

From: icocasework@ico.org.uk
To: foia@judicialappointments.gov.uk;
CC:
Subject: ICO Case Reference: IC-267125-Q5P5
Direction: Outgoing
Date Sent: 30/10/2023 16:15

30 October 2023

Case Reference: IC-267125-Q5P5

Dear Information Access Team,

Please see attached the letter in regard to a complaint that we have received.

Yours sincerely,

Sent on behalf of

[Redacted Signature]

Information Commissioner's Office

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

T. [Redacted] 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.

Please be aware we are often asked for copies of the correspondence we exchange with third parties. We are subject to all of the laws we deal with, including the data protection laws and the Freedom of Information Act 2000. You can read about these on our website (www.ico.org.uk). Please say whether you consider any of the information you send us is confidential. You should also say why. We will withhold information where there is a good reason to do so.

30 October 2023

Dear Information Access Team,

Freedom of Information Act 2000 (FOIA)

Complaint from: [REDACTED]

RFI of 30 April 2023, 5 June 2023 and 5 July 2023

Our reference: IC-267125-Q5P5

This complaint has been accepted as eligible for formal consideration. Investigation of this complaint will, in all likelihood, look at your application of **section s.42, s.40(2), s.36 and s.12 to withhold information.**

Once the complaint has been allocated to a case officer, they will proceed to a decision notice or contact you directly if they require further information.

Please be aware that whilst submitted emails are monitored, any detailed enquiries relating to the case will not be addressed until it has been allocated to a case officer for investigation. For more general enquiries, please call our helpline on **0303 123 1113**.

Sent on behalf of

[REDACTED]

[REDACTED]

Information Commissioner's Office

For information about what we do with personal data see our privacy notice at www.ico.org.uk/privacy-notice.

To read about our commitment to high standards of customer service see our service standards at www.ico.org.uk/about-theico/our-information/our-service-standards/.

We've developed some general resources to support public authorities. There are case studies detailing how other organisations approach compliance and a self-assessment toolkit to help you with timeliness, the cost of compliance and vexatious requests. There are also other tools to help with improving your timeliness, the details you need to join our

feedback group, and more. They're on this section of our website: [Resources, toolkits and training | ICO](#)

Subscribe to our newsletter; [E-newsletter | ICO](#)

From: icocasework@ico.org.uk
To: foia@judicialappointments.gov.uk;
CC:
Subject: ICO Case Reference - IC-267125-Q5P5
Direction: Outgoing
Date Sent: 04/03/2024 16:14

4 March 2024

Case Reference: IC-267125-Q5P5

Dear JAC

We have received a complaint about your handling of a number of requests from information from the same complainant, which are being handled under this one case reference.

Please see my attached correspondence.

Yours sincerely

[Redacted Signature]

Information Commissioner's Office

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

T. [Redacted] F. [Redacted] ico.org.uk twitter.com/iconews

Please consider the environment before printing this email

Please be aware we are often asked for copies of the correspondence we exchange with third parties. We are subject to all of the laws we deal with, including the data protection laws and the Freedom of Information Act 2000. You can read about these on our website (www.ico.org.uk). Please say whether you consider any of the information you send us is confidential. You should also say why. We will withhold information where there is a good reason to do so.

For information about what we do with personal data see our privacy notice at www.ico.org.uk/privacy-notice

4 March 2024

ICO Case reference IC-267125-Q5P5

Dear Judicial Appointments Commission

Freedom of Information Act 2000 (FOIA)

Complainant: [REDACTED]

I am writing regarding the above complaint to the ICO. This complaint has been allocated to me for consideration and I will be your point of contact for any queries you have about the handling of the case.

I have set out below my understanding of the complaint and the response I would like the JAC to provide me with in the first instance. I would be grateful if you could acknowledge receipt and let me know who will be dealing with the case.

ICO's approach

On receipt of a complaint under FOIA, we will give a public authority one opportunity to justify its position, before issuing a decision notice. Please consider the guide for public authorities on our website for more information about how we handle complaints:

http://www.ico.org.uk/for_organisations/freedom_of_information/guide.aspx

Unusually, this complaint relates to **three** requests for information. I will address each in turn.

Request 1

On 30 April 2023 the complainant made the following request for information under FOIA:

1 Qualified person

[...]

Please provide copies:

- a) of all communication passing between the JAC (or any person on its behalf) leading to the granting of the authorisation on 10 October 2022.
- b) Copies of all FOIAs and answers given by the JAC prior to the grant of the authorisation where the 'qualified person' exemption was used or specific links to them under your disclosure programme. A link to your disclosure log is not enough. I specifically seek those requests where the JAC used sec 36.[...]
- c) Please state whether there is any policy in force about how requests for information are answered where the qualified person exemption is engaged. If there were a written policy, please provide the document. If you do not have a written policy please provide full details of the individuals at the JAC who are aware of its details. [...]
- d) Please state whether any of these individual have formal legal qualifications or are solicitors or barristers or members of the judiciary.

