

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **13 September 2022**

Public Authority: **Information Commissioner**
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Decision

1. The Commissioner's decision is that the ICO is entitled to withhold the requested information under section 40(1) and 40(2) of FOIA as it is the personal data of the complainant and other individuals. However, the Commissioner finds that the ICO's refusal of the request did not comply with the requirements of section 17(1). The Commissioner does not require the ICO to take any corrective steps.

Jurisdiction and nomenclature

2. This decision notice concerns a complaint made against the Information Commissioner. The Information Commissioner is both the regulator of FOIA and a public authority subject to FOIA. He is therefore under a duty, as regulator, to make a formal determination of a complaint made against him in his capacity as a public authority – a duty confirmed by the First Tier Tribunal. It should be noted however that the complainant has a right of appeal against the decision, details of which are given at the end of this notice.
3. This notice uses the term "the ICO" to refer to the Information Commissioner dealing with the request, and the term "the Commissioner" when referring to the Information Commissioner dealing with the complaint.

Request and response

4. The complainant made the following information request to the ICO on 4 February 2022:

"I hereby request, under the Freedom of Information Act 2000, a copy of all information held in relation to FOI decision notice FS50847772. In particular this should include all correspondence between the ICO and the public authority, and all of the public authority's submissions to the ICO.

5. The final position of the ICO was to confirm that it had considered a previous request, a duplicate of the current request, under both the data protection legislation and FOIA and that personal data that had been withheld under the former would also be exempt under the latter.

Reasons for decision

6. The ICO subsequently confirmed to the Commissioner that it is withholding information under section 40(1) as it is the complainant's own personal data, and under section 40(2) of FOIA which concerns the personal data of other individuals. This reasoning therefore covers whether the ICO has correctly applied section 40 of FOIA to the request. The Commissioner has also considered the ICO's refusal of the request under FOIA.
7. Under section 40(1) of FOIA, information is exempt information if it is the personal data of the applicant. This is because disclosure under FOIA is disclosure to the wider world. A public authority should handle a request for an applicant's own personal data as a subject access request (SAR) under the data protection legislation.
8. The Commissioner understands that the decision referred to in the request concerns a FOIA complaint the complainant had submitted to him in July 2019. The Commissioner also understands that when the complainant submitted the duplicate request originally, the ICO had handled it as a SAR and provided an appropriate response. The ICO had provided the complainant with the information that is their own personal data and had withheld third person data under the appropriate data protection exemption.
9. With regard to the FOIA request that is the subject of this notice, the Commissioner has decided that the ICO is entitled to withhold the complainant's personal data under section 40(1) of FOIA.

10. As noted, in response to the complainant's SAR the ICO had withheld other individuals' personal data under the relevant data protection exemption. Under section 40(2) of FOIA, information is also exempt information if it is the personal data of another individual and disclosure would contravene a data protection principle.
11. The information in question is the names of certain individuals – the data subjects - and the name and contact details of another. In context those individuals can be identified from the information and it can therefore be categorised as their personal data under section 40(2).
12. The Commissioner appreciates that the complainant has a legitimate interest in that information as it is associated with a FOIA complaint they submitted to the Commissioner. However, he is satisfied that the individuals concerned would have the reasonable expectation that their personal data would not be disclosed to the wider world in response to a FOIA request. Disclosing their personal data would be likely to cause them harm or distress.
13. The Commissioner considers that the complainant's legitimate interest has been met to a satisfactory degree through the information provided to them in response to their SAR.
14. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information in question would contravene a data protection principle as it would not be lawful. He has decided that the ICO is therefore entitled to withhold this information under section 40(2) of FOIA.
15. Under section 17(1) of FOIA, a public authority that is relying on an exemption to withhold information should provide the applicant with a refusal notice that states that fact, specifies the exemption in question and states why the exemption applies. The Commissioner has reviewed the ICO's refusal and finds that it did not comply with the requirements of section 17(1) as it did not specify the FOIA exemptions the ICO is relying on, or why they applied.

Right of appeal

16. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

17. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF