

13 September 2024

Case reference: IC-327909-M8C2

We are now in a position to respond to your information request of 25 August.

Request

You asked us the following:

"A journalist writing on this blog says that you've told him that an employer which asks, as part of the settlement of an employment dispute, an employee/former employee to withdraw a subject access request (or FOI request) is "outside the law".

Do you hold any recorded information either in relation to what you told the journalist, or more generally (such as a Line To Take or other internal guidance document) on the ICO's position on employment settlements that involve an agreement to withdraw a subject access request?"

In your further correspondence you provided a [link](#) to the relevant blog article.

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

Our response

We can confirm we hold information within scope of your request.

We provide advice to employers on our [website](#) about settlement and non-disclosure agreements. See the answer to question: Do we have to comply with a SAR if the worker has signed a non-disclosure or settlement agreement?.

In summary, individuals have a right to request access to their personal information under data protection legislation. Whilst an employer may be able to refuse that access in certain circumstances, this right cannot be overridden by a settlement or non-disclosure agreement.

We do hold some internal guidance on this topic which is available to ICO staff. The wording of this is provided below.

"Can a person sign away their SAR rights?"

No. If an agreement includes a clause limiting someone's right of access, either the whole agreement or the individual clause will generally be void and unenforceable. If you need to know for sure, you should ask for legal advice.

The right to data protection, and the right to respect for private and family life are fundamental human rights.

The right of access is a core part of data protection and other human rights. It's particularly important because it allows people to check that their rights are being respected.

This often comes up in settlement agreements. Organisations use settlement agreements to either settle a claim or stop someone making or continuing with a claim. In an employment context, employers occasionally include a clause within the agreement to prevent the employee from making any future information requests.

There are circumstances when organisations don't have to comply with someone's rights, for example, a controller may refuse to respond to a SAR if the request is manifestly unfounded or excessive. But this mustn't simply be on the basis of the settlement agreement and would have to take all relevant context into account.

People should seek independent legal advice if they're concerned about breaching contract law or any settlement agreements."

In terms of the advice given to the journalist as referenced in their blog article, this guidance was as follows.

"Everyone has the right to ask an organisation for copies of the personal information held about them. As well as the right to request recorded information held by public authorities.

There is no option in data protection or freedom of information law for organisations to remove these rights for an individual, and the ICO would intervene where requests were not being handled in line with the law.

For more information on SARs, please visit our website: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/individual-rights/right-of-access/>"

This concludes our response to your request. We hope you found this information helpful.

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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