2. Head of corporate services

1. Please confirm that you ran an open competition for the current head of corporate services. If not, why didn't you?
2. Please state when and where you advertised the position.
3. Please provide the job advert, job specification and job competencies when you advertised the position.
4. Please provide details of the current job specification for the head of corporate services.
5. Please provide details of his or her current terms and conditions of employment.

The JAC responded on 26 May 2023.

In response to 1a, it provided some information, but withheld the remainder citing section 42(1) (legal professional privilege).

It provided the information in scope of 1b, redacted to avoid disclosure of personal information. It stated that it does not hold information in scope of 1c, and provided the information in scope of 1d.

With reference to Q2, the JAC stated that it does not hold information in scope of 1-3, it provided information in scope of 4 and refused to provide the information in scope of 5, citing section 40(2) (personal information).

On 31 May 2023, the complainant requested an internal review. Further to that correspondence, they requested further information on 22 June 2023.

Following an internal review, (1 August 2023), the JAC clarified some parts of its response. It maintained its application of section 40(2) and 42 to the withheld information.

As part of the internal review, the JAC responded to the additional questions asked on 22 June 2023. In relation to those additional points, the JAC variously cited sections 12 (cost of compliance), 21 and 40(2).

Complaint about request 1:

The complainant wishes to challenge the application of section 42 to refuse to provide the information requested at 1(a), and the application of section 40(2) to withhold the information requested at 2.5, namely details of the terms and conditions of employment of [REDACTED]

Request 2

On 5 June 2023, in a multi-point request, the complainant requested information about 'Claims, complaints and Appeals'. The points within the request were numbered 1-11.

The JAC responded on 27 June 2023.

It provided information in scope of points 1-6. It also provided some information in scope of points 7a and 8a, but refused to provide the remainder, citing section 36(2)(c). Similarly, the JAC provided some information in scope of points 7b and 8b, but refused to provide the remainder, citing section 36(2)(c).

With respect to point 9, the JAC stated that it does not hold all the requested information and that the information that is held is exempt from disclosure by virtue of section 40(2) (personal information). With respect to point 10, the JAC variously cited sections 21, 22 and 40(2) of FOIA.

It provided the information in scope of point 11.

The complainant requested an internal review on 5 July 2023.

Following an internal review, the JAC responded on 24 July 2023. It advised that most of the points made within the request for an internal review were, in fact, new requests for information and would be responded to as such. It maintained its application of section 36 in relation to point 7.

Complaint about request 2:

The complainant wishes to challenge the application of section 36 to refuse to provide the information in scope of Q7-8. They also wish to challenge the application of section 40(2) to the withheld information in scope of Q10.

Request 3

On 5 July 2023, the complainant made a further multi-point request. The JAC responded on 26 July 2023. It provided some information, denied holding of the requested information and refused to provide the remainder, citing sections 40(2) and 42.

The complainant requested an internal review on 9 August 2023. They subsequently made a further multi-point request for information on 28 September 2023.

Following an internal review, the JAC responded on 3 October 2023. While that response addresses the points raised in the correspondence of 9 August 2023, it does not address the new requests for information.

Complaint about request 3:

The complainant disputes that the JAC does not hold information relating to the circumstances in which the JAC's former chief executive retired (points 7 and 8).

Action required

It is your responsibility to satisfy us that you have complied with the law. [Our website](#) has guidance which you should refer to in order to check whether your original response to the information request was appropriate.

If, when reviewing this matter, you decide to change your response to the request, you may do so. If you decide to disclose some or all of the requested information to the complainant, please do so by 3 April 2024. This may enable the Commissioner to resolve the complaint informally.

If you decide to apply a new exemption, you should inform the complainant of your revised position and let me have answers to the questions in respect of the corresponding exemption, which can be found at:

[Key Questions for Public Authorities – Freedom of Information Act 2000 | ICO](#)

If you maintain that the exemptions were correctly applied, **please let me have a copy of the withheld information, preferably by email (if it has a security classification above 'Official Sensitive', please do not send it by Royal Mail)** and answer the relevant questions, as set out in the 'Key Questions' document referenced above.

