

FOI s12 Response - Cost of Compliance

Our response

We hold information that falls under the scope of your request. However, [finding/retrieving/extracting] the information would exceed the cost limit set out by section 12 of the Freedom of Information Act 2000 (FOIA).

OR

Conducting the searches necessary to confirm if we hold the information you have asked for would exceed the cost limit set out by section 12 of the Freedom of Information Act 2000 (FOIA).

[NOTE: If necessary, include this further information]

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 states that the 'appropriate limit' for the ICO is £450. We have determined that £450 would equate to 18 hours work.

[NOTE: If the request concerns extensive, manual searches in the case management system, the following paragraph may be helpful]

[Description of information] is not information we normally need for our purposes. Our case management system is unable to run a quick automated report on this type of information. To locate the information you have requested would require a manual search of [hundreds/thousands] of cases.

Assuming that each search would take approximately [estimated minutes per item] minutes to complete – and it is certain that some searches would take much longer than that – this would equate to over [estimated total hours] hours' worth of searching. This clearly exceeds the 18 hours which would accrue a charge of £450 or more, triggering the provisions of section 12 of the FOIA.

Advice and assistance

[NOTE: Enter details of how the requester can adjust their request to bring it under the s.12 limit, if it is possible to do so, such as a narrower date range, naming specific organisations they're interested in, etc]

[NOTE: If one particular part of the request is the cause of the cost limit being exceeded, the requester should be advised about this]

[NOTE: Include the following optional paragraph if a refined request would still require manual searching]

We would need to consider if it is in the public interest for us to dedicate the resources necessary to carry out this kind of search, or whether it represents an unreasonable burden on us as a public authority.

FOI s14 Response - Grossly Oppressive Burden

Template for a section 14 grossly oppressive burden

Our response

We are 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 section 14(1) due to burden alone, we should be able to establish that the requested information is voluminous, that we have real concerns about exempt information being contained within it, and that the exempt material is scattered throughout and cannot be easily isolated. I have provided further explanation of our consideration of this below.

[NOTE: Provide an explanation of the volume concerned, what potentially withheld information could be held within it (incl. what exemptions), and details about why it would be possible to isolate withheld from non-withheld information]

Our guidance states that the threshold for applying section 14 FOIA on the basis of burden is a higher one than for section 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 section 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.

[NOTE: Estimate of time required to comply with the request based on volume and/or complexity]

[NOTE: Also, include consideration of any public interest in the information and why this does not outweigh the burden of compliance]

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

FOI s14(1) Response - Vexatious for WDTK or X (formerly Twitter)

For whatdotheyknow.com

Request IC-XXXXXX-XXXX

You asked:

[quote request]

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

Our Response

We are refusing this request under section 14(1) of the Freedom of Information Act 2000 (FOIA) which states:

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

This refusal has been made having carefully considered the ICO guidance on [dealing with vexatious requests \(section 14\)](#)

We have prepared a full response which details our rationale for refusing your request. However, we do not feel it is appropriate to place on a public forum such as WDTK. If you would like a copy of this refusal notice please email us at accessicoinformation@ico.org.uk quoting the reference number.

Next steps

If you are dissatisfied with our response under the FOIA or wish to complain about how your request has been handled please write to the Information Access Team at the address below or email icoaccessinformation@ico.org.uk.

A request for internal review should be submitted to us within 40 working days of receipt by you of this response. Any such request received after this time will only be considered at the discretion of the Commissioner.

If having exhausted the review process you are not content that your request or review has been dealt with correctly, you have a further right

of appeal to this office in our capacity as the statutory complaint handler under the legislation. To make such an application, please write to our FOI Complaints & Appeals Department at the address below or visit our website if you wish to make a complaint under the Freedom of Information Act.

A copy of our review procedure can be accessed from our website [here](#).

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,

Information Access Team
Information Commissioner's Office
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 at www.ico.org.uk/privacy-notice.

For X (formerly Twitter)

We have refused this request under section 14(1) of the FOIA. We will not publish our full response in a public forum due to the personal information it includes. Please contact us directly for our full response, quoting case reference IC-XXXXXX-XXXX

FOI s21 s22 Response - Information Accessible or for Future Publication

Section 21 FOIA

You can access the information you have requested here:

Because the information is already reasonably accessible to you, technically it is withheld under section 21 of the FOIA.

