

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 October 2016

Public Authority: Information Commissioner's Office

Address: Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

Decision (including any steps ordered)

1. This notice relates to a complaint about how the Information Commissioner's Office dealt with a request for information. As such the Information Commissioner's Office is placed in the unusual position of having to investigate itself. To avoid confusion this notice will refer to the 'ICO' when discussing the Information Commissioner's Office as the subject of the complaint. The term 'Commissioner' will be used to refer to the Information Commissioner as the body undertaking the investigation as the regulator of FOIA.
2. The complainant has requested information relating to a workshop organised by the ICO to gather views on the implications of the new EU directive on data protection. The ICO provided some information and denied holding other information. Although it provided a list of the organisations invited to send a representative, the ICO withheld the actual names of those invited to attend under regulation 40(2) – personal information.
3. The Commissioner's decision is that the ICO has correctly withheld the names of those invited under section 40(2).
4. The Commissioner does not require the ICO to take any further action in this matter.

Request and response

5. On 26 January 2016 the complainant requested information of the following description:

"1) I would like to request the names of any Twitter accounts monitored by the ICO – this would not be accounts that the ICO follows on Twitter, but accounts that are actively monitored and checked, with their comments analysed and circulated.

I would like to request any recorded information on how users of such accounts are informed that this is happening.

2) Separately, the ICO announced on Twitter that it was holding a "Stakeholder" meeting about EU Data Protection reform.

I would like to request the following

a) a copy of all materials and documents provided to those attending

b) a full list of individuals invited and the organisations they represent

c) recorded information on how the ICO defines a "Stakeholder" for the purposes of this event

d) recorded information on how those who were invited to the event were selected

e) recorded information on how many more such "Stakeholder events are planned"

6. On 23 February 2016 the ICO responded. It explained that it did not hold information captured by the first request. In respect of the second request the ICO provided correspondence falling within part a), a list of the organisations requested at part b), it denied holding the information captured by part c), it provided the information requested in part d) and denied holding the information requested in part e).
7. The ICO refused to provide the names of the individuals requested in part b) under section 40(2) – third party personal data.
8. The complainant requested an internal review on the same day, 23 February 2016. The request for a review focussed on the second request. In particular he challenged the ICO's application of section 40(2) to the names of invitees as requested in part b). He also challenged the ICO's assertion that it did not hold any information in respect of part c) and queried whether the email it had provided in response to part d) was complete.

9. The ICO concluded the outcome of its internal review on 17 March 2016. In respect of part b) it maintained its application of section 40(2) to the names of invitees. In respect of part c) it maintained that it did not hold any information. In respect of part d) it sent the complainant a complete copy of the email it had previously provided.

Scope of the case

10. The complainant contacted the Commissioner on 1 April 2016 to complain about the way his request for information had been handled. He specifically asked the Commissioner to investigate the ICO's refusal to provide the names of those invited to attend the workshop.
11. The Commissioner considers the matter to be decided is whether the ICO is entitled to withhold the names under section 40(2) – personal information.

Reasons for decision

12. Section 40(2) of FOIA states that the personal data of someone other than the applicant can be withheld if its disclosure to the public would breach any of the data protection principles contained in the Data Protection Act 1998 (DPA).
13. Personal data is defined as information which both identifies a living individual and relates to that individual.
14. In this case the withheld information is the names of individuals invited to attend the workshop. It is clearly the personal data of those individuals.
15. The ICO has withheld these names because it believes disclosing them would breach the first data protection principle. The first principle states that the processing of personal data shall be fair and lawful and in particular shall not be processed unless at least one of the conditions listed in Schedule 2 of the DPA can be satisfied.
16. The Commissioner's approach when considering the first principle is to start by looking at whether the disclosure would be fair. Only if the Commissioner finds that it would be fair will she go on to look at lawfulness or whether a Schedule 2 condition can be satisfied.
17. 'Fairness' is a difficult concept to define. It involves consideration of:

- The possible consequences of disclosure to the individual.
- The reasonable expectations of the individual regarding how their personal data will be used.
- The legitimate interests in the public having access to the information and the balance between these and the rights and freedoms of the particular individual.

Often these factors are interrelated.

18. The ICO has explained that at the time the workshop was organised it was considering the implications of the new General Data Protection Regulation and the Directive on data protection and law enforcement. As part of that process it wanted to seek the views of some of those affected and the workshop was organised to achieve that end. Stakeholders from the public sector, the private sector and the third sector were invited to attend.
19. The requested information is held in a spreadsheet produced for the administration of the workshop. It was very much a working document which was originally kept for the purpose of producing name badges of those attending. It lists the names of those to be invited, the organisation they are from, together with their email address. There is also a column for their job role, but these are only recorded for around half of the invitees. This is because it was decided that the badges would not include job roles and therefore there was no pressing need to record such details on the spreadsheet. As a consequence it is difficult to determine the seniority of many of those attending. Furthermore the ICO has explained that the spreadsheet was initially colour coded to denote those who had accepted the invitation to the workshop and those who had declined. However this practice was not maintained and as a consequence it does not provide a reliable record of who actually attended. This all has implications for the way in which the ICO approached the issue of fairness.
20. One of the factors taken into account when considering fairness is whether the information relates to an individual's professional or private life. The information in question obviously relates to working lives and as such its disclosure would be less intrusive than had it related to private lives. Where the individual concerned was a senior member of staff within an organisation this would also point to a disclosure being more likely to be fair. This is because the more senior someone is within an organisation the higher their expectation that information about their role within that organisation could be released. This is particularly true within public sector organisations where individuals are more used to the concept of transparency. However in this case the ICO has

explained that it is unable to identify the particular job role of many, possibly the majority of the invitees. Even if all the job roles had been recorded this on its own may not have been very useful as there is no consistency as to the names given to particular jobs. Therefore without the relevant organisational chart it would be very difficult to know whether a particular job role indicated the post holder was a senior member of staff.