In summary, your submission should address the reasons for withholding the following:

Request 1 - communication passing between the JAC and its legal advisers

Request 1 - details of the terms and conditions of employment of [REDACTED]

Request 2 - Information relating to the scoring framework and situational questions

Request 2 – documents withheld under section 42 on the basis that legal privilege outweighs the public interest in disclosure

Request 2 - information withheld under section 40(2) relating to the race, background and other characteristics of candidates

Request 3 - information about the circumstances relating to, and arising from, [REDACTED] having ended his employment with the JAC

Please also provide any background information that you consider provides context to the requests and responses.

We strongly recommend that your response is guided by recent decision notices, our guidance and our lines to take, which demonstrate our approach to the exemptions and procedural sections of FOIA. These can be found on our website:

- <http://search.ico.org.uk/ico/search/decisionnotice>
- <https://ico.org.uk/for-organisations/>

Please provide your response within **20** working days of the date of this letter, that is by 3 April 2024, ensuring that you set out fully your final position in relation to this request. If we do not hear from you we will consider issuing an Information Notice to compel you to respond, or issue a decision notice based on the information available to us.

If you have any concerns please contact me at icocasework@ico.org.uk (quoting reference **IC-267125-Q5P5**) or call me on [REDACTED]

Yours sincerely

[REDACTED]

We are often asked for copies of the correspondence we exchange with third parties. We are subject to all of the laws we deal with, including the Data Protection Act 2018 and the Freedom of Information Act 2000. You can read about these on our website (www.ico.org.uk). Please say whether you consider any of the information you send us is confidential. You should also say why. We will only withhold information where there is good reason to do so.

From: foia@judicialappointments.gov.uk
To: icocasework@ico.org.uk;
CC: foia@judicialappointments.gov.uk;
Subject: RE: ICO Case Reference - IC-267125-Q5P5
Direction: Incoming
Date Received: 04/04/2024 10:16

External: This email originated outside the ICO.

Morning [REDACTED]

My apologies, the timeline for this complaint and the other complaint from the same requester being investigated by [REDACTED] have been confused and as such, could I please request an extension until 11 April 2024 to respond to this request?

Kind regards,

[REDACTED]

| Judicial Appointments Commission | **M:**

www.judicialappointments.gov.uk | [LinkedIn](#) | [Twitter](#) |

From: icocasework@ico.org.uk
To: foia@judicialappointments.gov.uk;
CC:
Subject: Your email to the ICO - Case Reference IC-267125-Q5P5
Direction: Outgoing
Date Sent: 09/04/2024 08:41

9 April 2024

Case Reference: IC-267125-Q5P5

Dear [REDACTED]

Thank you for your email of 4 April 2024. I agree to your request for additional time and look forward to receiving your response by 11 April 2024.

Yours sincerely,

[REDACTED]

Information Commissioner's Office

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

T. [REDACTED] 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.

From: [REDACTED]@ico.org.uk
To: icocasework@ico.org.uk;
CC:
Subject: IC-267125-Q5P5
Direction: Incoming
Date Received: 15/04/2024 17:13

Hi [REDACTED]

Please see attached correspondence received via sift.

Many thanks

[REDACTED]

[REDACTED] – FOI Complaints and Compliance

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,
Cheshire SK9 5AF

T. [REDACTED] 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](#).

Email

Deadline Extensions

Regarding

Worked By

Status Reason

R...



Activity Marker



E... Direction



I...



Email

From

foia@judicialappointments.gov.uk

To

ICO Casework

Cc

foia@judicialappointments.gov.uk

Subject

Deadline Extensions

Display Name

Date Received

12/04/2024 09:49

Email Address

"FOIA" FOIA@judicialappointments.gov.uk

External: This email originated outside the ICO.

Good morning [REDACTED] and [REDACTED]

RE: IC-278867-L1C2 and IC-267125-Q5P5

- Please accept my apologies that the JAC have had to delay our response to these investigations.

We had hoped to be able to meet the deadline of 11 April 2024. However, our lawyers are currently reviewing our response drafts.

I apologise for any inconvenience caused and will update you as soon as the lawyers return. We expect this to be today or early next week.

Kind regards,

[REDACTED] | Judicial Appointments Commission |
M: [REDACTED]
www.judicialappointments.gov.uk | [LinkedIn](#) | [Twitter](#) |



From: icocasework <icocasework@ico.org.uk>
Sent: 09 April 2024 08:41
To: FOIA <FOIA@judicialappointments.gov.uk>
Subject: Your email to the ICO - Case Reference IC-267125-Q5P5

9 April 2024

Case Reference: IC-267125-Q5P5

Dear [REDACTED]

Thank you for your email of 4 April 2024. I agree to your request for additional time and look forward to receiving your response by 11 April 2024.