[NOTE: Provide further information, if necessary]

Section 21 states that we don't need to provide you with a copy of information when you already have access to it.

Section 22 FOIA

We intend to publish the information you have requested.

[NOTE: Provide some further details, if possible]

This means that it is exempt from disclosure under section 22 of the FOIA.

This is not an absolute exemption, which means we must consider the public interest in withholding the information.

The factors in favour of disclosing the information are:

[NOTE: There is always a general public interest in transparency]

The factors in favour of withholding the exemption are:

[NOTE: Section 22 arguments usually focus on the duplication of effort necessary for us to put together a disclosure where we are already working to get the information ready for wider publication, both being routes to providing the information to the public. There may be other factors in favour of withholding]

Having considered these factors, we are satisfied that [it is appropriate to withhold the information / the public interest favours disclosure so the exemption falls away].

FOI s22 Response – Datasets

The data sets are currently available for the period up to the end of [], we regularly publish these on a quarterly basis in arrears and are currently working on publication of the next batch which will cover []. The information that you requested that hasn't yet been published is therefore withheld under s.22 FOIA as it is intended for future publication.

FOIA section 22

As we have done for the previous quarters, we intend to publish data sets for [] within the current quarter and the work is well underway for this, and then to publish the subsequent quarter according to the same schedule and so on.

Due to the volumes of casework that we process and the rigorous checks we need to carry out in order to ensure that personal data and other sensitive information is not disclosed inappropriately, the process for publication of datasets is not one that can expedite more quickly than we are.

Our commitment to publishing this data on regular basis is clear from the speed and consistency with which we have published this information over the past two years. As a result we find that it is reasonable to withhold it in response to your request pursuant to section 22 of the FOIA, as it is 'being held for future publication'.

Section 22 of the Act states that information is exempt from disclosure in response to an information request if:

"(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
(b) the information was already held with a view to such publication at the time when the request for information was made, and
(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a)."

In this case we find that the exemption at section 22 of the FOIA applies to some of the datasets requested. The exemption at section 22 is qualified by the public interest test, meaning that the information should be disclosed if the public interest in the maintenance of the exemption does not outweigh the public interest in disclosure.

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

- Promoting transparency by providing up to date information on the ICO's complaints handling work in response to requests.

The factors in withholding the information are:

- The ICO has a history of publishing this information on a regular basis and has committed to publishing relevant data sets in the near future (and at that point the information will be in the public domain anyway).
- Under the current schedule, information about closed cases is being published within the following financial quarter so this means that data is being made available while it is still recent and relevant and as quickly as it can be without compromising information security.
- The current process being employed is the most efficient way to make this data available without overly burdening resources and it is in the public interest that the ICO deploys its resources to provide services in the most efficient way.
- The rigorous checks that we undertake in order to publish the data sets are within the public interest as they ensure the efficacy of the data and avoid the potential for a data breach, and speeding the process along to the detriment of this would not be in the public interest.
- Earlier disclosure is not necessary to satisfy any pressing public interest at the present time.
- Controlling the release of this information helps us to ensure it is fair to those who have an interest in the information. Premature release may be seen as unfair and discourage further engagement by the organisation involved.

Having considered the public interest arguments, we have decided to withhold this information in reference to section 22 of FOIA.

FOI s23(1) Response - Security Matters

We have considered whether a copy of this information could be disclosed to you however this information would be exempt under Section 23(1) of the FOIA. This part of the Act exempts information supplied by, or relating to, bodies dealing with security matters.

Section 23(1) of FOIA states:

"Information held by a public authority is exempt information if it was directly or indirectly supplied to the public authority by, or relates to, any of the bodies in subsection (3)."

The body referred to in Section 23(3) is;

"(a) the Security Service"

OR

"(c) the Government Communications Headquarters"

ETC

As you will appreciate the information which you have requested relates to information supplied to us by a body which deals with security matters. This information is therefore exempt. The exemption at section 23 is absolute, which means that no public interest test is required.

I appreciate this may not be the response you were seeking but hope that our response is clear. Should you wish to complain about our response I have provided details on how this is done below.

