our systems. The limited information held in respect of these complaints would require us to make guesses or

determinations on which of the Council's departments a given complaint most likely related to. Such determinations fall outside the scope of FOIA.

However, as the ICO is the information rights regulator, it is likely that a majority of the complaints involved those parts of the Council that handle data protection and information rights requests.

We recommend that you contact the Council directly if you wish to find out more about this. You can find a contact point for the Council at the following link: <https://www.southend.gov.uk/freedom-information-data-protection>

You may also wish to view the Council's privacy notice, which includes a further contact point: <https://www.southend.gov.uk/downloads/file/5542/privacy-notice-may-2023>

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](#) 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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