Yours sincerely,

[REDACTED]
Information Commissioner's Office

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

T. [REDACTED] 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.

----- Original Message -----

External: This email originated outside the ICO.

Morning [REDACTED]

My apologies, the timeline for this complaint and the other complaint from the same requester being investigated by [REDACTED] have been confused and as such, could I please request an extension until 11 April 2024 to respond to this request?

Kind regards,

[REDACTED] | Judicial Appointments Commission |

M: [REDACTED]
www.judicialappointments.gov.uk | [LinkedIn](https://www.linkedin.com/company/judicialappointments) | [Twitter](https://twitter.com/judicialappointments) |



From: icocasework <icocasework@ico.org.uk>
Sent: 04 March 2024 16:15
To: FOIA <FOIA@judicialappointments.gov.uk>
Subject: ICO Case Reference - IC-267125-Q5P5

4 March 2024

Case Reference: IC-267125-Q5P5

Dear JAC

We have received a complaint about your handling of a number of requests from information from the same complainant, which are being handled under this one case reference.

Please see my attached correspondence.

Yours sincerely

[Redacted signature]

Information Commissioner's Office

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF

T. [Redacted] F. [Redacted] ico.org.uk twitter.com/iconews

Please consider the environment before printing this email

Please be aware we are often asked for copies of the correspondence we exchange with third parties. We are subject to all of the laws we deal with, including the data protection laws and the Freedom of Information Act 2000. You can read about these on our website (www.ico.org.uk). Please say whether you consider any of the information you send us is confidential. You should also say why. We will withhold information where there is a good reason to do so.

For information about what we do with personal data see our privacy notice at www.ico.org.uk/privacy-notice

This e-mail and any attachments is intended only for the attention of the addressee(s). Its unauthorised use, disclosure, storage or copying is not permitted. If you are not the intended recipient, please destroy all copies and inform the sender by return e-mail. Internet e-mail is not a secure medium. Any reply to this message could be intercepted and read by someone else. Please bear that in mind when deciding whether to send material in response to this message by e-mail. This e-mail (whether you are the sender or the recipient) may be monitored, recorded and retained by the Ministry of Justice. Monitoring / blocking software may be used, and e-mail content may be read at any time. You have a responsibility to ensure laws are not broken when

ATTACHMENTS

File Name	Followed	File Size (Byte...
-----------	----------	--------------------



image001.jpg	No	11,379
1 - 1 of 1 (0 selected)		
		Page 1

and their contents.

From: [REDACTED]@judicialappointments.gov.uk
To: icocasework@ico.org.uk;
CC:
Subject: FAO [REDACTED] Case Reference: IC-267125-Q5P5
Direction: Incoming
Date Received: 16/04/2024 12:09

External: This email originated outside the ICO.

Good morning [REDACTED]

Apologies for the delay with which this response finds you.

Herewith our response to the ICO investigation, the requested withheld information and the clarification letter that will be sent to the requester.

Please do let me know if I can provide any further information to assist with your investigation.

Kind regards,

[REDACTED] | Judicial Appointments Commission | M:
www.judicialappointments.gov.uk | [LinkedIn](#) | [Twitter](#) |

This e-mail and any attachments is intended only for the attention of the addressee(s). Its unauthorised use, disclosure, storage or copying is not permitted. If you are not the intended recipient, please destroy all copies and inform the sender by return e-mail. Internet e-mail is not a secure medium. Any reply to this message could be intercepted and read by someone else. Please bear that in mind when deciding whether to send material in response to this message by e-mail. This e-mail (whether you are the sender or the recipient) may be monitored, recorded and retained by the Ministry of Justice. Monitoring / blocking software may be used, and e-mail content may be read at any time. You have a responsibility to ensure laws are not broken when composing or forwarding e-mails and their contents.



Judicial Appointments Commission
5th Floor
Clive House, 70 Petty France
London
SW1H 9EJ

<https://www.judicialappointments.gov.uk>

Official Sensitive

[REDACTED]

[REDACTED]

16 April 2024

Dear [REDACTED]

Thank you for your email dated 4 March 2024 in which you set out the parameters of your Information Commissioner's Office (ICO) investigation.

I confirm that I have reinvestigated the Freedom of Information (FOI) requests and the subsequent Internal Review (IR) requests submitted by [REDACTED] for which this ICO investigation refers to. I will refer to the requests in the order they were laid out in your investigation.

Request 1:

I have investigated the response to the initial FOI, as well as the internal review and I am confident that the JAC have applied section 42 correctly in this instance.