This concludes our response to your information request.

FOI s23(5) s24(2) Response - Security
Matters and National Security NCND

Under the provisions of section 23(5) of FOIA we can neither confirm nor deny whether we hold information described in your request. This is because the information described in your request would, if held, be information which related to a body listed at section 23 of FOIA ([****] is a body listed at section 23(3)(*) of FOIA).

Section 23(5) provides that –

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) which was directly or indirectly supplied to the public authority by, or relates to, any of the bodies specified in subsection (3)."

Furthermore, the context indicates that the information would relate to matters of safeguarding national security, and therefore under the provisions of section 24(2) of FOIA we can neither confirm nor deny that information of the description in your request is held.

Section 24(2) provides that –

"The duty to confirm or deny does not arise if, or to the extent that, exemption from section 1(1)(a) is required for the purpose of safeguarding national security."

I shall explain a little further and I hope this will make our position more clear.

From time to time, the Information Commissioner's Office may be called upon to investigate, or become involved in, matters relating to the various security agencies, or matters of national security. However it is necessary to adopt a consistent approach to our response to requests for information about such matters. This is because any inconsistency could lead to inferences being made about that response, but also could inadvertently lead to conclusions being drawn about other responses.

In simple terms, if we adopted a general policy of neither confirming nor denying (NCND) that we held information, then if we occasionally departed from that policy and denied that we held information, this might enable parties to infer from previous NCND responses that relevant information was indeed held. Furthermore, the occasional confirmation that information was held could enable conclusions to be drawn about other NCND responses, for example where the information was of a broadly similar nature and, if held for one, would have been likely to be held for the other.

Clearly, the risk is that a confirmation or denial which in itself appears benign could enable somebody to deduce whether information was in fact held or not in other circumstances where an NCND response had been given, and where that deduction could itself prejudice the security bodies, or national security.

Unfortunately, therefore, it is our view that, irrespective of the specific public interest in transparency in any individual issue, the importance of maintaining the integrity of the NCND responses, past and present, is of the greatest public interest.

In the present circumstances, it should be apparent that [*****] would be highly likely to involve, at some point, material, or consideration of material, which was itself in the territory of national security or related to one or other of the various national security bodies listed at section 23 of FOIA.

It is therefore inescapable that, in order to maintain the integrity of our NCND practice, any response we provide to your request must be consistent with what we have previously said, and will continue to say, where such matters are concerned.

For the avoidance of doubt, nothing in this response should be taken to be either confirming or denying that the information you have requested is held by the ICO.

FOI s27 Response - International Relations

FOIA section 27

We can confirm that Therefore, we do hold the information you are asking for.

However, we are unable to provide you with a copy of as the exemption at section 27 of the FOIA is engaged.

Section 27 applies to information held in connection with 'international relations', and states:

"(1) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice —

- (a) relations between the United Kingdom and any other State,*
- (b) relations between the United Kingdom and any international organisation or international court,*
- (c) the interests of the United Kingdom abroad, or*
- (d) the promotion or protection by the United Kingdom of its interests abroad.*

(2) Information is also exempt information if it is confidential information obtained from a state other than the United Kingdom or from an international organisation or international court."

We find that disclosure of the information you have requested would **EFFECT**. This is why the exemption at section 27(**enter appropriate limb**) applies in this instance.

The exemption at section 27 is not absolute and is qualified by a public interest test. In this case we find that....

FOI s30 Response - Criminal Investigations (inc NCND)

FOIA Section 30

Some of the information you have requested is exempt from disclosure under section 30 of the FOIA. Section 30(1) states:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-

(i) whether a person should be charged with an offence, or

(ii) whether a person charged with an offence is guilty of it,

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or

(c) any criminal proceedings which the authority has power to conduct."

The information you have requested falls into the category described in [relevant section]. Section 30 is not an absolute exemption. 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:

[NOTE: There is always a general public interest in transparency]

The factors in withholding the information are:

[NOTE: Section 30 arguments might focus on how disclosure under FOIA might alert individuals/organisations who are under investigation]

Having considered these factors, we are satisfied that [it is appropriate to withhold the information / the public interest favours disclosure so the exemption falls away].

