

7 October 2024

IC-329668-J6D2

## **Request**

On 3 September 2024 you made the following request to the ICO:

*Please provide copies of all correspondence between the ICO/Commissioner and the ICO Sponsorship and Regulatory Policy Team of the Department for Science, Innovation and Technology on the current data protection fee regime and the need for change.*

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

## **Response**

We hold information that falls within scope of your request. Please note that this information falls within correspondence that covers a range of topics other than the current fee regime and the need for change. Therefore we have provided only the relevant extracts alongside the dates and details of recipients.

Some information has been withheld and where this falls within the attached bundle, each redacted section has been labelled with the exemption used to withhold it. Further details are also provided below.

## **Information withheld – FOIA Section 40**

Personal data belonging to some DSIT staff has been withheld in accordance with Section 40(2). Disclosure of this data would break the first principle of data protection - that personal data is processed lawfully, fairly and in a transparent manner.

There is no strong legitimate interest that would override the prejudice that disclosure would cause to the rights and freedoms of the individuals concerned. So we are withholding the information under section 40(2) of the FOIA.

### **Information withheld – FOIA Section 31**

We have withheld two internal email addresss under section 31(1)(g) of the FOIA. We can do this when 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):

*" 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."*

Misuse of internal email addresses that exist to support ICO staff would likely prejudice our ability to perform our regulatory functions. Disclosure would leave us vulnerable to phishing or other cyber-attacks, spam, or an increased volume of irrelevant correspondence which it would take us time to process.

There are other channels that the public can use to contact us, and they are publicly available via [our website](#).

The exemption at section 31(1)(g) is not absolute. When considering whether to apply it in response to a request for information, there is a 'public interest test'. We have to consider whether the public interest favours withholding or disclosing the information.

In this case the public interest factor in favour of disclosing the information is:

- Increased transparency in the way in which the ICO conducts its operations.

The public interest factors in maintaining the exemption are as follows:

- Internal email addresses being used inappropriately will reduce the effectiveness and efficiency of our regulatory functions.

- The information of primary relevance to your request is not affected by the redaction of our internal email addresses.
- The public interest in transparency is met by the public provision of other more appropriate means of contacting us.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

### **Information withheld – FOIA Section 36**

Some information has been withheld in accordance with Section 36 of the FOIA.

Section 36 provides that –

*"Information to which this section applies is exempt information if in the reasonable opinion of a qualified person disclosure of the information under this Act—*

*(b) would, or would be likely to, inhibit—*

*(i) the free and frank provision of advice, or*

*(ii) the free and frank exchange of views for the purposes of deliberation"*

And:

*(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."*

Section 36 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

We have sought the opinion of our qualified person, the Information Commissioner, who considered the specific and detailed arguments which we are unable to replicate in full in our response.

However, in summary, we consider that disclosure would inhibit the free and frank exchange of views in future discussions about this and related topics, and be harmful to our relationships with relevant stakeholders more broadly, including those who may be impacted by changes to the current fee regime. The matter is still considered to be ongoing at this stage and the public consultation

on the proposed changes to the fee structure has only just ended at the time of writing.

There is a strong public interest in transparency in relation to discussions about the current fee regime and the need for change. This would lead to wider scrutiny of this topic, the considerations involved and the parties involved, which is in the public interest.

However, there is also a strong public interest in the ICO being able to discuss this matter openly with DSIT, and disclosure of information at this stage would reduce the level of candour in future consultations. If free and frank exchange of views is inhibited, ongoing work in this area may be disrupted, including flexibility to consider different options, and the timeliness and effectiveness of any relevant decision making.

There is also a public interest in the ICO maintaining effective relationships with DSIT and those we regulate, which includes data controllers impacted by any changes to the fee regime. Some information about this topic is still under consideration and may be subject to change. As a result, disclosure at this time, would be likely to harm our relationships with stakeholders, who would also be adversely affected by the disruption mentioned above.

It is also worth noting that the ICO has a demonstrable history of sharing information about our work, when it is appropriate to do so. [The ICO's response to the DSIT consultation](#) forms part of that commitment and goes some way to satisfying the public interest in this area.

We consider that the public interest falls in favour of withholding some of this information and the relevant sections are marked accordingly in the attached bundle. Where we consider that the balance of the public interest favours disclosure in regards to section 36 of the FOIA, we have provided the information in this response.

This concludes our response to your request.

## **Next steps**

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full [review procedure](#) on our website.

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint](#) through our website.

## Your information

Our [privacy notice](#) explains what we do with the personal data you provide to us, and sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely



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