

13 November 2024

Ref: IC-339100-H9Y2

Request

You asked us:

"under ref IC-330008-W2K0 you've disclosed parts of the datasets you hold which track all First-tier Tribunal and Upper Tribunal cases involving the ICO (<https://ico.org.uk/about-the-ico/our-information/disclosure-log/ic-330008-w2k0/>).

Please could you disclose the full datasets (redacted as necessary where one of the parties is a natural person whose names is not in the public domain)?

It would also be appreciated if you could have regard to section 19(2A) of FOIA when responding to the request (assuming you are not satisfied it is not appropriate to publish the datasets)."

We received your request on 18 October.

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

Our response

I am refusing the Freedom of Information request you have made because the amount of work involved in complying with it would place a grossly oppressive burden on our resources, meaning that we are able to rely on Section 14 (1) of the FOIA.

Section 14 (1) FOIA states that:

'14.—(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.'

The ICO's guidance explains that:

"A single request taken in isolation,may be vexatious solely on the grounds of burden. That is, where complying with the request would place a grossly oppressive burden on your resources which outweighs any value or serious purpose the request may have."

While we do not doubt that you have a genuine interest in the information you have requested, we have determined that the burden placed on our resources in complying with this request would outweigh the public interest in the requested information.

Our guidance further provides that, in order to refuse to respond to a request under s.14(1) due to burden alone, we should be able to establish firstly that the requested information is voluminous, secondly that we have real concerns about exempt information being contained within it, and thirdly that the exempt material is scattered throughout and cannot be easily isolated. I have provided further explanation of our consideration of this below.

The extract of the data set you have referred to which we disclosed in response to a previous request was a small excerpt of a much larger spreadsheet. It includes two tabs, one with details of open cases and one with closed cases. The open cases tab includes around 360 lines of data (each representing a case), while the 'closed' tab includes around 4000 lines of data.

We think it's likely that the 'closed' tab would be the one of interest as it is the one from which we extracted the sections disclosed in response to the previous request. In addition to containing more cases, it also includes many more columns containing additional details about each case that were not included in the extract disclosed in response to the previous request.

Some columns contain information that informs our stats and internal processes, which is unlikely to be of use outside of the ICO, while others contain information that may in some cases be exempt, but not in others.

Examples of this would be the fees paid to counsel instructed on each case, these are in some cases expressed as overall figures for the work on a case, which we could disclose, but in others expressed in more detail such as hourly rate, or charge per specific task. In those cases where more detail is provided, these would be likely to subject to s.43 FOIA as disclosure would be likely to prejudice both the barrister's and the ICO's negotiating position in agreeing rates in future.

This would particularly be the case where the ICO had been able to negotiate a favourable rate.

In addition, there are columns for the name of the appellant and any other party. These contain personal data and will not always be in the public domain, even for closed cases, where the appellant may have requested that their name not be published and this may have been granted.

In addition, there are columns containing information which may be legally privileged and may also contain personal data, such as which tasks counsel completed and hearings they attended, case summary and case outcome notes.

None of these columns would fall entirely under an exemption, but instead each line of data would need to be individually checked as a mixture of exemptions may apply and non-exempt information is also included.

Our guidance states that the threshold for applying s.14 FOIA on the basis of burden is a higher one than for s.12 FOIA, which allows a public authority to refuse to comply with a request if the necessary searches involved in doing so would take longer than 18 hours. We are relying on s.14 here because the burden is related to the time required for reviewing and redacting the relevant information, rather than searching for information that may be in scope.

The closed cases tab contains 4000 lines of data and, on the basis that checking each one would take two minutes, and this is a conservative estimate, this would amount to over 130 hours' work.

We do appreciate that there is a public interest in this information, especially given that the Tribunal is no longer updating its register of cases. However, we do not believe that this extends to providing the full data set in the format that we hold it and to the level of detail that we do.

We therefore advise that we are refusing to comply with this request under s.14(1) of the FOIA.

We would advise however, that we would be able to disclose the closed cases tab, for all cases recorded there with the columns of data that were disclosed in response to the previous request that you have referred to, but excluding the additional columns, without creating an excessive burden on our resources. We are also of the view that the columns contained in the previous excerpt are those which are likely to be of greater value to the public.

If you would like to request the dataset in this format, please resubmit your request accordingly. If you are also interested in open cases, please advise. We would be able to provide those to the same level of detail, although as you will no doubt be aware, data for open cases will be incomplete, depending on the stage the case has reached at the time of publication.

With regards to section 19(2A), this is something that we have under consideration, especially given that the Tribunal is no longer updating its published register as highlighted above. For the reasons explained here, we do not feel this information as currently held is suitable for proactive disclosure. However, we are reviewing the data we hold and, as we undertake this work, we are also considering what information we could look to disclose proactively in future, and how. We do not have a timescale for this work currently.

We would be happy to take into consideration your views as to what information it would be useful to include in such a proactive disclosure.

We would just also add that this spreadsheet includes only details of FOI appeals and does not include applications under section 166 DPA or other data protection appeals.

Lastly, we apologise that we did not contact you sooner to advise that we would be unable to respond to this request and advise on how it could be revised. It has taken some time to review the tracker and consider where the sensitivities are, and we did explore different ways that we could respond to the request before we concluded that this wouldn't be possible.

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
Strategic Planning and Transformation
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](#)**