

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 June 2023

**Public Authority:** Information Commissioner's Office

**Address:** Wycliffe House  
Water Lane  
Wilmslow  
SK9 5AF

#### **Decision (including any steps ordered)**

---

1. In this case the Information Commissioner is both the public authority which is the subject of the complaint and the regulator of FOIA responsible for investigating the complaint. The notice will use the term Information Commissioner's Officer (ICO) when referring to the Information Commissioner as the public authority subject to the complaint and the term Commissioner will be used to refer to him as the regulator.
2. The complainant requested information from the ICO relating to all documentation it holds on its own policies and procedures including the internal guidance and training courses for staff on dealing with casework and the erasure processes for SARs (Subject Access Requests).
3. The ICO provided some information within the scope of the request and withheld the remainder citing section 21 (Information reasonably accessible to the applicant by other means) and section 22 (Information intended for future public publication) as its reasons for doing so.

4. The Commissioner's decision is that the ICO has correctly applied both section 21 and section 22 of FOIA to the withheld information in this case.
5. The Commissioner requires no further steps to be taken.

## Request and response

---

6. On 17 November 2022, the complainant wrote to the ICO and requested information in the following terms:

"all materials relating to case work processes, such as training materials, instructions and guidance."

7. The ICO responded on 30 November 2022. It confirmed it held information and provided numerous links to its website stating:

"This information is technically exempt under section 21 of the FOIA because it is available to you by means other than making an FOI request.

In addition, our Regulatory Action Policy outlines the circumstances in which we would consider taking formal regulatory action. This can be found here: [Regulatory Action Policy \(ico.org.uk\)](https://ico.org.uk/regulatory-action-policy)

We have disclosed information in relation to similar requests on our disclosure log where you are able to search for keywords of interest.

Details of our internal guidance, consisting of training presentations given to our staff who handle data protection complaints were disclosed on our disclosure log [Search | ICO](#) on the following link: [IC-179576-P5B8 | ICO](#)"

8. The complainant requested an internal review on 2 December 2022 as they did not consider that all the information requested had been provided and stated:

"1. The link to a training document contains a link which is inaccessible 'your personal information concerns'.

2. There is no detailed training material or reference material on what an appropriate response to a SAR or request for erasure constitutes, such as guidance on proportionate searches. It is implausible that case officers would be expected to make such judgements with not training or reference materials available.

3. I was informed that only correspondence within the 3 months preceding the case can be considered but there is no mention of this in any of the information provided.

This was followed up by two further emails the same day expressing dissatisfaction with the initial response as follows:

- In addition, the link to the training document provided on the disclosure log references a future training session where templates will be provided but again there is no mention of this in any of the links provided or on the website

- When responding, please provide an email address for the customer contact team in case I need to submit an appeal, and an email address if I wish to make a complaint under the FOI Act. There is a lack of transparency in the response letter about these details and a lack of clarity about which of these would be the next step. This information should be clear and readily available, not opaque. ICO should be providing such information in accessible format so that all members of the community can follow the process regardless of intellectual disability or impairment.”

9. Following an internal review the ICO wrote to the complainant on 14 December 2022 and responded to the four points as follows.

“1. Please use the following link to view the “your personal information concerns” document. This is already publicly available on the ICO website: [Data protection and personal information complaints tool | ICO](#)

2. I note your comments regarding what you consider to be insufficient training material regarding responses to SARs or erasure requests. However, FOIA is in place to facilitate the provision of information already held by an organisation. Our initial response provided numerous pieces of guidance in respect of SARs. Public authorities are not obliged to create new information in order to provide responses.

To guide and advise you, I can point you to further information published on the ICO website through the following link: [How to deal with a request for information: a step-by-step guide | ICO](#) This is a step by step guide on dealing with SARs.

3. I note your comments, but I cannot find any reference to this timescale in the response of 30 November. It isn't clear what legislation this refers to.

4. The future training session has not taken place as yet. Therefore, this information is not yet available.

The initial response was informative and detailed. It provided numerous links to information which is already published on the ICO website.

Consequently, Section 21 applies to this information as it is already easily accessible.

I consider that the response provided you with advice and assistance to facilitate easier viewing of the published information – which is not required by the legislation. For these reasons, your review is not upheld.”