21. The Commissioner accepts the logic of the ICO's argument. Whilst some of the job roles that are recorded on the spreadsheet do suggest senior roles, this is difficult to confirm. The ICO accepts that there were some senior public sector staff invited, but has argued that a high number of those invited were junior staff or middle managers.
22. Even if it was possible to identify senior figures from the list of invitees the ICO has stressed in its response that those invited were not necessarily those who actually attended. A number of those on this list are highlighted in red to show they had declined the invitation, others may have declined the invitation after the ICO stopped using the colour coding and even where someone had accepted the invitation, the ICO has said that on the day another member of that organisation's staff may have attended in their place. The ICO therefore argues that it would be unfair to disclose the names of individuals simply as a result of them receiving an invitation for an event which ultimately they chose not to attend.
23. Closely related to this point is the fact that it appears the invitations were unsolicited. The Commissioner put it to the ICO that had the workshop provided an opportunity for attendees to influence its policy on regulating the new legislation, the individuals should have had a higher expectation of information about them being made public. This is because they would have recognised the public interest in people knowing who had an opportunity to exert influence on a regulator. The complainant also touches on this point when he argued at the internal review stage that there was a public interest in knowing who may have benefited from the special access to the ICO afforded to them by an invitation only event. In particular the complainant argued that some of those invited were from private sector organisations, consultants and lawyers, who may well profit from their attendance.
24. However the ICO has countered this argument by explaining that rather than the attendees having most to gain, the workshop was what it described as a 'fact finding' event. The Commissioner considers this reduces both the legitimate interest in disclosing the information and the expectations of those involved that their names would be disclosed.

25. One of the main factors that shape an individual's expectations of how their personal data will be used is what they have been told by the organisation holding it. In this case the ICO has provided the Commissioner with copies of the letters inviting potential delegates to the workshop. She notes that there is no reference to the possibility that personal data could be disclosed. The ICO has contrasted this with the situation when people apply to attend other events such as the annual Data Protection Conference which the ICO organises. Delegates to the conference are advised in advance that delegate lists may be published in response to requests. The difference in the approach taken when organising the workshop would, the ICO argues, have signalled to delegates that information about who attended the workshop would not be published, let alone a list of those who were simply invited. This view would have been reinforced by the fact that any of actual attendees requesting a delegate list on the day were told that no list was available.
26. The Commissioner accepts that the procedures followed in practice throughout the organisation and running of the event gave no indication that lists of those invited to attend would be disclosed. When these procedures are contrasted against the approach normally adopted by the ICO for other events, this would have given rise to an expectation that the information would not be disclosed.
27. Expectations are also moulded by experience. Those who attended were all practitioners in the field of data protection and it seems safe to assume that they would also have had some awareness of freedom of information legislation, particularly those from public sector organisations. It cannot be ruled out therefore that it would have occurred to those attending that the workshop could attract freedom of information requests including requests for attendees. Nevertheless the Commissioner considers that the overriding factor influencing expectations would be what could be gleaned from the manner in which the course was organised in practice. This did not, in itself, give rise to an expectation that the names of invitees would be released.
28. In terms of the consequences for invitees it is not immediately obvious what detriment they would suffer if their names were disclosed. The ICO has argued that it would be inappropriate to disclose the names of those invited but who did not attend. As discussed earlier, this is on the basis that, as they did not solicit invitations, it would be unreasonable to identify them simply because at one point the ICO considered it would benefit from their contribution; the selection of those invited to attend was totally outside the control of those invitees. There is a stronger argument for disclosing the names of those who did attend, but, again as discussed earlier, the ICO is unable to identify who those people are. Any list the ICO attempted to produce would be inaccurate. The ICO argues that releasing such a list, could result in someone being

identified as attending an event when they may have been involved in a professional capacity elsewhere. The Commissioner recognises this possibility but does not consider the consequence particularly detrimental.

29. Although the consequences of disclosing the information would not be particularly detrimental, the Commissioner finds that none of the invitees would have a reasonable expectation that their names would be released based on how the workshop was organised. Nor is it clear that there is any strong legitimate interest in disclosing the information. This is because the workshop was organised as a fact finding event rather than as an opportunity for invitees to promote their own agendas and influence ICO policy. To the extent that there is a value in knowing who the ICO identified as stakeholders and who they sought the views of, the Commissioner considers this interest was largely met by disclosing the organisations which the invitees represented. The Commissioner therefore concludes that disclosing the names would be unfair and therefore breach the first data protection principle. She is satisfied that the ICO is entitled to withhold the names and does not require the ICO to take any further action in this matter.

Right of appeal

30. 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@hmcts.gsi.gov.uk

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

31. 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.
32. 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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