

9 October 2024

IC-331663-H5G0

Request

You asked us:

"I would like to make an FOI request about the SAR Solution Impact Summary on the Commissioner's website

ico.org.uk/about-the-ico/research-reports-impact-and-evaluation/impact-and-evaluation/impact-assessment/sars-solution-impact-summary/context

- 1) The document states "SARs mitigate against potential market failures" - please provide any recorded information that explains what market is referred to here, or what the word means in this context*

- 2) The document refers to possible harms including "a person could be prevented from gaining access to their information to use as evidence in a criminal trial or employment tribunal". Given that both of these situations involve the subject having a separate and arguably superior access mechanism (i.e. the legal disclosure process), please provide any recorded information about why these examples were chosen, and recorded information showing any research the Commissioner's staff carried out into harms associated with subject access failures as part of this process.*

- 3) In the 'Theory of Change' diagram at the end, the 'Legal Context' refers to subject access rights in general coming from S45 of the Data Protection Act 2018. This would only be true for law enforcement bodies; SAR rights for everyone else come from the UK GDPR in Article 15.*

I would like to request any recorded information that relates to this element of the Summary. I appreciate that this is only one part of the document so no information may be held, but any recorded information that would show why this wording was chosen and what the thinking behind it was would be helpful to the public in understanding how the document came to be issued in its current incorrect form. As the Commissioner is the regulator for subject access and data protection more widely, I believe there is a significant public interest in scrutinising the extent to which these matters are properly understood within his office.

4) I would like to request the name, job title and grade of the most senior person who signed off the document. If you do not consider the person to be sufficiently senior to be identified, please supply the job title and grade. If you believe that the person isn't senior enough to be identified and their job title would identify them, please supply the grade of the person.

I ask this because I believe there is a legitimate interest in understanding the process by which the Commissioner's staff create project documents and how they are approved, especially when the document in this case contains a significant error (it is not simply a typo or imperfectly written text). There is a difference between a mistake being made by one person and that mistake not being picked up by someone more senior who should be expected to have a firm grasp on the legislation that the Commissioner exists to regulate. Revealing information about who approved the document - or at least how senior they are - will provide clarity on the nature of a situation that I presume the Commissioner would accept should not have happened."

We received your request on 13 September.

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

Our response

We hold information within the scope of part 4 of your request only. I have addressed each of your questions below:

- 1) We do not have any recorded information further to what is provided on the webpage that explains which market is referred to or what it means in this context.
- 2) We do not have any recorded information about why these examples were chosen or research carried out into harms associated with subject access failures further to what is provided on the webpage.
- 3) We do not have any recorded information that relates to this part of the summary. However, we have now updated this part of the summary to reflect the point raised and are grateful to you for bringing it to our attention.
- 4) We do hold this information but are withholding it pursuant to s.40(2) FOIA. We have provided further information about this below.

FOIA section 40(2)

Section 40(2) of the FOIA exempts information if it is personal data belonging to an individual other than the requester and it satisfies one of the conditions listed in the legislation.

We find that the condition at section 40(3A)(a) applies in this instance: that disclosure would breach one of the data protection principles. The principles are outlined in the General Data Protection Regulation (GDPR) with the relevant principle on this occasion being the first principle as provided by Article 5(1): that personal data shall be processed lawfully, fairly and in a transparent manner.

Under usual circumstances we would disclose this information in relation to a member of staff having signed off on a published document. However, we do not believe that it would be fair or lawful to disclose the member of staff's name in order to reveal that they have signed off on a document which contains an error. As we explained in our response to your previous request about this document, we do not consider that there is a public interest in naming and shaming a member of staff for having made a small error. Further, we certainly do not consider that any such public interest would outweigh the rights and freedoms of the member of staff in this instance.

We appreciate that you asked for the individual's job title and/or grade in the alternative to providing their name, however in this instance we are of the view that this information would potentially identify the individual concerned. We are therefore content that this information is exempt under s.40(2) in itself.

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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