In the initial FOI response, following the application of the section 42 exemption, considerations both supporting and opposing the disclosure of information were outlined. The public interest in transparency was acknowledged but the importance of protecting legal professional privilege, crucial for organisations to seek and receive legal advice freely was emphasised. It was argued that disclosure could prejudice the organisation's legal interests and hinder fully informed decision-making.

The IR emphasised the need for a secure space for the JAC to obtain legal advice and highlighted that the information in question was privileged, releasing it could undermine this principle. It noted that the protection of legal privilege serves the administration of justice, ensures frank communication between lawyer and client, and helps in efficient handling of legal matters. The internal review concluded that there was no wider public interest in releasing the information, and the response adhered to the Freedom of Information Act (FOIA).

I would also add that legal entitlement to free and frank legal advice persists irrespective of the Qualified Person authorisation status, and that there is no time limit on the use of legal professional privilege. Please find attached the withheld information for the purposes of your investigation [REDACTED]

In relation to the request for details of the terms and conditions of employment of [REDACTED] the initial FOI response found that the JAC is not obliged, under section 40(2) of the Act, to provide information that is the personal information of another person if releasing would contravene any of the provisions in the Data Protection Act 1998 (DPA). The JAC found that the release of this information would contravene the first data protection principle and therefore section 40(2) is engaged. It was also confirmed that a Public Interest Test would not apply to this exemption.

The IR stated that Section 40(2) and section 40(3A)(a) of the FOIA taken together mean that personal data can only be released if to do so would not contravene any of the principles set out in Article 5(1) of the General Data Protection Regulation (GDPR) and section 34(1) of the Data Protection Act 2018. The IR response further emphasised that individuals have a clear and strong expectation that their personal data will be held in confidence and not disclosed to the public under the FOIA.

Although s.40 is an absolute exemption, the internal reviewer considered whether there is a wider public interest in disclosing this personal information, that would override the fundamental rights of those concerned. It was concluded that releasing the information has the potential to cause both harm and distress to the individual and the reviewer saw no wider public interest in the information requested at this point being provided. The IR also noted that this individual has a reasonable expectation that this information would be kept private and not provided to the wider public. The nature of this disclosure would likely cause both damage and distress to the individual concerned and outweighs any legitimate interests in disclosure.

The IR response also referred to the requester's link between the requested information and similar information that was published in relation to the Chief Executive of the JAC. It was explained that the Civil Service has an established practice of releasing the salary bandings of Senior Civil Servants, and the Chief Executive of the JAC would have been aware when entering into the role that these details would be published in the JAC Annual Report. The individual referred to in the request would have had no such expectation upon entering into their terms of employment and there is no such precedent within the JAC for releasing this information.

I, therefore, conclude that the JAC applied the exemption at section 40(2) correctly. Please find attached a copy of the withheld information for your investigatory purposes [REDACTED]

Request 2:

The initial FOI response to this request at points 7a&b and 8a&b considered that the requested information is exempt from disclosure under section 36(2)(c) of the act, as, in a qualified person's reasonable opinion the release of this information would otherwise prejudice or would be likely otherwise to prejudice the effective conduct of

public affairs. This is because there is a good likelihood that the information requested, ie the situational questions, specimen answers and scoring framework, may be used or referred to, in part or full, in future judicial appointment exercises. Disclosure of this information would not allow that to happen.

The FOI response also confirmed that as section 36(2)(c) is subject to the Public Interest Test (PIT), the FOI responder considered whether in the circumstances the public interest in maintaining the exception outweighs the public interest in disclosing the withheld information. The response appreciated that there is a public interest in transparency. However, it concluded that disclosing the information would not be in the public interest as it would mean that such material could not be used to assist future exercises, thus placing additional burdens on judicial resource who are key in producing such information. Therefore, the public interest test is not met as it has the potential to be detrimental to the judicial appointment process.

A subsequent IR supported the initial FOI and stated that it had consulted the ICO guidance on the subject. It found that whilst there might be interest to the public in the publication of the requested information, at this point, there is a more overriding public interest in that the disclosure of this information would mean the information would be in the public domain and potentially available to all future applicants. This would mean the JAC would not be able to rely upon this information for any future use. It would also lead to additional replacement questioning needing to be created, drawing upon judicial resources to do so. Furthermore, releasing questioning information could create a situation where candidates merely learn how to answer questions, rather than possess the prerequisite knowledge which the public might expect from members of the judiciary. It was, therefore, found that the PIT was correctly applied.

