

04 December 2024

ICO Case Reference IC-342993-L6W4

Request for information

Request received 8 November 2024:

"I am writing to request information on [this case](#), surrounding what appears to be a breach of data regulations by the Conservative party. According to a [letter](#) sent by an ICO case officer, the ICO contacted the Conservative party and "outlined steps they need to take to improve their practices, to ensure that their actions are in compliance with the data protection legislation". The ICO also informed the party "that they need to ensure that data protection is considered during the design of new products, including new and updated webpages. Additionally, that any changes to cookie consent mechanisms and privacy notices are made prior to/in conjunction with changes to processing activities".

I am writing to request the findings of the ICO's investigation, in particular, which, if any, data legislation and regulations were breached by the Conservative party.

In the above letter, the ICO case officer noted that the ICO is "not likely to consider taking regulatory action on the basis of a singular complaint. This course of action is only taken in the most serious cases, where cases must meet a set of criteria outlined within our Regulatory Action Policy (RAP). Unfortunately ... we are not of the opinion that the concerns raised meets the requirements listed within the RAP. As such, we will not be taking any enforcement action in this instance".

Please also provide me with a summary of the deliberations behind your decision not to take enforcement action against the Conservative party. If data legislation and regulations were breached, why did the party not face the penalties that follow from such breaches?"

Your request has been handled under the Freedom of Information Act 2000 (the FOIA). This legislation provides public access to recorded information held by a public authority unless an appropriate exemption applies.

Our response

We do hold information in scope of your request. Please find attached a copy of the outcome letter sent to the data controller concerning our findings about the incident and our consideration of the case. We also hold other recorded information relating to our consideration of the outcome (although not a full summary of all deliberations). However, this is exempt from disclosure. We have also redacted other information as it is the personal data of a third party. Further information is provided below.

FOIA section 31

Some of the information held is exempt from disclosure under section 31(1)(g) of the FOIA. We can rely on section 31(1)(g) of the FOIA where disclosure:

“would, or would be likely to, prejudice... the exercise by any public authority of its functions for any of the purposes specified in subsection (2).”

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state:

“(a) the purpose of ascertaining whether any person has failed to comply with the law...

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ...”

Section 31 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

To release some information you have requested could prejudice the ICO's ability to conduct future investigations fairly and appropriately. Disclosure would likely discourage this data controller, or other data controllers, from fully engaging with us in the future if they did not have confidence that potentially sensitive discussions and details would be handled carefully and appropriately.

We also consider that we need a 'safe space' in which to determine what regulatory action we may choose to take and how to fulfil our regulatory function. This needs to happen without undue external influence, and without revealing our methods and considerations that data controllers could use to minimise scrutiny in future.

In addition, information released that relates to deliberations could be misinterpreted, and could distract from the final investigation findings.

With this in mind, we have then considered the public interest test for and against disclosure.

In this case the public interest factors in disclosing the information are:

- increased transparency in the way in which the data controller has responded to the ICO's enquiries; and
- increased transparency in the way in which the ICO conducts its investigations.

The factors in favour of withholding the information are:

- the public interest in maintaining organisations' trust and confidence that their replies to the ICO's enquiries will be afforded an appropriate level of confidentiality;
- the public interest in organisations being open and honest in their correspondence with the ICO without fear that their comments will be made public prematurely or, as appropriate, at all;
- the public interest in maintaining the ICO's ability to conduct investigations as it thinks fit; and
- Interest in this specific matter is somewhat met by the publication of the outcome letter with this response, particularly the section titled 'Our

consideration of this case'.

Furthermore, the public interest in our general regulatory activity, including when we will publish information about our regulatory work, is already somewhat met through the publishing of our [Communicating our Regulatory and Enforcement Activity Policy](#), our [Regulatory Action Policy](#), and other documents such as our [Annual reports](#).

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

FOIA section 40(2)

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.

This concludes our response to your request.

Next steps

You can ask us to review our response. Please let us know in writing within 40 working days if you want us to carry out a review.

You can read a copy of our full [review procedure](#) on our website.

If we perform a review but you remain dissatisfied, you can [raise a complaint](#) to the ICO as regulator of the Freedom of Information Act. This complaint will be handled just like a complaint made to the ICO about any other public authority.

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

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

Telephone: 0303 123 1113. Website: ico.org.uk

For information about what we do with personal data, please see our [privacy notice](#)