Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **5 August 2019**

Public Authority: **Information Commissioner's Office**
Address: **Wycliffe House**
Water Lane
Wilmslow
SK9 5AF

Note: This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of the FOIA and a public authority subject to the FOIA. She is therefore under a duty as regulator to make a formal determination of a complaint made against her as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term 'ICO' is used to denote the ICO dealing with the request, and the term 'Commissioner' denotes the ICO dealing with the complaint.

Decision (including any steps ordered)

1. The complainant has requested a copy of the ICO's register of data protection fee payers, in a specific format. The ICO withheld the relevant information it holds under section 21(1) of the FOIA as it said this information is already accessible to the complainant by other means. During the investigation the ICO identified that it holds some related information separately from the register and it released this information to the complainant.

2. The Commissioner's decision is as follows:

   - The majority of the requested information is exempt information under section 21(1) of the FOIA.

- The ICO breached section 10(1) as it did not release other information that it holds that falls within the scope of the request within 20 working days of the request.

3. The ICO has now released the above information and the Commissioner does not therefore require the ICO to take any remedial steps.

Request and response

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4. On 24 September 2018, the complainant wrote to the ICO and requested information in the following terms:

   "A copy of the Register of fee payers in a .csv format.

   Please provide a copy of the register as currently searchable online at https://ico.org.uk/about-the-ico/what-we-do/register-of-fee-payers/, providing the following information:

   the name and address of the controller;
   the data protection registration number;
   the level of fee paid;
   the date the fee was paid and when it is due to expire;
   any other trading names of the organisation; and
   the name and contact details for the DPO, where one has been provided; or
   Where the DPO has not consented to their name being published, please provide their public contact details e.g. email address; or
   Where the DPO has not consented to the publication of their name or contact details, please provide a flag in the data which makes this clear i.e. this fee payer has appointed a DPO but has not consented to their name or contact details being published."

5. The ICO responded on 22 October 2018. It said the information the complainant has requested is available on its website and so exempt from release under section 21 of the FOIA. The ICO also said that it noted that the complainant had requested a CSV file of the information it holds. It advised that such a file would be placed on the ICO website in due course. The ICO explained it was exploring the technical issues that need to be resolved before it could place the information it holds in the requested format on its website, and that this work was ongoing.

6. The complainant requested an internal review on 22 October 2018. He said the information on the ICO's website does not enable him to search for and identify all the information he is seeking. He also noted that the ICO's approach was inconsistent with its approach to a separate request in which a CSV file containing the data requested was provided even

though the response also advised that the information was, at that time, searchable on the ICO website. Finally, the complainant asked the ICO to advise when the CSV download might be available and what the technical issues were that needed to be resolved.

7. Following its internal review the ICO wrote to the complainant on 30 November 2018. It maintained its reliance on section 21. The ICO explained that it does not have a duty to change the format of available information, only to ensure that it is accessible to the requester. Finally the ICO explained that it had looked into the matter and, at that point, did not have a timeline for the re-introduction of a downloadable copy of the public register in CSV format.

Scope of the case

8. The complainant contacted the Commissioner on 30 November 2018 to complain about the way his request for information had been handled. He disputes that the information he has requested is already accessible to him through the published register as he is not able to interrogate the register in such a way as to identify the specific information he is seeking. The complainant also says that the register does not contain all the categories of information he requested. Finally, the complainant has said that the requested information was available in the past as a CSV download from the ICO's website. Given this, and the ICO's stated plans to republish in the future, he considers that the ICO should release the information he has requested to him in CSV format.

9. The Commissioner's investigation has focussed on whether the ICO can rely on section 21(1) to withhold the requested information ie the fees register.

10. The Commissioner also considered whether the ICO can be said to hold particular information the complainant has requested concerning Data Protection Officers (DPOs), and if it does, whether it should communicate this information to the complainant.

11. The complainant has also expressed a concern about how long it took the ICO to provide an internal review. The Commissioner has considered this aspect under 'Other Matters'.

Reasons for decision

Section 21 – information accessible to applicant by other means

12. Section 21(1) says that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

13. Section 21 provides an absolute exemption. This means that if the requested information is held by the public authority, and it is reasonably accessible to the applicant by other means, it is not subject to the public interest test.

14. In its submission to the Commissioner the ICO confirmed that the information the complainant has requested is already accessible to him on its website, albeit in a different format.

15. It explained that the information it holds that falls within the scope of the complainant's request is stored in a database that it refers to as 'ICO Customer Engagement (ICE) Registration'. This is a configurable, off the shelf, Microsoft Dynamics product. The ICO has confirmed that it holds the information sought in this database, but it:

    a) does not hold it in a dataset format as per the complainant's preference, such as a CSV, and

    b) has not yet undertaken the developmental work needed to enable it to convert the information held in that database into a dataset format.

16. The ICO said that searches of its published ICE database[1] can be made by the number, name, address or postcode of the data controllers of interest. The ICO indicated that the results of the searches provide, where this information is held:

    - the name and address of the controller;
    - the data protection registration number;
    - the level of fee paid (through the description of the payment tier);

[1] https://ico.org.uk/ESDWebPages/Search

- the date the controller was registered and when the current payment is due to expire;
- any other trading names of the organisation; and
- the name and contact details for the DPO, where one is held and consent to disclose the DPO's name has been provided.

