

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 February 2024

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

Decision (including any steps ordered)

1. The Commissioner's decision is that, on the balance of probabilities, the ICO doesn't hold information within scope of the complainant's request for correspondence with the National Police Chief's Council about data sharing.
2. The ICO has complied with section 1(1)(a) and 10(1) of FOIA and it's not necessary for the ICO to take any corrective steps.
3. This decision notice concerns a complaint made against the Information Commissioner ('the Commissioner'). The Commissioner is both the regulator of FOIA and a public authority subject to FOIA. He's 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.

Request and response

4. The complainant made the following information request to the ICO on 1 September 2023:

“I ask to be provided with the information held in respect of this matter; the sharing of data when a collision has taken place, your exchanges with the NPCC and others concerning the practice.”
5. The ICO refused this request under section 12 of FOIA as it considered that complying with the request would exceed the appropriate cost limit.
6. On 12 September 2023, the complainant narrowed their request to:

“Please narrow my request to correspondence exchanged with the NPCC.”
7. The ICO’s final position was that it didn’t hold any information within scope of the refined request.

Reasons for decision

8. This reasoning covers whether the ICO holds information within scope of the complainant’s request.
9. Under section 1(1)(a) of FOIA a public authority must confirm to an applicant whether it holds information that they’ve requested. Under section 10(1) a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
10. In its response to the request on 26 September 2023, the ICO said it had undertaken searches of its case management system and its electronic document and records management system. It also consulted internally with relevant areas of the business. The ICO advised that it doesn’t hold any information which falls within the scope of the complainant’s request.
11. In their request for an internal review on 26 September 2023, the complainant noted a statement that the National Police Chief’s Council (NPCC) had made on 20 May 2023 to the effect that the ICO had advised that, when there’s been a car collision, police forces can’t share relevant personal information to both parties, where this hasn’t already happened, so that those parties can undertake civil proceedings where appropriate or desired. The complainant said they wanted the advice the ICO had given.

12. The complainant made a similar point to the ICO in correspondence on 4 October 2023.
13. On 19 October 2023, the complainant wrote to the ICO again and referred to a copy of a letter that the NPCC had disclosed dated 7 November 2022 and which concerned re-using personal data. In the complainant's view this letter further suggested that the ICO would hold information relevant to their request.
14. In its internal review of 19 October 2023, the ICO confirmed it didn't hold any relevant information. It discussed the advice from the ICO that was quoted in the correspondence from the NPCC that the complainant had referenced in their request for internal review. The ICO noted that it isn't stated in that letter that this came from advice that the ICO had provided directly to the NPCC. The ICO considered it possible that this came from general guidance that the ICO has published, or from advice provided to another party. The ICO confirmed it would therefore not be found in the reasonable searches that it had undertaken in respect of this request.
15. The Commissioner asked the ICO to address the point the complainant had made on 19 October 2023 which had crossed with the ICO's review response.
16. In its submission to the Commissioner, the ICO first confirmed that it's content that it had carried out all reasonable searches in respect of the initial request. In the first instance it searched its case management system for records of data protection complaint cases against the NPCC. This is the most likely place such information would be held.
17. The ICO says that its case management system allows it to search for complaint cases using a number of different search terms, such as the data controller concerned, the complainant, or the case reference number, but it can't search for cases based on the precise subject matter of the complaint. This is the reason that it had applied section 12 to the original request which wasn't limited to a particular data controller. Without a data controller name the ICO says it would only be able to find the information by manually searching through thousands of complaint case files.
18. From the wording of the request the only search parameters provided that would help the ICO to trace the case were that the data controller concerned was the NPCC.
19. Searching against the NPCC the ICO says it found that it had no record of any data protection complaints about the NPCC, so it could be

confident in the fact that this information wasn't held on a complaint case file.

20. As well as searching its case management system, the ICO also made enquiries with the ICO Relationship Management Service and specifically with the two members of staff who are stakeholder managers for the NPCC. They advised that they'd checked their files relating to their engagement with the NPCC and couldn't find any record of such advice having been given to the NPCC. They also advised that they couldn't think of a scenario in which a collision would give rise to issues around the sharing of data that would require advice. They therefore felt confident that they didn't hold any information as described in the request.
21. Outside of complaints held on the casework management system, it's highly unlikely that any other department at the ICO would have given such advice to the NPCC. It's even less likely that they would have done so without the knowledge or involvement of their designated stakeholder relationship managers.
22. The ICO says it was therefore satisfied that it had undertaken all reasonable searches and that no such information was held.
23. Regarding the complainant's correspondence of 19 October 2023 advising that they'd received from the NPCC a copy of an advice letter from the ICO, the ICO says this didn't help it in making any further searches because the complainant wasn't able to provide it with a case reference number or the name of any of the parties involved due to the document being redacted.
24. Given the complainant's insistence that this information must exist the ICO says it did conduct a further check with the stakeholder managers when conducting the review. They conducted further searches based on the additional details provided in the complainant's subsequent emails but again were unable to find any relevant information.
25. The ICO therefore suspected that either the advice being referred to was given in a different context than that described by the complainant or that it was held somewhere other than correspondence between the ICO and the NPCC. But the ICO says that it would be unable to find it without further information, hence the advice that it gave in its internal review response.
26. The ICO has gone on to say that on 20 October 2023, it received a further request from the complainant in which they provided a copy of the redacted letter that they'd received from the NPCC and asked for copies of all information connected to the matter.

27. The letter they provided was a redacted case outcome letter from the ICO in which the addressee (a data controller), the names of all parties involved, and the case reference number were redacted.
28. This again provided no detail that would have enabled the ICO to find this letter in its case management system. However, when dealing with the new request the ICO said it became aware by chance during discussions with a colleague that the relevant complaint was about a particular police force of England and Wales. The ICO colleague was aware of the matter because the NPCC had previously made contact with the ICO to consult about a FOIA request that they had received for the same information. It had provided the ICO with an unredacted copy of the same letter that the complainant had received in redacted format.
29. If it hadn't been for this chance conversation the ICO says it wouldn't have been made aware of this and would still have been unable to find the matter to which that letter related. The letter that the complainant had received was not addressed to the NPCC, but to the police force. It had presumably been provided to the NPCC by the police force, as the ICO had no record of ever having sent this information on to the NPCC, nor would it do so according to its usual practices.
30. The ICO says it responded to the new request under a different reference, providing the requested information, but with redactions. The information disclosed made clear that the complaint was about the specific police force, and the ICO advised the complainant in response to a subsequent query they raised with it that it had never sent the letter in question to the NPCC.
31. The ICO says that the complainant should therefore be aware by now that the ICO didn't hold the information as they described it in their request of 12 September 2023. Furthermore, they've already been provided with the information that they were seeking about this matter.
32. The complainant requested correspondence between the NPCC and the ICO about data sharing in a particular circumstance. The Commissioner is satisfied that the searches and discussions the ICO has had to identify if it held any relevant information were adequate. He accepts that, on the balance of probabilities, the ICO doesn't hold the requested information. The letter that the complainant referred to and which the ICO subsequently identified quite by chance was sent by the ICO to a specific police force, not the NPCC.
33. The Commissioner therefore finds that the ICO complied with section 1(1)(a) and section 10(1) of FOIA.

Right of appeal

34. 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

35. 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.
36. 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

Cressida Woodall
Senior Case Officer
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