

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 15 June 2022

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

#### **Decision (including any steps ordered)**

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1. The complainant requested information from the Information Commissioner ("the ICO") about the International Data Transfer Agreement laid before Parliament by the Secretary of State.
2. The Commissioner's decision is that the ICO breached section 10(1) of FOIA by failing to provide a valid response to the request within the statutory time frame of 20 working days. No steps are required.

#### **Jurisdiction and Nomenclature**

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3. 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 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 particular complaint.

## Request and response

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4. On 21 February 2022, the complainant made the following request for information:

" This is a request for information made pursuant to the general right of access to information contained within the Freedom of Information Act 2000 and it relates to the International Data Transfer Agreement which was laid before Parliament by the Secretary of State and issued pursuant to section 119A of the Data Protection Act 2018.

Clause 35.4 of the Agreement states:

"London shall be the seat or legal place of arbitration. It does not matter if the Parties selected a different UK country as the 'primary place for legal claims to be made' in Table 2: Transfer Details."

And Clause 35.6 states:

"English law governs this Section 35"

I request for them ICO all information pertaining to the drafting of Section 35 of the agreement; including (but not limited to), all information which shows or tends to show why the ICO drafted the Agreement, which applies across the whole of the UK, in a way that appears to limit Arbitration under it to being seated in London and governed by English law and what considerations were given (if any) to the law of Scotland and/or Northern Ireland in relation to Arbitration.

I also request all correspondence between the DCMS and the ICO in relation to the Arbitration provisions of the Agreement."

5. The ICO responded to the request for information on 14 June 2022.

## Scope of the case

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6. The complainant contacted the Commissioner on 14 May 2022 to complain about the ICO's failure to respond to their request within the statutory time frame of FOIA.
7. On 24 May 2022 the Commissioner wrote to the ICO, reminding it of its responsibilities and asking it to provide a substantive response to the complainant within 10 working days.

8. The Commissioner has considered whether the ICO has complied with its obligations in relation to the time for compliance at section 10(1) of FOIA.

### **Reasons for decision**

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9. Section 1(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.”

10. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.

11. From the evidence provided to the Commissioner in this case, it is clear that the ICO did not deal with the request for information in accordance with FOIA. The Commissioner finds that the ICO has breached section 10(1) by failing to respond to the request within 20 working days.

## Right of appeal

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12. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

13. 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.
14. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**