

10 July 2024

IC-313522-V8B1

Request

You asked us:

FOI for information that the ICO holds in relation to The Guardian

Organisation: The Guardian

Please could I kindly have:

- Details of all the occasions The Guardian has been referred for investigation to the ICO*
- Documents relating to these investigations*
- The outcomes of these investigations (regardless of the outcome)*

We received your request on 16 June 2024.

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

Our response

We hold information which falls within the scope of your request.

We have interpreted your request to include self reported data breaches from The Guardian as well as complaints received from members of the public.

Self reported data breach

We received a personal data breach report from The Guardian in December 2022. This was set up as an incident on our system and considered by our Cyber Team.

Incidents are cases taken forward for potential investigation. They are set up as 'Incident' cases while the team is reviewing the case, obtaining further information and determining whether the case should progress to a full Investigation.

The outcome of this case was No further action. You can see limited information about this on our [Cyber Incidents data sets](#). The data set which holds this information is the [Cyber Incidents data set for quarter four of the 2022/23 financial year](#).

Those cases which appear on the Incidents data sets are those which were considered but not progressed to a full Investigation.

As this information is already publicly accessible it is technically exempt from disclosure under section 21 of the FOIA.

The documents relating to the investigation, which include correspondence to and from The Guardian, are exempt under sections 31 and 44 of the FOIA, which are explained in detail below.

Complaints from the public

We have also received complaints from members of the public about The Guardian. Some details of these complaints, including the outcomes, are published in the [Data Protection Complaints data sets](#) which are published on our website, or will be published when they are closed.

Where the details of these complaints are already publicly available in the data sets they are exempt under section 21 of the FOIA. Where they have not yet been published we have a settled intention to do so and they are therefore exempt under section 22 of the FOIA which is explained in more detail below.

Once again, the documents relating to these complaint cases are exempt from disclosure under section 44 and 31 of the FOIA, and the exemptions are explained in detail below.

Exemptions used

Section 21

Information which is already reasonable accessible to the public is exempt from disclosure. The links provided will allow you to access the information you are seeking.

Section 22

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)."*

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 favour of disclosing the information are:

- To promote openness and transparency by providing information about complaint cases that have been submitted under the legislation we regulate.

The factors in favour of maintaining the exemption are:

- The ICO has a history of publishing this information on a periodic basis and has committed to publishing relevant casework data sets which will include the requested information in the future.
- To prepare this information for disclosure earlier than our intended date of publication in response to individual requests we receive would not be an efficient use of resources when we intend to publish this information in due course anyway.
- Earlier disclosure is not necessary to satisfy any pressing public interest at the present time.

Having considered the public interest arguments, we consider it reasonable in the circumstances to withhold this information under section 22 of the FOIA.

Section 31

The exemption at section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information "*would, or would be likely to, prejudice – ... the exercise by any public authority of its functions for any of the purposes specified in subsection (2).*"

In this case the relevant subsection is 31(2)(c) which states –

"(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ..."

Clearly, these purposes apply when the Information Commissioner has obtained or created information during an investigation or during the consideration of a complaint from the public.

The exemption at Section 31 is not absolute, and we need to consider the public interest test by weighing up the factors for and against disclosure of the information we hold, as well as any prejudice or harm which may be caused by disclosure.

We believe that disclosure of the information you have requested would be likely to limit how open data controllers are when they communicate with us regarding their compliance with the legislation. This in turn would be likely to damage our ability to consider complaints and undertake investigations in line with our regulatory duty.

This exemption is not absolute. When considering whether to apply it in response to a request for information, there is a 'public interest test'. That is, we must consider whether the public interest favours withholding or disclosing the information.

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

- Increased transparency in the way in which the ICO deals with complaints reported to us.
- There is a public interest in the ICO being open and transparent regarding our regulatory activities. Such openness and transparency helps to promote public awareness and understanding of the ICO's regulatory functions.

The factors in withholding the information are –

- There is a public interest in the ICO providing a cost effective and efficient regulatory function. This relies on the cooperation of data controllers and we feel this is best achieved by an informal, open, voluntary and uninhibited exchange of information with these organisations. We feel that the cooperation of data controllers may be adversely affected if all details of our investigations and complaint handling were routinely made public. This would be likely to make data controllers more cautious about providing information to us which would in turn prejudice the ICO's ability to deliver the levels of service required of it.
- The public interest in maintaining the ICO's ability to conduct investigations into DPA compliance as it thinks fit.
- The public interest in data controllers being open and honest in their correspondence with the ICO about the way they have handled personal data, without fear that their comments will be made public prematurely or as appropriate at all.

We also consider that the information published in datasets on our website goes some way to satisfy the public interest in this particular case.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

Section 44

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'

In this case, the Data Protection Act 2018, Part 5, section 132 prohibits the disclosure of confidential information that -

- (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 do not have lawful authority to disclose to you the information relating to The Guardian, whether it was provided directly by them or by members of the public submitting complaints, as this information was provided to us in confidence. Section 132(3) imposes a criminal liability on the Commissioner and his staff not to disclose information relating to an identifiable individual or business provided to us or obtained for the purposes of carrying out our regulatory functions, unless we have the lawful authority to do so or it has been made public from another source.

This concludes our response. I appreciate that it may be disappointing that we cannot provide you with the documents you have requested, however, I hope the datasets are of interest to you.

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