Having thoroughly re-investigated the FOI and IR response, I find that the JAC responded to the requester correctly in their application of section 36(2)(c). For your investigatory purposes, I include the material which was considered exempt under s36(2)(c) [REDACTED]

In reference to the request at point 10 of this FOI and in relation to the information requested for those from a 'BAME background' on the number of applicants and those recommended for appointment by the JAC, the initial FOI stated that the information for 024 Deputy High Court Judge (DHCJ) is exempt under Section 21 of the FOI Act as it is information that is already accessible to the requester. The FOI response confirmed that the JAC publishes annual statistics in July, and the details about this exercise were included in the statistical report that was published in July 2022. A link was provided to the data on the JAC website and an explanation of how to access the data was provided.

For the remaining DHCJ exercises that fell within the requested time period (086 and 0131), in relation to those from a 'BAME background', the FOI response explained that this information is exempt from disclosure under Section 22 of the FOI Act, as this information was intended for future publication, in line with the JAC annual statistical data. That data for the DHCJ 086 selection exercise has now been

published and can be viewed at the following link:

For the eligible Specialist Circuit Judge exercise (092), the requested information for those from a 'BAME' background was included in the 2022 Combined Statistical Report. However, as the number of applications and recommendations were less than 10, details of diversity are not provided as such information is considered exempt from disclosure under Section 40(2) of the FOI as the information contains personal data that could be identified due to the small number of applicants.

A subsequent IR provided further assistance on how to access the requested information on the excel spreadsheet which was signposted to in the initial FOI response and provided answers to further requests that were made in the internal review request.

[illegible]

Please note that based on a review of the applicable data with analytical colleagues that the JAC intend to adjust their position and issue a clarification response to the requester to provide the number of LGB applicants in the 024 and 086 DHCJ selection exercises. Please note that the number of LGB recommendations will not be disclosed, this is because the identities of individuals appointed to these roles are usually made public, and therefore there is an increased risk of identification from providing these figures.

content to share the figures in the format requested after the publication date.

Please note that our position remains unchanged in relation to the LGB data on the 092 Specialist Circuit Judge selection exercise as the number of applications and recommendations were less than 10, details of diversity are not provided as such information is considered exempt from disclosure under Section 40(2) of the FOI as the information contains personal data that could be identified due to the small number of applicants.

Request 3:

In the investigation that the ICO have set out, it is stated that the requester's complaint at Request 3, is in relation to points 7 and 8. I have been unable to link these points with the investigation as set out. Instead, I think that the ICO may be referring to points 3(d) and 3(e). Please do let me know if this is incorrect and I will revisit the request.

At points 3(d) and 3(e), the initial FOI response from the JAC stated that [REDACTED] formally retired as Chief Executive of the JAC from 30 June 2023 and that this was published in the JAC's Annual Report, for which a link was provided. It was confirmed that the JAC holds no further information regarding notification of [REDACTED] retirement, including any letter of resignation or retirement. It was noted that if the JAC did hold such information that the request would likely be refused on the grounds that it is exempt under section 40(2) of the FOIA, because it contains personal data.

The IR response supported the position of the initial FOI and confirmed that the position of Chief Executive Officer of the JAC is not for a limited or a fixed period, therefore [REDACTED] retired before any such term ended. The IR also stated that 'any documents pertaining to discussion of the retirement, either via email, HR records or texts' of [REDACTED] were exempt from disclosure under section 40(2) of the FOIA, because it contains personal data.

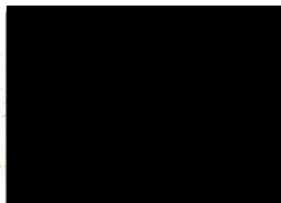
Although section 40 is an absolute exemption, I have considered whether there is a wider public interest in disclosing this personal information, that would override the fundamental rights of those concerned. I believe that releasing this information has the potential to cause both harm and distress to the individual and I see no wider public interest in this information being provided. It is also my view that this individual has a reasonable expectation that this information would be kept private and not provided to the wider public. The nature of this disclosure would likely cause both damage and distress to the individual concerned and outweighs any legitimate interests in disclosure.

Please find attached the withheld information for your investigatory purposes

[REDACTED]

Finally, in your investigation letter at Request 3, it was stated that the JAC did not respond to the requester's FOI request of 28 September 2023. As you know, the JAC did respond to this request on 8 November 2023 and an ICO Appeal investigation is currently underway into this FOI response and subsequent IR.

Yours sincerely,

A large black rectangular redaction box covering the signature area.A black rectangular redaction box covering the name area.