FOIA section 30 'neither confirm nor deny'

We neither confirm nor deny that we hold the information you have requested. Section 30(1) states that:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

- (a) any investigation which the public authority has a duty to conduct with a view to it being ascertained-*
 - (i) whether a person should be charged with an offence, or*
 - (ii) whether a person charged with an offence is guilty of it,*
- (b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or*
- (c) any criminal proceedings which the authority has power to conduct."*

The information you have requested, if held, would fall into the category described in **[relevant section]**.

Section 30(3) confirms that we are not required to confirm or deny that we hold information if it would be exempt from disclosure under any of the criteria set out above. However, we must carry out a public interest test to weigh whether the public interest favours confirmation or denial.

In this case the public interest factors favour are:

[NOTE: There is always a general public interest in transparency]

The factors against are:

[NOTE: Section 30 arguments might focus on how disclosure under FOIA might alert individuals/organisations who are under investigation. With NCND responses, there is also a consideration about preserving the integrity of other NCND responses]

Having considered these factors, we are satisfied that we can rely on section 30 to neither confirm nor deny that we hold the information you have requested.

FOI s31 Response - Law Enforcement
(inc NCND)

FOIA section 31

Some of the information you have requested 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.

[NOTE: The following are examples of prejudice arguments]

Our investigation into [organisation name] is still ongoing. To release the information you have requested could prejudice the ICO's ability to conduct the investigation in an appropriate manner. Disclosure at this stage would discourage our ongoing discussions between the ICO and [organisation name] and may damage our ability to conduct and conclude the investigation fairly and proportionately.

Disclosure could also jeopardise the ICO's ability to obtain information relating to this case or others in the future.

Disclosure is likely to result in other parties being reluctant to engage with the ICO in the future.

Any information released at this stage could be misinterpreted, which in turn could distract from the investigation process.

[NOTE: The following is an example of a public interest argument]

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 [organisation name] has responded to the ICO's enquiries; and
- increased transparency in the way in which the ICO conducts its investigations.

The factors in 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; and
- the public interest in maintaining the ICO's ability to conduct the investigation into complaints as it thinks fit,

Having considered these factors, we are satisfied that [it is appropriate to withhold the information / the public interest favours disclosure so the exemption falls away].

FOIA section 31 'neither confirm nor deny'

We neither confirm nor deny that we hold the information you have requested.

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)."

The information you have requested, if held, would fall into the purposes contained in subsection 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(3) states that: "The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice any of the matters mentioned in subsection (1)." However, section 31 is not an

absolute exemption, and we must carry out a public interest test to weigh whether the public interest test favours confirmation or denial.

In this case the public interest factors favour are:

[NOTE: There is always a general public interest in transparency]

The factors against are:

[NOTE: Section 31 arguments might focus on how disclosure under FOIA might prejudice the ICO's ability to regulate effectively. With NCND responses, there is also a consideration about preserving the integrity of other NCND responses]

Having considered these factors, we are satisfied that we can rely on section 31 to neither confirm nor deny that we hold the information you have requested.

FOI s31 Response - Withholding Internal Email and Phone Numbers

Not in scope

Section 31 Template – information only for internal use

We have withheld an internal email address under section 31(1)(g) of the FOIA. We can do this when the disclosure of information *“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):

" a. the purpose of ascertaining whether any person has failed to comply with the law," and

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

Misuse of internal email addresses that exist to support ICO staff would likely prejudice our ability to perform our regulatory functions. Disclosure would leave us vulnerable to phishing or other cyber-attacks, spam, or an increased volume of irrelevant correspondence which it would take us time to process.

[If withholding any of the above IT phone numbers you could advise that: *Providing the number for our internal IT help service would lead to them receiving calls from the public.*]

There are other channels that the public can use to contact us, and they are publicly available via [our website](#).

The exemption at section 31(1)(g) is not absolute. When considering whether to apply it in response to a request for information, there is a 'public interest test'. We have to consider whether the public interest favours withholding or disclosing the information.

In this case the public interest factor in favour of disclosing the information is:

- Increased transparency in the way in which the ICO conducts its operations.

