

22 August 2024

IC-324826-W2P3

Request

You asked us:

"Is the ICO's concerns tracker (for this council) available under an FOI please ?"

Your request relates to Hammersmith & Fulham Council ('the council').

We received your request on 1 August 2024.

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

Our response

We neither confirm nor deny that we hold the requested information.

Section 31(1)(g) exempts information if its disclosure 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),"

With the relevant subsections to this request being 2(a) and 2(c):

"(a) the purpose of ascertaining whether any person has failed to comply with the law" and

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

These purposes apply in relation to the information you have requested. This is because our concerns tracker forms part of the intelligence we gather about public authorities' compliance with the FOIA.

Section 31(3) provides that:

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters

mentioned in subsection (1)."

We find that confirming or denying whether information about a public authority is held on the compliance tracker would itself reveal information about the intelligence we gather as part of our monitoring and enforcement activity.

Section 31 is not an absolute exemption, however. The duty to confirm or deny depends on the balance of the public interest.

It is our view that the balance of the public interest supports the use of the provision to neither confirm nor deny that the requested information is held. This is because if the ICO were to reveal whether information about any particular public authority is held on the concerns tracker this would be likely to harm our ability to monitor public authorities.

It is also necessary to adopt a consistent approach to our response to requests for information about such matters, in the public interest, because any inconsistency could lead to inferences being made about that response, but also could inadvertently lead to conclusions being drawn about other 'neither confirm nor deny' (NCND) responses.

There is a risk that a confirmation or denial - which in itself appears benign - could enable somebody to deduce whether information was in fact held or not in other circumstances where an NCND response had been given. In such circumstances, that deduction could itself prejudice open investigations and proceedings undertaken by the ICO.

It is therefore our view that, irrespective of the specific public interest in transparency in any individual case, the importance of maintaining the integrity of the NCND responses, past and present, is of the greater public interest.

I trust it will be clear why our response in the present case must be to neither confirm nor deny that the information you have requested is held by the ICO. For the avoidance of doubt, therefore, nothing in the above should be taken as being either confirmation or denial that the ICO holds information in relation to the council on the concerns tracker.

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



Information Access Team
Information Commissioner's Office
Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
ico.org.uk twitter.com/iconews
Please consider the environment before printing this email
**For information about what we do with personal data
see our [privacy notice](#)**