E [REDACTED]

M [REDACTED]

<https://www.judicialappointments.gov.uk>

Personal

[REDACTED]
Via e-mail: [REDACTED]

16 April 2024

Dear [REDACTED]

In your Freedom of Information (FOI) request of 5 June 2023, you asked for the following information at point 10 in relation to the Deputy High Court Judge selection exercises for 2021, 2022, 2023 and the Specialist Circuit Judge selection exercises held in 2021, 2022 and 2023:

- 10. Please provide information about how many individuals from a BAME background or identifying as lesbian, gay or bisexual in respect of the selection exercises referred to above:*
- a. applied to be appointed to the positions specified in respect of the above selection exercises.*
 - b. were appointed to those positions.*

The initial JAC response to your request at point 10 stated the following:

For Deputy High Court exercise No. 024, in relation to diversity information on the number of applicants and those recommended for appointment by the JAC, this information is exempt under Section 21 of the FOI Act as it is information that is already accessible to you. The JAC publishes annual statistics, normally in July, and the details about this exercise was included in the statistical report that was published in July 2022. This is available on our website. If you go to the tables entitled "Judicial diversity tables", tab 2.1 provides a top level summary of all the JAC exercises that are reported in that year. Tab 2.2 provides further detail of each specific exercise that can be reported. If you go into cell B2, there is a drop down menu that allows you to chose the exercise you require, including this specific exercise.

For Deputy High Court exercises 086 and 0131, in relation to diversity information, this information is exempt from disclosure under Section 22 of the FOI Act, as this information is intended for future publication, in line with the JAC annual statistical data, the next publication being in late July 2023.

For Specialist Circuit Judge exercise (no. 092) this information was included in the 2022 Combined Statistical Report. However as the number of applications and recommendations were less than 10, details of diversity is not provided as such is exempt from disclosure under Section 40(2) of the FOI as the information contains personal data, as should be treated a third-party request under GDPR rules.

In relation to the second part of your request, details of candidates identifying as lesbian, gay or bisexual for the relevant exercises, this information is exempt under section 40(2) of the FOI as the information contains personal data, which could be identifiable as the numbers are small.

While the JAC does not provide such information for any specific exercises, the Combined Statistical Report does provide details of sexual orientation of applicants for all exercises in tab 2.2.

A subsequent internal review response dated 24 July 2023 stated:

Points 9 & 10

Here, I note you refer to three points, but you only refer to a & b, our response is:

a. I have visited the statistical section of our website and have downloaded and checked the information contained within the spreadsheet. I can confirm that a 'drop-down menu' is available from cell B1 in tab 2.2. The cell in question is highlighted red and is titled 'Legal exercises completed in 2022/23'. You may firstly need to ensure you have correctly downloaded the spreadsheet and have enabled editing. However, I am satisfied the 'drop down' is present.

b. This information is already available to you, however to assist I refer you to both the commentary for the diversity statistics and the accompanying user guide.

I was not involved in the handling of your request at FOI or internal review stage. However, following your escalation of this request to the Information Commissioner's Office, I have reviewed your initial FOI request as well as the applicable data and the subsequent internal review response in relation to point 10.

Previously, exercise-level data relating to sexual orientation for the requested exercises was not provided to you, due to concerns that doing so would risk the identification of individuals, owing to the small numbers involved, and this would be in breach of our statutory obligations under the General Data Protection Regulation and/or the Data Protection Act. Data relating to sexual orientation is only published in JAC statistics on an aggregated basis, rather than for individual exercises, partly for this reason. However, having reflected further on the risks involved, and having consulted analytical colleagues responsible for producing the JAC's statistics, I am now of the opinion that the risk of identification associated with publishing the numbers of applicants identifying as Lesbian, Gay or Bisexual (LGB) is minimal for two Deputy High Court Judge exercises requested (JAC0024 and JAC00086). Therefore, please find the requested information in a table at Annex A.

In relation to providing the requested information for the third Deputy High Court Judge exercise (JAC00131) that fell within the scope of your request, I can confirm that the JAC do hold this information. However, it is exempt from disclosure under section 22(1) of the FOIA, because it is intended for future publication as part of the aggregated statistics on sexual orientation. The JAC would be happy to provide you with the information for this specific exercise as requested following the publication date. The expected publication date is 11 July 2024 at 09.30. This can be viewed at the following link: <https://www.gov.uk/government/statistics/announcements/diversity-of-the-judiciary-2024-statistics>.

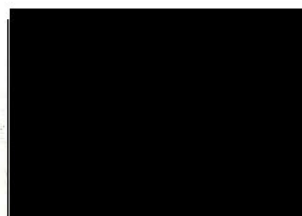
Section 22 is a qualified exemption and therefore the JAC must consider whether the public interest in maintaining the exemption is greater than the public interest in disclosing the requested information. Having considered the arguments for and against disclosure of the requested information, I find that premature publication could likely undermine the principle of making the information available to all at the same time through the official publication process.

