

31 October 2024

## **IC-333241-F2Q8: Internal Review Response**

I write further to your email of 24 October 2024, in which you asked us to review the handling of your information request, processed under case reference IC-333241-F2Q8.

I am a Senior Information Access Officer and can confirm that I have had no prior involvement in the handling of this request. My role is to review the application of the Freedom of Information Act 2000 (FOIA) in relation to your request.

Section 45 of the FOIA requires the publication of a code of practice, designed to assist public authorities handle requests under this legislation.

This guide recommends that public authorities put in place an internal review process for FOIA responses, which our guide suggests should be triggered whenever a requester expresses dissatisfaction with the outcome of a request they have made.

The purpose of this review is to look again at your request and the way it was handled.

### **Request**

Your request was as follows:

“My experience of the above body (abbreviated to RUH) is that they fail to comply with The General Data Protection Regulations 2018. I shall be grateful if you will advise me of the number of complaints you have received about this body's failure to comply with GDPR. This information is sought for each of the past 5 years to 31 March 2024. At the same time, please state the numbers of complaints made to you about this body otherwise.

Again, this is for each of the past 5 years to 31 March 2024.

Has the ICO taken any enforcement action against the RUH for failures relating to GDPR, OR compliance with the FOIA? Once more, this information is for each of the past 5 years to 31 March 2024."

## **Response**

The request handler used Sections 21 and 22 of the FOIA to withhold the information, on the grounds that some of this is already available on our website and some of it is due to be published. Relevant links were provided and the request handler explained that we do not hold all the information for the five year period specified due to our retention schedule.

## **Review**

In your request for review you state that:

"The links you have given do not contain any of the information that was requested. I shall be grateful if you will either send the information via this site, or give the correct links which contain this. In view of the situation with this Trust, the Care Quality Commission stating it requires improvement, it is in the public interest to do so"

Having reviewed the response I am satisfied that some of the information requested is accessible via the links the request handler has provided. We do not publish individual lists of complaints or action taken against specific data controllers or public authorities, but the information you have requested can be located by searching for the organisation's name within the data sets and other information that is accessible via the links provided in the original response.

For this reason I agree with the decision to withhold this publicly available information using Section 21 of the FOIA. Section 21 exempts information which is reasonably accessible to the applicant through means other than a request under the FOIA.

[Our guidance](#) states that before applying section 21, we must consider if the applicant can actually and reasonably access the information they requested. This means checking that:

- the information in the public domain matches what the applicant asked for;

- precise directions have been given to the applicant to enable them to find it; and
- this information is reasonably accessible to the applicant, based on their particular circumstances

I have checked the information and can confirm that it exists, falls within scope of your request and is already available in the public domain via our website. I have also checked the links that the request handler has provided in the response. I can find no fault with these, and each links to information that falls within scope of your request. It is reasonable for the request handler to have assumed that, as you are contacting us via an online platform, that you have internet access, and that by providing links in a format that works within commonly used software and browsers that you would be able to access the information.

For avoidance of doubt, the full link address for the data sets is here:

<https://ico.org.uk/about-the-ico/our-information/complaints-and-concerns-data-sets/>

On this page you need to scroll down and select the relevant section. Some examples are provided below.

Data sets for data protection complaints are here:

<https://ico.org.uk/about-the-ico/our-information/complaints-and-concerns-data-sets/data-protection-complaints/>

Data sets for FOI complaints are here:

<https://ico.org.uk/about-the-ico/our-information/complaints-and-concerns-data-sets/complaints-under-s50-of-the-freedom-of-information-act-2000/>

In order to locate the information you are seeking you will need to open each data set and search for the name of the organisation.

In terms of action we've taken, the full link is here:

<https://ico.org.uk/action-weve-taken/>

As above, you will need to scroll down and select the action you are interested in, and search the relevant page using the organisation name.

Where information that falls within scope of your request is not yet publicly available, I agree with the decision to withhold this using Section 22 of the FOIA, on the basis that this information is due to be published in the future. For the exemption at Section 22 to apply, the public authority must, at the time of the request, hold the information and intend that it or 'any other person' will publish it in future. This means that it must have a settled expectation that the information will be published at some future date.

I agree with the request handler that these conditions are met, and the ICO has a proven record of publishing both the data sets and action we've taken, on a regular basis.

Section 22 is a qualified exemption and therefore public authorities must consider whether the public interest in maintaining the exemption is greater than the public interest in disclosing the requested information.

In your request for review you have suggested that given the concerns you have highlighted about the organisation, it is in the public interest to disclose any information not yet publicly available.

While I agree there is public interest in the disclosure of information about complaints relating to specific organisations, I also agree with the request handler's assessment - that earlier disclosure is not necessary to satisfy any pressing public interest at present, and that to prepare the information prior to intended publication would not be an efficient use of resources, particularly given that the ICO has a record of publishing this information regularly. Taking this into account, I consider that Section 22 has been correctly applied.

It is worth re-iterating that, as the request handler has pointed out, we retain information in line with [our retention policy](#). We do not keep information about casework indefinitely, and as a result do not hold a full record of all complaints made over the five year period specified. The information we hold is accessible via the above links or is due to be published as explained.

Finally, as part of my review I also considered Section 16 (duty to provide advice and assistance), and am of the view that the response was sufficiently clear in stating that we hold relevant information, and why this has been withheld. The request handler also signposted to relevant resources on our website and for avoidance of doubt I have provided more detailed instructions to you.

While I appreciate that the response to your information request was not what you were expecting, and that this may be disappointing, I do not uphold your

request for internal review. This is because I consider that the response provided was correct and compliant with the legislation.

If you disagree with the outcome of this internal review, and want to pursue this further, please follow the next steps provided below. This concludes my response to your internal review request.

### **Complaint procedure**

If you are dissatisfied with the outcome of this review you can make a formal complaint with the ICO in its capacity as the regulator of the Freedom of Information Act 2000. Please follow the link below to submit your complaint:

<https://ico.org.uk/make-a-complaint/>

### **Your rights**

Our [privacy notice](#) explains what we do with the personal data you provide to us and what your rights are, with a specific entry, for example, for [an information requester](#). Our retention policy can be found [here](#).

Yours sincerely,



Sarah Coggrave  
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