

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2013

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

Decision (including any steps ordered)

1. The complainant has requested information on the number of complaints being processed under the Data Protection Act 1984 (DPA84) which are still being investigated by the ICO. The ICO informed the complainant that it did not hold any recorded information to answer the request but that the answer to the question was that no individuals who made complaints under the DPA84 are still having their complaints investigated under the Data Protection Act 1998 (DPA98).
2. The Commissioner's decision is that the ICO has complied with section 1(1) of the FOIA.

Request and response

3. On 1 November 2012, the complainant wrote to the ICO and requested information in the following terms:
"How many individuals who asked the Registrar to investigate a complaint about data processed under the Data Protection Act 1984, are still having their complaints investigated by the Data Protection Registrar's successor?"
4. The ICO responded on 9 November 2012 and stated there were no individuals who asked the Data Protection Registrar to investigate a complaint about data processed under the DPA84 still having their complaints investigated by the Data Protection Registrar's successor (the Information Commissioner). As such the ICO considered it did not

hold any recorded information to answer the request and concluded this after conducting a search of its paper and electronic records.

5. Following an internal review the ICO wrote to the complainant on 14 November 2012. It clarified that the DPA84 was repealed by the DPA98 and therefore all complaints currently being investigated by the Information Commissioner are under the provisions of the DPA98. Consequently the ICO upheld its initial response to the complaint.

Scope of the case

6. The complainant contacted the Commissioner on 14 November 2012 to complain about the way her request for information had been handled.
7. The complainant raised a number of issues with the ICO's response; in particular the complainant had made it clear that she currently had a complaint being investigated by the ICO in which the data concerned was originally processed under the provisions of the DPA84 and, although the data was continuing to be processed under the DPA98, the complaint was still being investigated by the ICO. The complainant considered this to be evidence that some complaints about data processed under the DPA84 were still being investigated.
8. The Commissioner considers the scope of his investigation to be to determine if the ICO holds any recorded information to answer the request.

Reasons for decision

9. Section 1(1)(a) of the 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,"

10. The Commissioner has considered whether the ICO has complied with this section of the FOIA in stating that it did not hold information to answer the complainant's questions.
11. In determining whether a public authority holds the requested information the Commissioner considers the standard of proof to apply is the civil standard of the balance of probabilities. In deciding where the balance lies in cases such as this one the Commissioner may look at:

- Explanations offered as to why the information is not held; and
 - The scope, quality, thoroughness and results of any searches undertaken by the public authority.
12. The Commissioner wrote to the ICO to ascertain what searches it had carried out to determine that no information was held. When responding to the Commissioner, the ICO reiterated that the DPA84 was repealed when the DPA98 came into force and therefore the ICO had no powers to investigate complaints or consider alleged breaches under the DPA84. That being said, the ICO did provide information on the searches it carried out to ascertain that no complaints received whilst the DPA84 was in force were still being investigated by the ICO although the Commissioner notes that even if any cases were identified the investigations would now be under the DPA98 as the earlier legislation has been repealed.
 13. The ICO explained that it contacted its Investigations department as this was the department most likely to be involved in any investigation which may still be on-going relating to the DPA84. The Investigations department confirmed it did not have any cases of this type.
 14. However, due to the potential age of the cases the ICO also checked its archived files and paper records by searching its central filing spread sheet for any cases relating to the DPA84 but found no information.
 15. In addition to this, the ICO also provided the complainant with information on the age profile of its cases¹ and restated this in its responses to the Commissioner. The information provided shows that all cases received about data protection complaints have been closed within 365 days meaning there are no outstanding data protection complaints which have taken more than a year to complete.
 16. On balance, the Commissioner accepts that the ICO has no outstanding data protection complaints older than 365 days. Therefore it stands to reason that any individual who contacted the ICO to investigate a complaint under the DPA84 would not be still having their complaint investigated now. The Commissioner notes the complainant's argument that she had a complaint looked into by the ICO involving the processing of data seemingly dating back to before the DPA98 was in force, however the Commissioner acknowledges that the DPA84 has been repealed by the DPA98 and therefore any complaints brought to the ICO now involving the processing of data will be investigated under the

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http://www.ico.gov.uk/about_us/performance/~media/documents/casework_handling_performance_statistics/e043_complaint_casework_handling_performance_092012.ashx

DPA98 regardless of whether the data was originally processed prior to the implementation of the DPA98.

17. Taking into account all of the above, the Commissioner therefore considers that the ICO complied with section 1(1)(a) of the FOIA.

Right of appeal

18. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

19. 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.
20. 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

Pamela Clements
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