

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 October 2022

Public Authority: Information Commissioner's Office
Address: Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Decision (including any steps ordered)

1. The complainant has requested the ICO to disclose information relating to the laws, rules and powers applicable to the ICO as regulator and how they are implemented. To the extent the complainant's information requests constituted valid information requests under section 8 of FOIA, the ICO directed the complainant to all the recorded information it holds and stated that, as all the information it holds is available to them via other means, it is technically exempt under section 21 of FOIA.
2. To the extent that the information requests are valid, the Commissioner is satisfied that the ICO has identified all the recorded information it holds falling within scope. As all the information it holds is available to the complainant via other means, the ICO was entitled to direct the complainant to where that can be found and refuse to disclose it under section 21 of FOIA.
3. The Commissioner does not therefore require any further action to be taken.

Jurisdiction and Nomenclature

4. 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 (“FTT”). 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. This notice uses the term “the ICO” to refer to the Information Commissioner dealing with the request and dealing with previous complaints brought under FOIA. It uses the term “the Commissioner” when referring to the Information Commissioner dealing with this complaint.

Request and response

5. The complainant sent correspondence to the ICO on 8 and 9 December 2021; both of which contained requests for information. On 20 December 2021 the ICO wrote to the complainant to seek clarification in respect of two parts of their requests. The complainant responded on 22 December 2021 and from this it was identified that the complainant required the ICO to disclose the following information:

- “1.1 Could you please confirm if a public authority does not given their final response, and if they use delaying tactics by defying all relevant laws and rules and they continue defying laws and rules knowingly and intentionally for over 320 days (as of 04.12.2021), (277days of which delay, was in the know of ICO on/ or after 08.10.21).
- 1.2 Whether the ICO has any policy decision to protect or to make a positive discrimination against big organisations or public bodies regarding the breaches of DPA 2018, and GDPR rules and also FOIA 2000?
- 1.3 Is there any rule or rules that the ICO ignores its regulatory duties against those big organisations or public bodies in order to protect them?
- 1.4 May I request from ICO that has taken any decision to dissuade law breakers in the last five years? If so, how many?
- 1.5 Is there any solidarity agreement between its staff to cover up their colleagues mistakes? OR are they acting in complacency?

- 1.6 If there is not, what is the policy of the ICO to prevent this kind of cooperation between its staff?
- 1.7 Is it to refer the complaint to an independent assessor to find out whether any administrative failures only (since the Independent assessors cannot interfere/or change their erroneous conclusions or decisions)?
- 1.8 What is the ICO's principle policy to protect public money and resources and also the complainants' times and resources by this kind of (mis)conduct?
- 1.9 What the ICO can or cannot do for the situation as stated above? for over 320 days failure and callously breaching the FOIA 2000 and GDPR rules knowingly and intentionally? [Just warn them not to do this conduct again or something else?]
- 1.10 As the 'regulator', what power ICO has or has not, to prevent those kind of acts of defying the laws and rules?
- 2.1 Could you please confirm if a public authority does not give their final response, and if they use delaying tactics by defying all relevant laws and rules and they continue defying laws and rules knowingly and intentionally for over 320 days, (277days of which delay, was in the know of ICO on/or after 08.10.2021).
- 2.2 What the ICO can or cannot do for the situation as stated above?
- 2.3 As the 'regulator', what power ICO has or has not to prevent those kind of acts of defying the laws and rules?
- 2.4 Is there any rule or rules that the ICO positively discriminates some big organisations/public bodies OR simply,
- 2.5 Is there any rule or rules that the ICO ignores its regulatory duties against those big organisations or public bodies?
- 2.6 Could you please advise me about whether there is/are any additional statutory duties ICO has to protect those public bodies?"
6. The ICO responded on 24 December 2021. It felt that large parts of the complainant's requests were not valid requests for information under section 8 of FOIA. However, to assist the complainant the ICO provided a summarising response to try and direct them to the recorded information it does hold on the subject matter referred to in their requests.

7. The complainant requested an internal review on 27 December 2021. This was received by the ICO on 11 January 2022.
8. The ICO carried out an internal review and notified the complainant of its findings on 11 February 2022. It upheld its initial response and considered this was accurate, thorough and helpful.

