

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 November 2022

Public Authority: Information Commissioner's Office

Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Note: This decision notice concerns a complaint made against the Information Commissioner ("the Commissioner"). The Commissioner is both the regulator of the FOIA and a public authority subject to the FOIA. He is therefore under a duty as regulator to make a formal determination of a complaint made against him as a public authority. It should be noted, however, that the complainant has a right of appeal against the Commissioner's decision, details of which are given at the end of this notice. In this notice the term "ICO" is used to denote the ICO dealing with the request, and the term "Commissioner" denotes the ICO dealing with the complaint.

Decision (including any steps ordered)

1. The complainant has requested the ICO to disclose information relating to a personal data breach incident which was reported to the ICO by Transform Hospital Group Ltd on 17 December 2020. The ICO refused to disclose the requested information citing section 44 of FOIA. At internal review the ICO also applied section 31(1)(g).
2. The Commissioner's decision is that the ICO is entitled to refuse to disclose the requested information in accordance with section 44 of FOIA. He therefore does not require any further action to be taken.

Request and response

3. On 14 June 2022, the complainant wrote to the ICO and requested information in the following terms:

"We are aware of a recent FOIA response (ref IC-165460-T2Z4) from the ICO dated 29/April 2022 which states that "a personal data breach incident was reported to the ICO by Transform Hospital Group Ltd on 17 December 2020. An investigation into this incident took place which was concluded on 7 February 2022. The result of the investigation was not to take any regulatory action."...we would be grateful if you would confirm whether the ICO found any breach(es) of the GDPR and/or the Data Protection Act 2018 by the Transform Hospital Group as part of its investigation and also whether any regulatory activity at all was taken by the ICO in relation to this incident."

4. The ICO responded on 23 June 2022. It confirmed that the information has been withheld under section 44 of FOIA.
5. The complainant requested an internal review on 11 July 2022. They consider section 44 of FOIA does not prevent the ICO from answering the request and they feel disclosure is in the public interest.
6. The ICO completed an internal review on 26 July 2022. It confirmed that a personal data breach incident was reported to it by Transform Hospital Group Ltd on 17 December 2020. The ICO confirmed that it took no regulatory action regarding the breach and published this as a result of an earlier information request it received. It felt the complainant's internal review request centred on why the ICO decided not to take regulatory action. The ICO confirmed that it holds information regarding its rationale in this case but remains of the view that it is exempt from disclosure under sections 44 and 31(1)(g) of FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 8 August 2022 to complain about the way their request for information had been handled. They believe the ICO has incorrectly withheld the requested information.
8. The Commissioner has not requested a copy of the withheld information or further submissions from the ICO in this case. He is satisfied that section 44 of FOIA applies based on the comprehensive responses the ICO issued, a description of the withheld information and previous decisions he has made relating to similar requests.

Reasons for decision

1. Section 44 of FOIA allows a public authority to withhold information whose disclosure, otherwise than under FOIA, would breach another piece of legislation.
2. The enactment in question is the Data Protection Act 2018 and the ICO's correspondence of 23 June 2022 clearly outlines what section 132(1) of part 5 of that Act states. This is the enactment on which it relies.
3. Section 132(2) lists circumstances in which disclosure can be made with lawful authority. However, the ICO and Commissioner agree that none of them apply here. Paragraph 30 of the Commissioner's guidance ¹ explains in more detail why gateways to disclosure are unlikely to allow disclosure under FOIA.
4. For the above reasons the Commissioner is satisfied that section 44 of FOIA applies. As section 44 is an absolute exemption, the Commissioner is not required to carry out a public interest test.

Other matters

5. The Commissioner notes that the ICO also applied section 31(1)(g) of FOIA. Although he has not considered this exemption in detail in this case (because he is satisfied that section 44 of FOIA applies and this exemption was relied on in the first instance) he would like to draw the complainant's attention to a decision notice that was issued on 14 April 2021, in which section 31(1)(g) of FOIA was upheld in relation to the same information concerning the DVLA².

¹ <https://ico.org.uk/media/for-organisations/documents/2021/2619033/s44-prohibitions-on-disclosure.pdf>

² <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/2619673/ic-39673-f2z8.pdf>

Right of appeal

6. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

7. 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.
8. 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

Samantha Coward
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SK9 5AF