

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 November 2024

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

Decision (including any steps ordered)

1. The complainant has requested information about triaging data protection complaint cases. The Information Commissioner's Office ('the ICO') provided links to the requested information and advised that some information was intended for future publication. The complainant expressed dissatisfaction with the ICO's response and stated that further information was held.
2. The Commissioner's decision is that, on the balance of probabilities, no further information is held within scope of the request.
3. The Commissioner does not require further 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

5. On 19 June 2024, the complainant wrote to the ICO and requested information in the following terms:

“Does the ICO use Artificial Intelligence, computer, or software assistance to aid in triaging complaints or in deciding in which complaints which can be rejected and which can be investigated further?

Since the ICO clearly do not reject complaints on the basis of merit or importance what criteria, policy, or triage method do the ICO use to decide which complaints to uphold and which to reject? Please send a copy of the criteria, policy, or triage method that you actually use.

Please send annual figures for the years 2015 through 2023 of the complaints received, the complaints rejected, and the complaint upheld.”

6. The ICO responded on 24 June 2024. It provided a response to the first part of the request, and provided links where the information could be found for the second part of the request. For the third part of the request, it provided links to some of the requested information, but advised that it was relying on section 22 of FOIA (intended for future publication) to withhold the statistics for 2023/24 as it intended to publish this information in the future.
7. On 24 June 2024, the complainant expressed dissatisfaction with the response received, and indicated they believed that further information was held for the second part of the request.
8. On 11 July 2024, the ICO provided its internal review response, advised that responses had been provided for all parts of the request and that all information held had either been provided or exempted.

Scope of the case

9. The complainant contacted the Commissioner on 11 July 2024 to complain about the way their request for information had been handled.
10. The Commissioner notes that the complainant did not express dissatisfaction with the ICO’s response to the third part of the request, so the Commissioner will not consider its application of section 22 of FOIA.

11. The Commissioner therefore considers that the scope of his investigation is to determine whether, on the balance of probabilities, further information is held within scope of the remainder of the request.

Reasons for decision

Section 1 – general right of access to information

12. Section 1 (1) FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

13. Section 1(1) requires that a public authority must inform a requestor, in writing, whether it holds information falling within the scope of the request. If it does hold relevant information, it also requires that it communicates the information to the requestor, subject to any exclusions or exemptions applying.
14. In scenarios where there is some dispute between the amount of information held which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request). For clarity, the Commissioner is not expected to prove categorically whether the information is held.
16. The Commissioner has therefore sought to determine whether, on the balance of probabilities, the ICO holds further relevant information.
17. In this case, the requested information relates to guidance or policy used by ICO staff to triage data protection complaints.

The complainant's position

18. The complainant has argued that the links to guidance provided by the ICO for the second part of the request do not appear to reflect its triage processes in practice. The complainant stated that they therefore believed that further information was held for this part of the request.

The ICO's position

19. The ICO has explained that it regularly receives requests that ask for copies of policies and guidance which set out the processes the ICO employs to manage complaints.
20. The ICO explained that such topics are covered by a few central pieces of guidance available on the ICO's website, namely the [Service Standards](#), [Service charter](#) and the guidance entitled "[What to expect from the ICO when making a data protection complaint](#)". The ICO explained that it directed the complainant to the most relevant sections of these documents.
21. In preparing its submission for the Commissioner, the ICO advised that it had completed another check of the guidance libraries on the ICO's staff intranet. It also carried out a consultation with the data protection complaints team in order to double check that there were no other policy or guidance documents held in scope of the request. A Group Manager and a Team Manager within the Public Advice and Data Protection directorate also confirmed that the ICO does not have any other such guidance in place.

The Commissioner's conclusion

22. The Commissioner notes that the complainant considers that the information provided does not appear to reflect the ICO's triage processes in practice. FOIA concerns the provision of recorded information and does not extend to whether that information is accurate, complete or forms part of a wider function.
23. The Commissioner accepts the ICO's reasoning and is satisfied that it has provided the information it holds in scope of the request and has consulted the most appropriate departments to check that no further information is held. 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

24. The complainant has also argued that the ICO has not responded properly to their first question about whether the ICO used artificial intelligence, computer or software assistance to triage complaint cases.
25. The Commissioner has reviewed the ICO's response to the first part of the request. He finds that while the ICO did not itemise 'artificial intelligence, computer or software assistance' it did state that the ICO does not use artificial intelligence or software to triage complaints. While the Commissioner is satisfied that the ICO has provided a proper response to this part of the request, it could have expressed its response more clearly to the complainant.

Right of appeal

26. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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