

10 January 2025

**Case reference: IC-350947-COW7**

We are now in a position to respond to your information request of 13 December.

**Request**

You asked us for the following:

"I note: "The Commissioner is issuing a Practice Recommendation at this time rather than, for example, an Enforcement Notice because Staffordshire Police has engaged openly with his office about the procedural problems it has faced. The overall backlog of overdue requests is also smaller than that of some equivalent police forces."

Please could you provide me the information you hold for each police constabulary that has been the subject of such attention and a copy of any notice/recommendation sent to them. I do not know the extent of this problem or how you hold the information, and therefore am reluctant to seek more information being concerned this may exceed cost."

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

**Our response**

We understand your request to be about the ICO's engagement with police forces as regulator on their compliance with responding to FOIA requests, as referenced in the practice recommendation to [Staffordshire Police](#). We have interpreted this to be engagement at a higher level than individual FOIA complaint cases.

We have issued FOIA enforcement notices to the following police forces in the last 12 months.

City of London  
Surrey  
Devon and Cornwall  
South Wales  
Dyfed Powys  
Metropolitan Police Service  
South Yorkshire

Sussex  
Greater Manchester

We have issued practice recommendations to the following police forces in the last 12 months.

Chief Constable of Dorset Constabulary  
Staffordshire

These enforcement notices and practice recommendations are available on our FOI regulatory action webpage [here](#).

The names of police forces that we have engaged with at this level, but where we have not issued an enforcement notice or practice recommendation, is being withheld under section 31 of the FOIA. We are also withholding the information we hold on this engagement work, including the police forces published on our website, under sections 31 and 44 of the FOIA. Further detail on these exemptions is provided below.

We have previously disclosed some information regarding our engagement with Staffordshire Police on this issue on our disclosure log, see [IC-304162-R2Y2](#) and [IC-311973-Z7J1](#).

The completed FOIA complaints we have received about police forces can be found on our casework datasets [here](#). These are available up to quarter 2 of 2024/25 and include the nature of the complaint (decision primary reason) and case outcome. Datasets for quarter 3 onwards will be published in due course.

The published information within scope of your request is technically withheld under section 21 of the FOIA, which explains that we are not required to provide information in response to a request if it is already reasonably accessible to you from another source.

## **Section 31 FOIA**

Section 31(1)(g) of the FOIA states:

"Information... is exempt information if its disclosure under this Act would, or would be likely to, prejudice – (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2)"

The purposes referred to in sections 31(2)(a) and (c) are:

- a. the purpose of ascertaining whether any person has failed to comply with the law
- c. the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise.

The purposes at section 31(2)(a) and (c) apply when a regulator is determining whether or not there has been a breach of relevant legislation, and whether any further action is appropriate.

The exemption at section 31 is not absolute, and we need to consider the public interest test by weighing up the factors for and against disclosure of the information we hold, as well as any prejudice or harm which may be caused by disclosure.

To release this information would be likely to prejudice the ICO's ability to conduct its investigations fairly and in an appropriate manner. The information gathered by the ICO during our enquiries, if disclosed, would likely discourage organisations from fully engaging with us as regulator.

We have taken into account the factors that would, in our view, impact on the release of the information. We have considered the public interest test for and against disclosure.

In this instance, the public interest factors in favour of disclosure are:

- Openness and transparency in the way the ICO conducts its enquiries as regulator into the compliance of organisations with the FOIA.
- The understandable interest of the public in being able to see the precise nature of the matters under consideration.

The public interest factors in favour of maintaining the exemption are:

- The need for the ICO to continue to encourage organisations to engage with the ICO as regulator.
- To allow the ICO to maintain the trust and confidence of organisations by affording the information obtained an appropriate level of confidentiality.
- Allowing us a 'safe space' in which to consider the information provided, free from external influence, and to ensure the confidentiality of enquiries undertaken and analysis of the matters raised.
- Disclosure of information that is the subject of regulatory action could undermine the effectiveness of that process, and our ability to pursue regulatory action in the future.

- The ICO has a demonstrable history of sharing information about our enforcement and regulatory activities, including details of our findings, when it is appropriate to do so and in line with our Communicating our regulatory and enforcement activity [policy](#). We publish information about our FOI regulatory action on our website.

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, and the information is exempt from disclosure under S31(1)(g) of the FOIA.

## **Section 44 FOIA**

Section 44 is an absolute exemption which means that information can be withheld without further consideration if other legislation prevents its release, if it meets certain conditions, and if none of the circumstances that would give us lawful authority to release it apply.

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’

In this case, the Data Protection Act 2018, Part 5, Section 132 prohibits the disclosure of confidential information that –

- 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
- c. 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.

We do not have lawful authority to disclose the information provided to us by these organisations as it was given in confidence.

Section 132(3) imposes a criminal liability on the Commissioner and his staff not to disclose information relating to an identifiable individual or business for the purposes of carrying out our regulatory functions, unless we have the lawful authority to do so or it has been made public from another source.

This concludes our response to your request. We hope you found this information helpful.

## **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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**For information about what we do with personal data see our [privacy notice](#)**