

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

### **Decision notice**

**Date:** 2 May 2024

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

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

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1. The complainant requested information about the Commissioner's decision to stop issuing certain fines on public bodies. The ICO advised that some relevant information is already published and that it didn't hold some information. It disclosed other information with some redactions under section 31 of FOIA (law enforcement). The complainant considers the ICO didn't set out clearly whether it held the specific information they requested and is also dissatisfied with an aspect of its handling of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the ICO holds no further information within scope of the request and complied with section 1(1) of FOIA.
3. It's not necessary for the ICO to take any corrective steps.
4. This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of FOIA and a public authority subject to FOIA. He's therefore under a duty as regulator to make a formal determination of a complaint made against him 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.

## Request and response

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5. The complainant made the following information request to the ICO on 27 September 2023:

"I would like to make an FOI request following the Commissioner's announcement of a series of reprimands on public sector bodies for data protection breaches. I am interested in the Commissioner's decision to stop issuing fines on public bodies and the recorded information that fed into that decision.

I am requesting:

- 1) Any recorded information about the criteria that the Commissioner and his staff intend to use to assess whether the decision not to issue fines on the public sector has been successful. I would like to emphasise that I am only requesting recorded information held at the time that this request is received.
  - 2) Any recorded information that shows research that the Commissioner used to make the decision. I would like to emphasise that I am only requesting information that fed into the decision in 2022, not any information that may subsequently have been obtained, or unrecorded information generated to respond to my request.
  - 3) Confirmation of whether the Commissioner or his staff obtained legal advice about the decision, either at the time or subsequently. I am not requesting any advice that may have been provided."
6. In its response the ICO first confirmed it held information within scope of parts 1 and 2 of the request. It then listed out the parts in the order 2, 3, 1. For part 2, the ICO directed the complainant to its disclosure log, where it had published a response to a similar request. For part 3, it confirmed that it didn't hold any relevant information. For part 1, the ICO advised that, at that point, it had completed two quarterly reports on its revised position. It disclosed those reports with some information redacted under section 31 of FOIA.
7. In their request for an internal review the complainant queried how the ICO had numbered the parts of their request in its response. They asked the ICO to clarify "what the numbered sections in [its] reply represent."
8. The complainant then queried the two evaluation reports they had received in response to part 1 of their request. They disputed that these reports represented criteria for measuring success and asked the ICO to confirm whether it holds criteria and, if it does, to disclose them.

9. Regarding the numbering of its response, in its review the ICO said that "although we did not answer your points in numerical order, we did use the numbering you provided to answer the corresponding points." It acknowledged that this may have caused confusion.
10. Regarding part 1, the ICO confirmed that it didn't hold any other relevant information. It noted that Annex A of the reports contain "a theory of change visual" and that that implicitly implied critical success factors in terms of outputs, outcomes, and impact. The ICO provided more explanation about the reports and acknowledged that it could have provided a little more explanation about the information in the reports in its initial response.

### Reasons for decision

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11. In their complaint to the Commissioner the complainant the complainant didn't dispute the ICO's application of section 31 to redacted information. Their concern was that, in their view, information that "implicitly implies" something can't reasonably be interpreted to be criteria. They considered that the ICO provided the reports in response to part 1 rather than formally deny that it holds information relevant to this part. They considered this was misleading.
12. Second the complainant considered that the ICO should explain why it answered the response 2, 3, 1 rather than 1, 2, 3 "as any reasonable public authority would have done."
13. This reasoning covers whether the ICO complied with section 1(1) of FOIA. The matter of how the ICO ordered the parts of the request in its response is discussed under 'Other matters' as this doesn't concern a possible breach of FOIA.
14. Under section 1(1)(a) of FOIA a public authority must confirm whether it holds information an applicant has requested. Under section 1(1)(b) the authority must communicate the information if it holds it, and it isn't exempt information.
15. In its response to the request the ICO confirmed it held information within scope of part 1.
16. To address the complainant's point, the ICO didn't deny holding information relevant to part 1 because it considered it **did** hold relevant information, which it disclosed (with redactions). The Commissioner has reviewed the disclosed information. He's satisfied that the information fell within scope of that part and satisfactorily addressed the request for 'criteria' for the reason the ICO explained to the complainant in its

internal review. He's gone on to consider whether the ICO holds any further information relevant to part 1.

17. In its submission to the Commissioner, the ICO explained that before it responded to the request it had conducted consultations with the relevant departments who were involved in the work which was the subject of the request. This included consulting with the Commissioner's Private Office and also the Economic Analysis Team, who are responsible for monitoring and measuring the impact of this policy. Both teams responded advising that searches had been carried out and that nothing further was held.
18. For the purposes of its internal review response, the ICO had carried out a further consultation with both teams and also with the investigations team. The extra consultations were done in order to ensure that nothing further was held. This assurance was confirmed by all three areas of the business and the ICO didn't consider any further searches were necessary. The ICO considers that it's not plausible that any other information would be held elsewhere in the organisation which wouldn't be accessible to, or known about, by the departments in charge of this area of work.
19. The Commissioner accepts the ICO's reasoning and is satisfied that it has consulted the most appropriate departments and searched the most appropriate areas of the organisation. His decision is therefore that, on the balance of probabilities, the ICO holds no further information within scope of the request and has complied with section 1(1) of FOIA – it confirmed it held relevant information and communicated this relevant, non-exempt information to the complainant.

## **Other matters**

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20. The complainant is unhappy with the way the ICO ordered the parts of their request in its response to it.
21. In its submission the ICO has noted that in its response it had used the numbering the complainant provided, which consisted of just three questions, but answered the points out of order. The ICO says that part 1 required a longer response which incorporated the use of exemptions as information was being withheld. The ICO says it thought it made sense to address parts 2 and 3 first as the responses to these parts were succinct and to the point. Given that the complainant's numbering was used, albeit in a different order, the ICO says it didn't consider that this made the response unclear. However, in its review response the ICO had apologised for any perceived lack of clarity.

It had gone on to explain that the numbering did correspond to the numbering in the request. The ICO says it believed this should have been sufficient to clear up any confusion, as there were only three questions.

22. With the benefit of hindsight, it might have been clearer if the ICO had simply responded to the parts of the request in their obvious order: 1, 2, 3. However, it didn't and it acknowledged in its review that this may have caused confusion. As requested by the complainant, the ICO has now provided an explanation for why it took the approach that it did, and the Commissioner considers that explanation is satisfactory.

## **Right of appeal**

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23. 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)

24. 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.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Cressida Woodall**  
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**Information Commissioner's Office**  
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**SK9 5AF**