The public interest factors in maintaining the exemption are as follows:

- Internal email addresses being used inappropriately will reduce the effectiveness and efficiency of our regulatory functions.
- The information of primary relevance to your request is not affected by the redaction of our internal email addresses.
- The public interest in transparency is met by the public provision of other more appropriate means of contacting us.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

FOI s32 Response - Court Records

Exempting Warrants

The information which you have requested is exempt under section 32 of the FOIA which relates to Court documents therefore we are not providing you with copies.

Section 32(1) of the FOIA states;

“Information held by a public authority is exempt information if it is held only by virtue of being contained in –

- a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
- b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
- c) any document created by –
 - (i) a court, or
 - (ii) a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter.”

Section 32 is a ‘class’ based exemption and is ‘absolute’, which means that if the nature, or class, of the information held falls within the scope of the exemption it need not be provided in response to a request under the FOIA. Therefore we do not need to consider whether disclosure of the information in question would prejudice the functions of the ICO or other parties to the appeal, nor is it necessary to consider any public interest test.

The warrants obtained by the ICO under XXXXXXXX of the DPA fall within the scope of section 32(1)(c) above, and as such are exempt from disclosure under the terms of the FOIA.

Exempting Tribunal Documents

We are withholding the emails between **** and the Tribunal for the purposes of this appeal as they are subject to the exemption at 32(1)(a) of the FOIA.

The ICO was only copied into the requested emails. We are also withholding a direct quote from these emails which is contained in the email from ***** to Information Governance sent on 22 November 2013.

Section 32(1) of the FOIA states in full:

32(1) Information held by a public authority is exempt information if it is held only by virtue of being contained in –

- a. any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,*
- b. any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or*
- c. any document created by –*

(i) a court, or

(ii) a member of the administrative staff of a court,

for the purposes of proceedings in a particular cause or matter.

Section 32 is a 'class' based exemption and is 'absolute', which means that if the nature, or class, of the information held falls within the scope of the exemption it need not be provided in response to a request under the FOIA.

The emails between ***** and the Tribunal fall within the scope of section 32(1)(a) above, and as such are exempt from disclosure under the terms of the FOIA.

The rationale for this exemption being absolute is that courts and tribunals regulate access to information generated in the course of proceedings, and the exemption is intended to protect court documents.

FOI s36 Response - Prejudice to Public Affairs

Section 36 FOIA template

FOIA section 36

Some of the information you have requested is exempt from disclosure under section 36 of the FOIA. Section 36(2)(c) provides that –

"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

Section 36 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.

Having sought the opinion of the qualified person, I can confirm the prejudice to disclosure of this information is [provide prejudice arguments].

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:

[NOTE: There is always a general public interest in transparency]

The factors in withholding the information are:

[NOTE: Section 36 arguments are very request-dependent, but historically we have weighed the value of mutual cooperation with stakeholders during important, far-reaching work which would be affected by disclosure while the matter was live and ongoing]

Having considered these factors, we are satisfied that [it is appropriate to withhold the information / the public interest favours disclosure so the exemption falls away].

FOI s37 Response - Royal Correspondence (inc NCND)

Request for Information

Further to our acknowledgement of we are now in a position to provide you with a response to your request for information dated

As you know we have dealt with your request in accordance with the Freedom of Information Act 2000 (FOIA). This entitles you to copies of any recorded information held by a public authority unless an appropriate exemption applies.

Request

In your e-mail you asked us to provide you with "....."

Our response

I can confirm that we hold information falling within the scope of your request. However, we find that the information is exempt from disclosure as it falls within the class of information described at section 37(1) of the FOIA. This relates to communications with the Sovereign, other members of the Royal Family and the Royal Household.

FOIA section 37

Section 37(1) of the FOIA states that:

"(1) Information is exempt information if it relates to—

- (a) communications with the Sovereign,*
 - (aa) communications with the heir to, or the person who is for the time being second in line of succession to, the Throne,*
 - (ab) communications with a person who has subsequently acceded to the Throne or become heir to, or second in line to, the Throne,*
 - (ac) communications with other members of the Royal Family (other than communications which fall within any of paragraphs (a) to (ab) because they are made or received on behalf of a person falling within any of those paragraphs), and*
 - (ad) communications with the Royal Household (other than communications which fall within any of paragraphs (a) to (ac) because they are made or received on behalf of a person falling within any of those paragraphs), or*
- (b) the conferring by the Crown of any honour or dignity."*

This exemption was amended in 2011 with the result that where a public authority holds any information falling within any of the categories listed in section 37(1)(a) to (ab) the application of the exemption becomes

'absolute'. This means any information falling within the scope of sections 37(1)(a) to (ab) can be withheld in reliance on the exemption, and no public interest test is necessary to justify this decision.