Scope of the case

9. The complainant contacted the Commissioner on 22 February 2022 to complain about the way their request for information had been handled. They are dissatisfied with the ICO's response because it does not detail how much the ICO is implementing the laws and rules and whether those laws and rules are being implemented relevantly and impartially. It does not provide information demonstrating that the ICO is applying those laws and rules without prejudice, negligence or abuse of power. The complainant has issues and therefore complains against the FCA and they are concerned that the ICO is operating "a big organisation does not make mistake syndrome".
10. The Commissioner considers the scope of his investigation to be to determine whether the ICO dealt with the complainant's information requests in accordance with FOIA. To the extent that the requests are valid requests for information under section 8 of FOIA, whether the ICO has identified all the recorded information it holds falling within the scope of them and either provided that information to the complainant or confirmed why it cannot be provided under Part II of FOIA.
11. This investigation is limited to looking at the ICO as a public authority and its requirement to respond to information requests it receives in accordance with FOIA, just like all other public authorities subject to the legislation. This is a completely separate function to the ICO's function as regulator of the Data Protection Act and FOIA and the complaints it receives from members of the public about subject access requests or information requests they have made to other public authorities (such as the FCA) and them not being handled in accordance with the relevant legislation. There is no remit to combine the two functions. The complainant's concerns about the FCA and, therefore the complaint(s) they have submitted to the ICO as part of its function as regulator, are not within the remit of this investigation or this decision notice.
12. Any issues with how the ICO has acted as regulator through its complaint handling process need to be directed to the relevant case officer(s) that have handled those complaints. If the complainant has exhausted this particular process, there are external avenues available to them to challenge the matter further and the complainant will have

been informed of what these are in the correspondence they have received from the ICO's complaint function.

Reasons for decision

13. Section 1 of FOIA states that any person making a request for information to a public authority is entitled –
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to him.Subject to any exemptions in Part II of FOIA which may apply.
14. Section 8 details what constitutes a valid request for information under FOIA. A request must be in writing, state the name of the applicant and an address for correspondence and describe the information requested.
15. FOIA provides a right of access to recorded information a public authority holds. This right of access does not extend to the right to request answers to questions or to be provided with explanations, unless the answers to those questions or explanations are held in recorded form already, which often is not the case. The relevant consideration for any public authority is – do we hold any recorded information which falls within the description of the request(s)? Can that information be disclosed? There is no requirement under FOIA to provide anything more. It does not have to explain that information or enter into dialogue about information, as this is not a requirement of FOIA. Such questioning or dialogue would have to be entertained via the normal course of business or via a public authority's complaints procedure.
16. Having set out the requirements, and in some ways limitations of FOIA, has the ICO identified all the recorded information it holds? Is the ICO permitted to cite section 21 of FOIA because this information is available to the complainant via other means?
17. To the extent that the complainant's requests are valid ones under section 8 (for example points 1.10 and 2.2), the Commissioner is satisfied that the ICO has identified all the relevant recorded information it holds and provided a comprehensive and helpful response to the complainant. The Commissioner does not see what further recorded information could possibly be held. The ICO was correct to cite section 21 of FOIA, as all the recorded information it does hold is accessible to the complainant by other means. The ICO provided links to all the

relevant recorded information on its website, to the complainant in its response.

18. The ICO would not agree that it does not act impartially, relevantly, does not tackle large organisations because it believes they do not make mistakes and abuses its power. This is the complainant's potential viewpoint brought about because of their dealings with the FCA and their thoughts on how such matters have been handled by the ICO when brought to it as function as regulator. The ICO would not agree with the complainant's viewpoint and so will not hold any further recorded information to that already provided of this specific nature. The laws, rules and procedures the ICO follows and any regulatory action it takes against public authorities and data controllers is already in the public domain. The laws, rules and procedures explain how the ICO monitors compliance with the legislation it regulates and how it establishes what action is necessary – therefore this information is already reasonably accessible to the complainant.
19. The Commissioner is therefore satisfied that on the balance of probabilities the ICO has identified all the recorded information it holds, directed the complainant to it and appropriately relied on section 21 of FOIA because this information is available to the complainant via other means.

Right of appeal

20. 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

21. 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.
22. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF