

16 January 2025

Internal Review: IC-337526-R5H7

I write further to your email of 20 December 2024, in which you requested an internal review of our response to your information request, which we handled under the above case reference number.

I am a Senior Information Access Officer in the Information Access Team at the ICO. I have been asked to review the way we handled your request for information. I can confirm that I have had no prior involvement in the handling of this request.

Request

You requested the following information:

"Please provide all the recorded information on the dealing of the case IC-315964-Y6R0? I dont believe youve made the necessary searches. Please confirm who was contacted, names and job titles and when."

Some of this information was withheld in accordance with Section 31 of the FOIA, and other information was withheld in accordance with Section 40(2).

You have raised the following concerns about our response:

"I think your arguements for withholding are weak and a blanket approach taken on section 31 exemption."

Review

In line with your internal review request, this review will focus on the exemptions applied by the request handler, and the reasoning provided.

I note that an internal email address has been withheld in accordance with Section 31. Section 31 is a prejudice-based exemption, and according to [our guidance about this](#), the following three questions should be considered.

- Which law enforcement interest(s), protected by section 31, could be harmed by the disclosure?
- Is the harm you have identified real, actual or of substance and is there a causal link between disclosure and that harm?
- What is the likelihood of that harm actually occurring: would it occur, or is it only likely to occur?

In relation to the first question, I can see that the request handler has relied upon Section 31(1)(g), which refers to information that:

“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.”

In relation to the second question, the request handler has explained that disclosure of the internal email address would leave the ICO vulnerable to spam, phishing and other irrelevant correspondence. This would create disruption to those who manage the inbox associated with this email address. All of these outcomes would compromise the ICO's ability to exercise its functions for the purposes outlined above.

I agree with the request handler's assessment that there is a causal link between disclosure and those harms, and their assertion that (in relation to question three) these harms would likely occur if the email address was disclosed.

Section 31 also requires a public interest test, which the request handler has carried out. They have acknowledged that there is public interest in increased transparency, in the way in which the ICO conducts its operations. However, I agree with their assessment that disclosing an internal-only email address, which is not intended for the handling of public enquiries, is not in the public interest, particularly given the harms identified as part of the prejudice test. Dealing with

the resulting disruption would divert ICO resources away from regulatory work, which is not in the public interest.

There is a clear public interest in the ICO being able to function effectively, which includes being able to manage correspondence efficiently. As the request handler has pointed out, the information of primary relevance to this request is not affected by the redaction of our internal email addresses, and the public interest is met by the information provided and by the existence of more appropriate ways to contact us – see [here](#) for details.

Overall, I agree with the request handler's assessment - that the public interest in withholding the information outweighs any public interest in disclosure. They have carried out the necessary tests required to apply the exemption and have explained their reasoning in the response.

I note that other information has been withheld in accordance with Section 40(2). Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

In this case, the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles') as set out in Article 5 of the General Data Protection Regulation ('GDPR').

Having checked the withheld information, I am satisfied that this constitutes personal data as defined by the Data Protection Act 2018 ('DPA'), and that this personal data belongs to individuals other than you (the requester).

I have also assessed whether disclosure of this data would breach any of the DP principles. The request handler has identified that the relevant principle on this occasion is the first principle provided by Article 5(1): that personal data shall be processed lawfully, fairly and in a transparent manner.

Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" lawful bases for processing listed in the Article applies. 29. I consider that the lawful basis most applicable is basis 6(1)(f), which states: "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or

fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”.

In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under FOIA, I have considered:

- whether a legitimate interest is being pursued in the request for information;
- whether disclosure of the information is necessary to meet the legitimate interest in question; and
- whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

I agree that there is a legitimate interest in openness and transparency here, and that some of the withheld information relates to details you have requested – the names of those contacted as part of IC-315964-Y6R0. It is understandable that you would have an interest in knowing who was consulted during the handling of the request.

However, I consider that at least some of this interest is met by the information we have provided, such as the job titles of those involved and the dates on which the relevant correspondence took place. Some of the withheld information does not relate to what you have asked for and the inclusion of personal data is only incidental, rather than directly relevant to the request. In the case of this incidental information in particular, I do not consider it necessary for it to be disclosed to meet any legitimate interests.

The names of correspondents in the email chains disclosed relates more closely to the legitimate interests outlined above, but it is worth mentioning that the withheld names belong to members of staff from the Commissioner's Private Office. While senior ICO staff, such as the Commissioner, might reasonably expect their names to be publicly disclosed in relation to work matters, this is not necessarily the case for junior or non-public facing staff. Similarly they would not expect their contact details to be routinely disclosed when there are already more appropriate channels available for the public to contact the Commissioner and his staff (see my previous point on this above).

This is particularly relevant for Private Office staff. The Commissioner receives a high volume of correspondence, and disclosing the names and email addresses of his Private Office staff (and it is worth noting that email addresses can easily be worked out even if only names are disclosed) would likely lead to these staff

being targeted by those seeking contact with the Commissioner. This would be disruptive and divert staff resources away from their core duties.

Overall, I agree with the request handler that the likely disruption and intrusion that would be caused to the data subjects by disclosure of their personal data is not necessary or justified. There is no strong legitimate interest that would override the prejudice to the rights and freedoms of the individuals involved. Therefore I agree with the request handler's decision to withhold the information in accordance with Section 40(2) of the FOIA, and that disclosure would be unlawful.

Finally, I share the request handler's concerns about the tone and nature of your recent correspondence. They have already advised you about appropriate channels for raising concerns about requests, as well as noting the accusatory tone of your correspondence. This appears to be an ongoing pattern, with you previously accusing us of trying to 'weasel out of' requests, refusing to provide clarification and following each request with either another request or a complaint. These include meta requests, and requesting information about the handling of requests made by others.

When individuals appear to be using their individual rights regarding access to information to make complaints, to make requests which are intended to cause disruption, or to extend a request or complaint process, we need to consider whether those requests are vexatious. The ICO has explained what 'vexatious' means in [our detailed guidance for organisations on dealing with vexatious requests \(section 14\)](#). Please note that under section 14 of the FOIA, we do have the option to refuse to respond to requests which are vexatious in nature.

In conclusion, your request for internal review is not upheld. I appreciate that this may be disappointing, and if you wish to pursue this matter further, you can do so by following the steps outlined below.

Complaint procedure

If you are dissatisfied with the outcome of this review you can make a formal complaint with the ICO in its capacity as the regulator of the Freedom of Information Act 2000. To make such an application, please write to our Customer Contact Team at the address below, or visit the 'Make a complaint' section of our website:

<https://ico.org.uk/make-a-complaint/>

Please ensure you attach any documents requested to progress your complaint when submitting your complaint.

Your information

Please note that our Privacy notice explains what we do with the personal data you provide to us and what your rights are.

<https://ico.org.uk/global/privacy-notice/>

This includes entries regarding the specific purpose and legal basis for the ICO processing information that people that have provided us with, such as an information requester.

The length of time we keep information is laid out in our retention schedule, which can be found here:

<https://ico.org.uk/media/about-the-ico/policies-and-procedures/4031693/retention-and-disposal-policy.pdf>

Yours sincerely,

Sarah Coggrave
Senior Information Access Officer



Information Access Team
Strategic Planning and Transformation
Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
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