NCND response

Please note that the provision at section 37(2) indicates that a public authority is not required to confirm or deny whether the information falling within the scope of the request is in fact held or not. We therefore neither confirm nor deny holding the requested information. This should not be taken as an indication that the information you have requested is or is not held by the ICO.

FOI s40(2) Response - DC Requesting Correspondence From Complainant

Request for Information

Further to our acknowledgement of we are now in a position to provide you with a response to your request for information dated

In your e-mail of DATE you asked us to provide you with:

"....".

As you know we have dealt with your request for information held by the Information Commissioner's Office (ICO) in accordance with the Freedom of Information Act 2000 (FOIA).

As you may be aware the FOIA provides access to recorded information held by a public authority unless an appropriate exemption applies. Disclosures under the FOIA are considered to be applicant blind, and are therefore made to 'the world at large.'

The FOIA gives an entitlement to information, rather than documents, and as such we are not under any obligation to provide you with an original copy of the documentation you have requested.

The information that was provided to us by the complainant in this matter is personal data about them. We would therefore need to consider whether the exemption at section 40(2) of the FOIA applies.

When the circumstances of a complaint indicate that a breach of the legislation we oversee may have occurred, we take the view that complainants do not generally expect their letters or complaint forms to be copied to the organisation which is the subject of their complaint.

Generally speaking we take the view that any disclosure of the original letter, e-mail or form of complaint in circumstances such as this would be unfair, and would therefore be in contravention of the first data protection principle. This requires personal data to be processed lawfully, fairly and in a transparent manner in relation to the data subject.

In such circumstances it would be appropriate for us to withhold a copy of the original complaint in reliance on the exemption at s40(2) of the FOIA by virtue of section 40(3A)(a). We provide an complained-about body with sufficient information regarding the

complaint in the course of our handling of it. It is therefore not necessary to disclose further information, and in doing so contravening the first data protection principle.

If there is any further, specific, information which you require in order to fully respond to the issues raised by this complaint, which as you know is being dealt with under our reference number XXXXXXXX please let the case officer know so that they can provide you with an appropriate response.

FOI s40(2) s40(5B) Response - Personal
Data (inc NCND)

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.

[NOTE: Provide more information, if necessary]

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.

FOIA section 40(5) 'neither confirm nor deny'

We neither confirm nor deny that we hold the information you have requested. Section 40(2) FOIA states:

"Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which does not fall within subsection (1), and*
- (b) the first, second or third condition below is satisfied."*

Section 40(3A), which sets out one of the three conditions, states:

"(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

- (a) would contravene any of the data protection principles"*

Finally, section 40(5B)(a) states:

"The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—

- (a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—*
 - (i) would (apart from this Act) contravene any of the data protection principles"*

You have requested information held about **[request details]**. This information, if held, would constitute the personal data of those

individuals as it relates to an identified natural person. Section 40(2) of FOIA exempts disclosure of the personal data of others, subject to conditions.

Section 40(3A)(a) details one of these conditions. In our view, this condition would be met in this case because disclosure of the information you have requested, if held at all, would break the first principle of data protection – that personal data is processed lawfully, fairly and in a transparent manner. Therefore, the information you have requested, if held, would be exempt from disclosure.

We also consider confirmation or denial would itself contravene the data protection principles because it would reveal personal data. Therefore, our response to your request is we can neither confirm nor deny that we hold the information you have requested.

FOI s42 Response - LPP - Advice or Litigation Privilege

Section 42 FOIA template

FOIA section 42

Some of the information you have requested is subject to legal professional privilege and is exempt from disclosure under 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.

Litigation privilege covers confidential communications between the client and lawyer made for the purpose of preparing for existing or anticipated litigation. Advice privilege covers such communications when they're made for the purpose of seeking or giving legal advice. We find that the information in scope of your request is subject to [privilege type].