## **Scope of the case**

---

10. The complainant contacted the Commissioner on 2 March 2023 to complain about the way her request for information had been handled.
11. During the course of the Commissioner’s investigation, the ICO identified further information not easily accessible to the complainant and further links on its website which were within the scope of the request. It provided this information to the complainant with the exception of the ‘Information Access Manual’ which it withheld under section 22.
12. The Commissioner considers that the scope of his investigation is to determine if the ICO was correct to refuse to disclose the requested information under section 21 and section 22 of FOIA.

## **Reasons for decision**

---

### **Section 21 – information accessible to applicant by other means**

13. Section 21 of FOIA provides that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
14. Section 21 is an absolute exemption which means there is no requirement to carry out a public interest test if the requested information is exempt.
15. The Commissioner considers that the purpose of the section 21 exemption is to protect the scarce resources of public authorities by

shielding them from replying to requests for information which the requestor could have found elsewhere. It also acts as an incentive for public authorities to be proactive in publishing information as part of their publication schemes.

16. On 16 June 2023 the ICO informed the Commissioner it had provided further links to information available to the complainant on its website to assist the complainant in assessing the information on erasures, casework, SARs and complaints processes and additionally provided the Commissioner with a summary of website links and documents considered within the scope of the request and provided to the complainant. accepted
17. As this information is already reasonably accessible to the applicant and general public and the ICO has both directed the complainant to where all this information can be located on its website, the Commissioner considers that section 21 FOIA was correctly applied in this case.

### **Section 22(1) – information intended for future publication**

18. Section 22(1) of FOIA says that information is exempt information 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).
19. Section 22 is a qualified exemption which means it is subject to the public interest test.
20. For the exemption in section 22 to apply, the public authority must have a settled expectation that the information will be published at some future date – even if no precise date has been set.
21. The ICO confirmed to the Commissioner that it held the information at the time the request was made in November 2022. It also confirmed to the complainant its intention to publish the draft Information Access Manual on its website once it was finalised, as part of its ongoing commitment to transparency. It did not provide an expected publication date, but did explain it intended to publish it this year.

22. The Commissioner therefore accepts that in all the circumstances it was reasonable to withhold the information under section 22 FOIA until the publication date.

### **Public Interest Test**

#### **Arguments in favour of disclosure**

23. In terms of the public interest, the ICO recognised the general public interest in transparency and accountability and the disclosure of the training given to its staff to deal with matters relevant to the public.

#### **Arguments in favour of maintaining the exemption**

24. The ICO said that publishing the Information Access Manual now would involve duplication of the effort necessary to prepare it for publication and create a significant separate workstream which would detract from the work currently being carried out in its preparation and completion. The ICO believed it would not be in the public interest for ICO staff to spend time on duplicated work efforts, particularly when the relevant information is due to be published in future.
25. Additionally, the ICO believes the public website is the most valid and appropriate route for publication and whilst the aim is for the manual to be published by the end of this year, it is likely that it will be published on a much shorter timescale.

#### **Commissioner's conclusion**

26. As the UK's independent authority set up to uphold and regulate information rights in the public interest by promoting openness by public bodies and data privacy for individuals, it is important to ensure any guidance used by ICO staff in conducting their duties is fair and accurate.
27. The Commissioner acknowledges the public interest in transparency and accountability and in ICO employees and members of the public having access to information that would enable them to understand the ICO's processing of SARs and FOI requests.
28. However, the Commissioner considers premature disclosure of the draft Information Access Manual would be likely to impact on its quality and potentially raise issues and confusion that the ICO would have to divert resources into countering though the potential release of incorrect or misleading information into the public domain.
29. The Commissioner recognises the strong public interest in openness and transparency, and in limiting any delays to publication and welcomes the

commitment to publish it as soon as possible. However, he considers that responding to individual requests for the information would also unreasonably impact on the ICO's resources.

30. Having considered all the arguments for and against disclosure, the Commissioner is satisfied that there are stronger public interest arguments in favour of maintaining the exemption.
31. He therefore finds that the ICO was correct to rely on section 22 to withhold the Information Access Manual.

## Right of appeal

---

32. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

33. 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.
34. 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** .....

**Laura Tomkinson**  
**Group Manager – Freedom of Information**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**