

27 June 2024

Case Reference IC-308265-V6X2

Your request

You asked us for the following:

"Please could you supply reports sent to the Commissioner at the conclusion of any PACE projects.

Please could you also supply the business case for the role of Director of Legal Service."

Where your questions satisfy the criteria of a valid information request, we have considered your request under the Freedom of Information Act 2000 (FOIA).

Our response

Please find attached copies of summary reports sent to the Commissioner at the conclusion of PACE projects. There are three such reports covering:

- Fertility Apps [More information has been disclosed in response to another request here [IC-308094-Z0S7 | ICO](#)]
- Electronic Monitoring of Migrants
- Tracing Agents

You will see that redactions have been made to some of the information recorded on the Fertility Apps summary report.

This information has been withheld under the exemptions at sections 31 and 44 of the FOIA. We explain this in further detail below. We hope the information we have been able to provide is helpful to you.

Please also find attached a 'request to recruit' form for the Director of Legal Services, which is the nearest information we hold that constitutes a "business case" for the recruitment of the role. This too is subject to redaction relying on section 31.

FOIA section 31

Some of the information is exempt from disclosure under section 31(1)(g) of the FOIA. This is an exemption relating to information

which, if disclosed, would or would be likely to cause prejudice to our ability to regulate the laws we oversee. Specifically, the exemption at section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information:

“would, or would be likely to, prejudice – ... the exercise by any public authority of its functions for any of the purposes specified in subsection (2).”

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state:

“(a) the purpose of ascertaining whether any person has failed to comply with the law” and

“(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ...”

Clearly, these purposes apply when the Information Commissioner is considering whether or not data controllers have met their obligations in respect of data protection legislation.

The exemption at section 31 is not absolute, and we must therefore consider the prejudice or harm which may be caused by disclosure of the information you have sought, as well as applying a public interest test by weighing up the factors in favour of disclosure against those in favour of maintaining the exemption.

We find that disclosure of the information redacted from the PACE project summary would be likely to prejudice our ability to conduct investigations in the future. The redacted information contains detailed information about our investigatory process and about our engagement with specific named apps. Disclosure of this information would be likely to damage our relationship with data controllers and would reveal information that data controllers could use to evade our regulatory powers.

The information redacted from the recruitment business case would, if it were disclosed, reveal information which may be used by subjects of ICO enforcement action to mitigate or avoid such action and therefore would likely prejudice our ability to enforce the legislation we regulate.

The public interest factors in disclosing this information are:

- Transparency in the way we have carried out our investigation;

- Transparency in the way apps have responded to our enquiries;
- The public interest in assisting with research in an area of interest to the wider public.
 - Transparency in the way the ICO recruits its staff.

The public interest factors in withholding the information are:

- It is important that we maintain the trust of organisations when engaging with us on investigations such as this one;
- There is public interest in organisations feeling like they can be open and honest with us without fear their comments will be made public;
- The public interest in not revealing the specific investigatory approach we took and tools that are available to us. Knowledge of this information could lead organisations to evade future investigations.
 - The public interest in safeguarding the ICO's ability to enforce the legislation it regulates.

Having considered these factors we have taken the decision that the public interest favours disclosure.

FOIA section 44 (& DPA s132)

Information provided to us by external stakeholders has been withheld under the provisions of section 44 of the FOIA which places prohibitions on disclosure. This exemption is an absolute exemption, which does not require a consideration of the public interest test of the type required by the qualified exemptions.

Section 44(1)(a) of the FOIA states;

'(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it –

(a) is prohibited by or under any enactment'

The enactment in question is the Data Protection Act 2018 and specifically section 132(1) of part 5 of that Act. This states that:

"A person who is or has been the Commissioner, or a member of the Commissioner's staff or an agent of the Commissioner, must not disclose information which—

(a) has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions,

(b) relates to an identified or identifiable individual or business,
and

(b) is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources, unless the disclosure is made with lawful authority.”

Section 132(2) lists the circumstances in which a disclosure can be made with lawful authority, however we find that none of them apply here. As a result the information is exempt under the FOIA and withheld from our response.

This concludes our response.

We hope you find this information helpful.