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

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

[NOTE: There is always a general public interest in transparency]

The factors in withholding the information are:

[NOTE: Typically, public interest factors against disclosure of material subject to legal privilege concern the fact that legal professional privilege is a really important principle of the legal system. There is also public interest in maintaining the ability for legal advisors and clients to be able to have full and frank discussions without the fear that such information will be potentially made public]

Having considered these factors, we are satisfied that [it is appropriate to withhold the information / the public interest favours disclosure so the exemption falls away].

FOI s42 Response - LPP - Advice
Privilege inc PIT Example

Information withheld – section 42

I can confirm that we hold some information which is subject to legal professional privilege and is withheld from our response in accordance with 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 xxx

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.

FOI s43 Response - Commercial Interests

Section 43 FOIA template

FOIA section 43

Some of the information you have requested is exempt from disclosure under section 43 of the FOIA. Section 43(2) states:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

A 'person' may be an individual, a company, the public authority itself or any other legal entity. Our guidance on what constitutes a commercial interest states:

"A commercial interest relates to a person's ability to participate competitively in a commercial activity."

Section 43 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.

We find that disclosure of this information would prejudice the commercial interests of [affected person] because [prejudice arguments].

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:

[NOTE: There is always a general public interest in transparency]

The factors in withholding the information are:

[NOTE: Section 43 public interest arguments are often highly specific. However, for the ICO, arguments against disclosure may include the ICO being able to negotiate and secure services on beneficial terms that ensure the best value for money, without prejudicing organisations who are contracting with. It may also harm an organisation's ability to effectively negotiate with other clients besides the ICO]

Having considered these factors, we are satisfied that [it is appropriate to withhold the information / the public interest favours disclosure so the exemption falls away].

FOI s44 DPA s132 Response - Prohibitions on Disclosure

FOIA Section 44 and DPA section 132

[NOTE: Short version]

Some information has been withheld 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.

[NOTE: Longer version]

We can confirm that:

- The information was [obtained by/provided to] the Commissioner in order to carry out their functions.
- The information relates to an identifiable business, specifically – [organisation name].
- The information is not, and was not previously, publicly available from other sources.

As a result we cannot disclose the information unless we have lawful authority.

Section 132(2) of the DPA provides conditions in which disclosure could be made with lawful authority. We have therefore considered each condition in turn:

"(a) the disclosure was made with the consent of the individual or of the person for the time being carrying on the business,"

I can confirm that we do not have consent to disclose this information.

"(b) the information was obtained or provided as described in subsection (1)(a) for the purpose of its being made available to the public (in whatever manner),"

The information was not obtained by or provided to the Commissioner as part of their regulatory role in order to make it available to the public and for this reason we are treating it as confidential.

"(c) the disclosure was made for the purposes of, and is necessary for, the discharge of one or more of the Commissioner's functions,"

We find that disclosure is not necessary in order to fulfil any of their functions.

"(e) the disclosure was made for the purposes of criminal or civil proceedings, however arising,"

Disclosure would not be for the purposes of criminal or civil proceedings.

"(f) having regard to the rights, freedoms and legitimate interests of any person, the disclosure was necessary in the public interest."

We do not consider it necessary or justifiable to disclose this information as there is no compelling public interest to do so. The Commissioner and his staff risk criminal liability if they disclose information without lawful authority. The right of access under the FOIA is not sufficient to override these important factors and the information is therefore withheld.

FOI s44(2) Response - Neither Confirm
nor Deny

FOIA Section 44(2) 'neither confirm nor deny'

We neither confirm nor deny whether we hold the information you have requested by virtue of section 44(2) of the FOIA.

Section 44(2) states:

"The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1)."

Section 44(2) of the FOIA exempts us from our duty to say whether or not we hold the information you have asked for if confirmation or denial would itself reveal information otherwise exempt under section 44(1)(a).

It is our view that the requested information, if held, would be exempt from disclosure under section 44(1)(a) of the FOIA and we therefore neither confirm nor deny we hold the information you have requested.

This exemption is absolute and, as such, we do not have to consider whether or not it would be in the public interest for us to reveal whether or not the information is held.

Please note, this response should not be taken as confirmation that the information you have requested does or does not exist.