

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 August 2024

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

Decision (including any steps ordered)

1. The complainant requested information from the Information Commissioner's Office (ICO) relating to the training provided to certain staff members.
2. The Commissioner's decision is that the ICO is entitled to rely on section 40(2) (personal information) of FOIA to refuse to provide the withheld information.
3. The Commissioner does not require further steps.

Naming

4. 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 is 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

5. On 3 March 2024, the complainant wrote to the ICO and requested information in the following terms:

“Please provide copies of your most recent Freedom of Information guidance and training for employees responsible for social media within your organisation.

By responsible I mean employees who make posts on behalf of your organisation.”
6. The ICO responded on 15 March 2024 and provided the complainant with information within the scope of the request. However, it withheld some information citing section 40(2) (personal information) of FOIA as its basis for doing so.
7. On 20 March 2024, the complainant requested an internal review. The ICO provided the complainant with the outcome of its internal review on 18 April 2024 in which it maintained its reliance on section 40(2) of FOIA to withhold some information.

Reasons for decision

8. This reasoning covers whether the ICO is entitled to rely on section 40(2) of FOIA to refuse to provide the withheld information. Details of this section of FOIA can be found in the Commissioner’s [decision notice support materials](#).
9. The Commissioner has viewed the withheld information which consists of two requests for information that were made to the ICO using twitter. He is satisfied that the information both relates and would identify the individuals who made the requests for information as the requests contain the names, twitter handles and profile pictures of those individuals.
10. Even if the names, twitter handles and profile pictures were redacted, these individuals could still be identified from the wording of their requests; an individual could search twitter using the wording of the requests and locate the original requests for information. The Commissioner therefore considers all of the withheld information to be personal data as defined in section 3(2) of the DPA.
11. In its submissions to the Commissioner the ICO stated that it does not consider there to be any legitimate interest in the disclosure of the

withheld information as the two requests for information which have been withheld are simply used as discussion points during staff training and do not contain any information that would be of interest to the wider public. The Commissioner does not agree with this position. He considers that there is a legitimate interest in understanding how the ICO trains its staff and that disclosure of the withheld information is necessary to meet this legitimate interest.

12. However, whilst the Commissioner recognises that the withheld information is already in the public domain as the two requests for information were made using twitter, he considers that the individuals who made the requests would not expect the requests to be used by the ICO in internal training or disclosed in response to a request for information. Furthermore, the Commissioner notes that, when making a request for information via twitter, a requester can control who is able to view that request and can delete their request at any point if they decide to do so. However, if the withheld information were to be disclosed, the individuals who made the requests for information would no longer be able to control who viewed their requests or be able to delete the requests. The Commissioner therefore considers that disclosure of the withheld information would likely be distressing to the individuals who made the requests.
13. The Commissioner notes that the ICO has already provided the complainant with some information in response to the request and so he considers that the legitimate interests identified above have already been met to some extent by the disclosure of this information. Furthermore, the Commissioner considers the withheld information to be relatively self explanatory in nature. He notes that the complainant has been informed by the ICO that the withheld information consists of two requests for information. He therefore considers that using this information, the information which has been disclosed in response to the request and the ICO's published guidance on making a request for information, the complainant would be able to surmise the information that has been withheld.
14. Therefore, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals who made the two requests for information. He considers that there is no legal basis for the ICO to disclose the withheld information and to do so would be in breach of principle (a).
15. The Commissioner's decision is that the ICO is entitled to rely on section 40(2) of FOIA to refuse to provide the withheld information.

Right of appeal

17. 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

18. 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.
19. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
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