

21 October 2024

IC-333252-F2W0

Request

In summary, you asked us:

"Under the Freedom of Information Act 2000

<https://eur03.safelinks.protection.outlook.com/?url=https%3A%2F%2Fico.org.uk%2Faction-weve-taken%2Fenforcement%2Fchelmer-valley-high-school%2F&data=05%7C02%7Cicoaccessinformation%40ico.org.uk%7Cd7d5b3090998412ac15b08dcdbbfc965%7C501293238fab4000adc1c4cfefba21e6%7C0%7C0%7C638626863994643723%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6I6Ik1haWwiLCJXVCI6Mn0%3D%7C0%7C%7C%7C&sdata=KbH%2BinYDRSLqef5hPty9Rp6EPoKc2MbaQiq4T1pmsgE%3D&reserved=0>

1) Please supply all internal ICO communications and external communications with regards to the above link (post and prior to 22nd July 2024). For example with Chelmer Valley High School and any other external body/s. Please include all communications to should include phone/text messages, voice messages, emails, minutes of meetings, etc."

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

Our response

We have searched our systems based on the information you provided and can confirm that we hold information within the scope of your request.

We hold some internal correspondence regarding this enforcement action, as well as external correspondence between the ICO and Chelmer Valley High School and between the ICO and IGS, the DPO for the school.

We will address the internal and external correspondence separately below.

Internal correspondence

Please find attached the internal correspondence in scope of your request. Some correspondence has been redacted or withheld from disclosure under sections 40(2), 42, and 44 of the FOIA. These will be explained in more detail below.

You will see that some third party personal data has been redacted in our response. It is exempt under section 40(2) of the FOIA.

Disclosure of this data would break the first principle of data protection - that personal data is processed lawfully, fairly and in a transparent manner.

There is no strong legitimate interest that would override the prejudice that disclosure would cause to the rights and freedoms of the individuals concerned. So we are withholding the information under section 40(2) of the FOIA.

Additionally, some correspondence has been withheld from disclosure because it is subject to legal professional privilege and is subject to section 42 of the FOIA.

Section 42(1) of the FOIA states:

"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."

There are two types of privilege covered by the exemption at section 42. These are:

- Litigation privilege; and
- Advice privilege.

We find that the information in scope of your request is subject to advice privilege. This covers confidential communications between the client and lawyer, made for the purpose of seeking or giving legal advice.

Section 42 is not an absolute exemption, so we must consider whether the public interest favours withholding or disclosing the information.

The factors in favour of lifting the exemption include:

- The public interest in the ICO being open and transparent;
- The public interest in transparency about the way the ICO makes assessments that lead to enforcement action.

With the public interest factors in favour of maintaining the exemption including:

- The disclosure of legally privileged information threatens the important principle of legal professional privilege;

- Maintaining openness in communications between client and lawyer to ensure full and frank legal advice;
- The disclosure of legal advice could have a chilling effect on both policy officers and legal advisers by dissuading them from discussing such matters in the future in the knowledge that it could potentially be made public.

Taking into account the above factors we conclude that the public interest lies in maintaining the exemption. For this reason we have withheld the relevant correspondence.

Some information has been redacted from the internal correspondence because it contains information provided to the ICO by IGA and is subject to section 44 of the FOIA. Further detail about this section will be given in the section below.

External correspondence

Please find attached the external correspondence in scope of your request. Some information has been redacted under section 40 of the FOIA, and some has been withheld under section 44. This will be explained in more detail below.

Some information from the correspondence between the ICO and Chelmer Valley High School has been redacted in line with section 40(2) of the FOIA because it is third-party personal data. This exemption was explained in detail above.

Correspondence between the ICO and IGS is withheld from disclosure 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."

Section 132(2) lists circumstances in which a disclosure can be made with lawful authority, however none of them apply here. As a result, the information is exempt from disclosure.

No other information has been redacted or withheld from disclosure. 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 [here](#).

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 set out your rights. Our retention schedule can be found [here](#).

Yours sincerely



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Planning Service
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