

**Date:** 28 June 2024

## **IC-312869-Q5Z4**

### **Request**

You asked us:

*"Please provide the entire case file for cases:-*

*IC-282508-J2Z5  
IC-268851-X5C1*

*Please include if any legal advice that was sought as to whether or not the CAA would hold information, and why the ICO tried to mislead the General Regulatory Chamber and state that the Civil Aviation (Contributions to the Air Travel Trust) Regulations 2007, Regulation 16 does not apply to regulation 10."*

We received your request on 12 June 2024. We have handled your request under the Freedom of Information Act 2000 (the FOIA).

### **Our response**

I can confirm that we hold information on our case management system in relation to cases assigned case references IC-282508-J2Z5 and IC-268851-X5C1. No legal advice was sought for either case, so no information is held in respect of the latter part of your request.

I have considered whether we can disclose the contents of the cases to you. I am of the view that the information is exempt from disclosure. The information on the cases falls into two distinct categories:

- Information we have received from the complainant or from the Civil Aviation Authority; and
- Information we have produced and sent to either the complainant or the Civil Aviation Authority.

In relation to the first category of information, the Commissioner and his staff are under a duty not to disclose information provided to us while we are exercising our functions. Because such a prohibition exists in law, I consider this information is exempt from disclosure by virtue of section 44 of the FOIA. I have provided further information about this exemption below.

In relation to the second category of information, I am mindful that this present request is for complaints made by individual members of the public. Notwithstanding that our letters do reference information which has been provided in confidence as well as their personal data, I consider publication under FOIA of our outbound correspondence may prejudice our law enforcement functions and therefore section 31 applies. I have also provided further information about this exemption below.

### **Section 31 FOIA**

Section 31 FOIA states:

*"Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice... (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)"*

Section 31(2) states:

*"(2) The purposes referred to in subsection (1)(g) to (i) are... (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise"*

I consider that publishing information which are held on FOIA complaints raised by members of the public would, or would likely, prejudice the exercise of our functions.

Specifically, one of our functions is to ascertain whether public authorities have complied with the law in relation to their FOIA obligations. In my view, if we published information held in relation to complaints made by members of the public under FOIA, it would or would likely make members of the public reluctant or unwilling to bring FOIA concerns to us as it would signal that we're not handling their cases with confidentiality and discretion.

A more reluctant public would or would likely result in less complaints being submitted to us. Evidence gathered via casework is an important part of how we

carry out our regulatory work (as alluded to in pages 7 and 8 of our [FOI and Transparency Regulatory Manual](#)), so this would or would likely result in less evidence available for us to understand problematic areas and address poor practices.

Section 31 is a qualified exemption and therefore I must consider balancing the public interest in disclosure versus the public interest in maintaining the exemption.

The factors in favour of disclosure are as follows:

- There is always a general interest in transparency in the work that we do.
- There is also a public interest in seeing how the ICO looks into concerns raised about public authorities and their FOIA obligations.

The factors against disclosure are as follows:

- The vast majority of the public interest is served by the publication of a Decision Notice, which details our considerations as well as the outcome on whether the PA met its FOIA obligations.
- There is a public interest in ensuring that members of the public feel safe reporting concerns to us and can trust that information shared with us will be treated with confidentiality and discretion. Publishing even our outbound correspondence, which references information about them and their complaint, would have the opposite effect.

I am of the view that the public interest favours exempting the information on this occasion.

### **Section 44 FOIA and section 132 DPA**

Some information has been withheld under section 44 of the FOIA. Section 44(1)(a) 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"*

The enactment in question is the Data Protection Act 2018. Section 132(1) of part 5 of that Act states that:

*"A person who is or has been the Commissioner, or a member of the Commissioner's staff or an agent of the Commissioner, must not disclose information which—*

*(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."*

In the present case, we have received submissions from external parties in the court of us discharging our functions as regulator of the FOIA. The information pertains to identified or identifiable individual and business. Finally, the information is not presently available to the public from other sources at the time of disclosure, nor has it previously been made available.

As such, I find that section 132 DPA applies and, by extension, section 44 FOIA applies. Although the exemption is absolute, section 132(2) lists some circumstances in which a disclosure can be made with lawful authority. However, I do not find that any of them apply here.

## **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



Information Access Team  
Strategic Planning and Transformation  
Information Commissioner's Office, Wycliffe House, Water  
Lane, Wilmslow, Cheshire SK9 5AF  
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