17. The Commissioner notes that these categories of information match the majority of those in the complainant's request. However the request also includes a request for:

    "…or Where the DPO has not consented to the publication of their name or contact details, please provide a flag in the data which makes this clear i.e. this fee payer has appointed a DPO but has not consented to their name or contact details being published."

    This matter is considered under the Section 10 analysis.

18. In its initial submission the ICO confirmed that the information it holds and which falls within the scope of the complainant's request is all in the public domain, via the published register, and that the register's search facility was in place at the time of the request.

19. The ICO directed the Commissioner to a link displayed on its website to a facility to download the current public register. It said that, as it explained to the complainant, this facility is not currently available but that it provided a downloadable register in the past and is committed to publishing the public [downloadable] register in the financial year 2019/2020.

20. The ICO then addressed the complainant's concerns. First, it noted that the complainant had cited an example provided in the Commissioner's published guidance on section 21 following from the First Tier Tribunal (Information Rights) case EA/2007/0110. He has claimed that the restrictions on the ICO's search facility mean that the information he is seeking is not reasonably accessible and that the exemption cannot therefore apply.

21. The ICO observed that its understanding of the cited example is that the public authority had sought to respond to a request for specific information by suggesting that because the information was available in an unspecified part on a large website it was reasonably accessible to the requester.

22. In this case the ICO says that it has pointed the complainant to the specific search facility on its website where the information can be

found. This is, it says, in accordance with the ICO guidance which states that:

> *"the authority would be expected to provide a precise link or some other direct reference as to where the information could actually be found."*

23. The ICO went on to note that the complainant has expressed dissatisfaction because his access to the amount of information that he wishes to see would require multiple searches to extract singular results.

24. The ICO acknowledged that the search facility does have limitations but finds that the numbers the complainant provided in his correspondence to the Commissioner do not reflect the reality of using it. As an example, the ICO says that searching by postcode group presents multiple hits. To demonstrate this the ICO searched the register for entries with the postcode 'SW1' and this returned 14 entries. It has searched 'SK9 5A*' and been given 42 results. The ICO says that searches of data controllers can also be conducted without knowing their names; a search for those beginning with 'AA' returns 73 results and 'AB' 87.

25. The ICO says it understands completely that its search facility is limited, and returns no more than 100 hits in response to a search entry. However it says that the alpha-numeric searches of the kind performed above would provide access to all of the requested information. Further, as it has explained to the complainant, it has committed to providing an alternative, downloadable format of the register which will give any member of the public the ability to procure the entire public register.

26. The complainant had also argued that the online version of the register '*does not appear to provide complete information*'. The ICO confirmed to the Commissioner that the information extracted from the search facility does correctly correspond with the information held in its register.

27. It has gone on to explain that there are many reasons why it might not hold data protection officer details for each of the more than 600,000 records in its register, not least as not every data controller is required to employ one. The ICO has, however, confirmed that in this instance the search facility provides an accurate reflection of the information held in its register.

28. The ICO said it appears that the complainant believes that its withholding of the information is based in its fear that doing so would expose that it has not fully enforced the law in relation to data controllers. It does not consider that the complainant has provided evidence to support this belief.

29. Having considered the ICO's explanation and all the circumstances of this case the Commissioner is satisfied that the majority of the information that the ICO holds that is relevant to the complainant's request for a "*copy of the Register*", is accessible to the complainant through the ICO's website and is therefore exempt from disclosure under section 21(1) of the FOIA.

Section 10 – time for compliance

30. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.

31. Under section 10(1) a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.

32. The complainant introduces his request by saying it is a request for *"a copy of the register as currently searchable online…"* and the position with regard to the register has been discussed above. However the request also includes a request for:

    "…Where the DPO has not consented to the publication of their name or contact details, please provide a flag in the data which makes this clear i.e. this fee payer has appointed a DPO but has not consented to their name or contact details being published."

33. The ICO confirmed that it is not currently possible to flag this particular information in the register database in the way that the complainant has requested. Its position appeared to be that it therefore does not hold this information.

34. The complainant is seeking information on organisations registered as fee payers where the DPO has not agreed to their name being published on the register. The Commissioner asked the ICO to consider whether it holds this information separately from the register. While noting that it does not have a business need for this particular information, the ICO confirmed in a further submission that it had been able to extract information on registered organisations whose DPOs had not consented to their name being released. It confirmed it would release this information to the complainant and did so on Friday 2 August 2019.

35. The ICO has now complied with section 1(1) with regard to this information but breached section 10(1) as it did not communicate the information to the complainant within 20 working days.

Other Matters

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36. Provision of an internal review is not a requirement of the FOIA but the Commissioner considers an internal review to be good practice. She recommends that a public authority should provide a review within 20 working days of the request for one and no longer than 40 working days. In this case the complainant requested a review on 22 October 2018 and the ICO provided one on 30 November 2018 ie within the 40 working days the Commissioner recommends. As such, she considers that the ICO's handling of the review process was satisfactory.

Right of appeal

37. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

    First-tier Tribunal (Information Rights)
    GRC & GRP Tribunals
    PO Box 9300
    LEICESTER
    LE1 8DJ

    Tel: 0300 1234504
    Fax: 0870 739 5836
    Email: grc@justice.gov.uk
    Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

39. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
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