In considering the risk of identification of individuals we also need to take account of the pool of potential applicants for a particular exercise and the risk that combining sources of data might increase the risk of identification. For the remaining requested exercise falling within the scope of your request (JAC00092 Specialist Circuit Judge), having considered these factors I judge the risk of identification to be too great.

Unfortunately, I am still not able to provide the number of LGB recommendations for each exercise, since the identities of individuals appointed to these roles are usually made public, and therefore there is an increased risk of identification from the figures. These figures are therefore suppressed in the tables below, as indicated by an asterisk.

The JAC response to the request at points 7a, 7b, 8a and 8b remains unchanged. The ICO will complete their investigation and inform both you and the JAC of the outcome in due course.

Yours sincerely,



[REDACTED]

Deputy High Court Judge and Specialist Circuit Judge exercises for 2020, 2021, and 2022
(Lesbian, Gay or Bisexual Applicants/Recommended)

Ex Ref	Exercise Name	Reporting Year	LGB Applicants	LGB Recommended
JAC00024	s9(4) Deputy High Court Judge	2021-22	21	*
JAC00086	s9(4) Deputy High Court Judge	2022-23	14	*

Data source: Judicial Appointments Commission (Digital Platform).

Notes: * data suppressed due to risk of identification

From: [REDACTED]@judicialappointments.gov.uk
To: icocasework@ico.org.uk;
CC: foia@judicialappointments.gov.uk;
Subject: FAO [REDACTED] Case Reference: IC-267125-Q5P5
Direction: Incoming
Date Received: 16/04/2024 12:12

External: This email originated outside the ICO.

Good morning [REDACTED]

Apologies for the delay with which this response finds you.

Herewith our response to the ICO investigation, the requested withheld information and the clarification letter that will be sent to the requester.

Please do let me know if I can provide any further information to assist with your investigation.

Kind regards,

[REDACTED] | Judicial Appointments Commission | **M:**
www.judicialappointments.gov.uk | [LinkedIn](#) | [Twitter](#) |

This e-mail and any attachments is intended only for the attention of the addressee(s). Its unauthorised use, disclosure, storage or copying is not permitted. If you are not the intended recipient, please destroy all copies and inform the sender by return e-mail. Internet e-mail is not a secure medium. Any reply to this message could be intercepted and read by someone else. Please bear that in mind when deciding whether to send material in response to this message by e-mail. This e-mail (whether you are the sender or the recipient) may be monitored, recorded and retained by the Ministry of Justice. Monitoring / blocking software may be used, and e-mail content may be read at any time. You have a responsibility to ensure laws are not broken when composing or forwarding e-mails and their contents.

From: foia@judicialappointments.gov.uk
To: icocasework@ico.org.uk;
CC: foia@judicialappointments.gov.uk [REDACTED]@judicialappointments.gov.uk;
[REDACTED]@judicialappointments.gov.uk;
Subject: FAO [REDACTED] Case Reference: IC-267125-Q5P5
Direction: Incoming
Date Received: 17/04/2024 13:53

External: This email originated outside the ICO.

Good afternoon [REDACTED]

In a bid to assist the investigation, I mistakenly shared information which was out of scope in relation to the s42 withheld information at Request 1.

Please find attached the correct document.

Happy to discuss further.

Kind regards,

[REDACTED] | Judicial Appointments Commission | **M:**
www.judicialappointments.gov.uk | [LinkedIn](#) | [Twitter](#) |

From: [REDACTED]@judicialappointments.gov.uk>
Sent: 16 April 2024 12:07
To: icocasework <icocasework@ico.org.uk>
Cc: FOIA <FOIA@judicialappointments.gov.uk>
Subject: FAO [REDACTED] Case Reference: IC-267125-Q5P5

Good morning [REDACTED]

Apologies for the delay with which this response finds you.

Herewith our response to the ICO investigation, the requested withheld information and the clarification letter that will be sent to the requester.

Please do let me know if I can provide any further information to assist with your investigation.

Kind regards,

[REDACTED] | Judicial Appointments Commission | **M:**

This e-mail and any attachments is intended only for the attention of the addressee(s). Its unauthorised use, disclosure, storage or copying is not permitted. If you are not the intended recipient, please destroy all copies and inform the sender by return e-mail. Internet e-mail is not a secure medium. Any reply to this message could be intercepted and read by someone else. Please bear that in mind when deciding whether to send material in response to this message by e-mail. This e-mail (whether you are the sender or the recipient) may be monitored, recorded and retained by the Ministry of Justice. Monitoring / blocking software may be used, and e-mail content may be read at any time. You have a responsibility to ensure laws are not broken when composing or forwarding e-mails and their contents.