|  |  |  |  |
| --- | --- | --- | --- |
| \_ | Ms Karen Mills  [request-588786-6ae258e8@whatdotheyknow.com](mailto:request-588786-6ae258e8@whatdotheyknow.com)  **By E-mail only** | Your ref:  Our ref:  Date: | 20 September 2019 |
| Dear Ms Mills  **Request under the Freedom of Information Act 2000 (FOIA)**  Thank you for email of 27 August requesting an Internal Review of a decision taken to withhold information under the Freedom of Information Act.  In your original request, dated 10 July, you asked for:  *All correspondence from the above union (Unite) pertaining to case ref CO/795T/8/17-18 that has not been shared with me to date as the person raising the concerns.*  On 6 August, Kanta Hirji refused your request citing exemptions under Sections 30, 31 and 40 of the Freedom of Information Act.  In conducting the Internal Review of her decision, I have looked at each of the documents that fall within the scope of your request and considered whether the exemptions cited by Ms Hirji apply to them.  I am not satisfied that the information you have requested would be subject to a Section 30 exemption, because although the Certification Officer does have a duty to investigate whether someone has committed an offence, I do not consider that the information you have requested was obtained for this purpose or that it would be likely to form the basis of a criminal prosecution in the future.  I am satisfied that the information you have requested is subject to exemptions under Section 31 and Section 40 of the Act and have therefore decided to uphold Ms Hirji’s original decision to refuse your request. I have set out my reasons for this below.  It’s worth noting that in arriving at my decision I have consulted guidance on Section 31 and Section 40 published by the Information Commissioner’s Office on their website here <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/>. I refer to this guidance throughout my reasons.  **Section 31 Exemption**  I have concluded that disclosing the information you seek would be likely to prejudice the ability of the Certification Officer to exercise her functions to ascertain whether any person has failed to comply with the law and whether any person is responsible for any conduct which is improper, under Section 31 (1) (g) of the Act.  To engage Section 31 (1) (g) the guidance provided by the ICO suggests that I need to be satisfied of three elements:   1. That the Certification Officer has been entrusted with a function to fulfil one of the purposes listed in Section 31, subsection (2) of the Act; 2. That the function has been specifically designed to fulfil that purpose; and 3. That disclosure would prejudice that function.   I am satisfied that the Certification Officer has been entrusted with a function to fulfil three separate purposes under Section 31 (2):  *Section 31 (2) (a) the purpose of ascertaining whether any person has failed to comply with the law*  *Section 31 (2) (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper*  *Section 31 (2) (c) the purpose of ascertaining whether circumstances exist which would justify regulatory action in pursuance of any enactment exist or may arise, any person has failed to comply with the law*  I am also satisfied that the Certification Officer’s function has been specifically designed to fulfil these purposes because her powers are derived directly from statute, namely the Trade Union and Labour Relations Consolidation Act 1992.  And I am satisfied that disclosure would prejudice this function. The ability of the Certification Officer to discharge her duties effectively is predicated on the voluntary supply of information from Trade Unions.  The ICO guidance on Section 31 exemptions is helpful in setting out why the voluntary supply of information is important for authorities and how disclosure of that information might deter the voluntary supply of information in the future, and I have extracted two particularly relevant paragraphs from that guidance below:  *Investigations, particularly those protected by section 31 (1) (g) via 31 (2), can be aided by either individuals, or organisations providing information to the investigating authority. Even where the provider of the information is not a confidential source, there is still a public interest in not discouraging others from cooperating with public authorities and supplying them with the information they need on a voluntary basis.*  *Cooperation between those being regulated and the regulator is important. Organisations are often encouraged to report problems they have had. Investigations take less time when those under investigation cooperate. This can be true even where a regulator has the power to compel a party to supply information as reliance on such powers often involves bureaucratic procedures which can cause delays. There is clearly a public interest in not deterring the voluntary supply of information.*  I have decided that if I was to authorise the disclosure of the information that you have requested, then it is likely that parties would not voluntarily disclose similar information in the future. This would compromise the Certification Officer’s ability to conduct informal enquiries, and force her to compel parties to supply information, which would both cause delays and increase the costs incurred by both the Certification Officer and the subject(s) of those enquiries and may limit the amount and type of information available to her.  I can confirm that all the correspondence covered by your request relates directly to the voluntary supply of sensitive, personal data and information about how that data was generated and used by Unite, so that the Certification Officer could investigate a complaint made by a union member about Bassa. This information was invaluable in helping the Certification Officer to properly consider the complex allegations set out in the complaint and ascertain whether the union had breached any of its rules or statutory responsibilities. Ultimately, the Certification Officer concluded that the union had not breached any rules or statutory responsibilities.  I believe that if I were to authorise the disclosure of this information to you that it would influence the way that Unite and other unions interacted with the Certification Officer to the detriment of her ability to conduct other informal investigations in the future. I am sure you will understand that I am not able to go into specific details about precisely how and why this would be the case as to do so would effectively lead me into making a disclosure about the information that I am seeking to withhold.  **The Prejudice Test**  I have considered whether the public interest in preventing this prejudice outweighs the public interest in disclosure. As set out above, in addressing the prejudice test I am satisfied that one of the law enforcement interests protected by section 31 would be harmed by disclosure, that the prejudice is real, actual and of substance, that there is a causal link between the disclosure and the harm claimed, and that this harm would occur if the information you have requested were to be disclosed.  **The Public Interest Test**  I recognise that there needs to be a balance between protecting the work of law enforcement agencies and the public interest in disclosing information that holds these bodies to account and increases transparency about how they perform their functions.  In this case I am satisfied that the public interest test is met. The Certification Officer routinely publishes information about her work, including a comprehensive annual report and details of the majority of her decisions. Having reviewed the information you have requested I am not satisfied that it would assist in either holding the Certification Officer to account or increase transparency about how she performs her functions. Given that the Certification Officer concluded that this information did not reveal any breach of rule or statute by the union, I do not find that there is any intrinsic value associated with making it publicly available.  **Section 40 Exemption**  Although I am primarily relying on a Section 31 exemption to refuse your request, I have also considered whether the information you have requested would be subject to an exemption under Section 40 of the Act.  I can confirm that the majority of the information you have requested is personal data, as defined by the Data Protection Act in that it is information relating to an identifiable living individual. The information you have requested includes names, contact details, financial information and details of individuals’ trade union membership. It’s important to note that the latter constitutes Special Category Data as defined under Section 9 of the General Data Protection Regulation.  Having reviewed the guidance around the disclosure of personal data, and particularly Special Category Data, I consider that it would be unlawful for me to authorise the disclosure of the majority of the information you have requested because I have neither explicit consent from the data subjects to do so, nor any evidence to suggest that this data has already clearly been made public by the individuals concerned.  It is worth noting that this exemption is absolute and so there would be no requirement for me to consider the public interest.  **Request for a List of Documents**  In your latest email you have also requested a list of the documents that fall within the scope of your request, and details of the specific reason why each document cannot be released, even in redacted form. I have included this list below.   1. Letter dated 29 June 2017 which contains information voluntarily supplied by the union. This letter is exempt from disclosure under Section 31 (1) (g). 2. Letter dated 25 July 2017 which contains information voluntarily supplied by the union, including personal data. This letter is exempt from disclosure under Section 31 (1) (g). 3. Letter dated 31 January 2018 which contains information voluntarily supplied by the union. This letter is exempt from disclosure under Section 31 (1) (g). 4. Letter date 21 February 2018 which contains information voluntarily supplied by the union, including personal data. This letter is exempt from disclosure under Section 31 (1) (g). 5. Letter dated 16 April 2018 which contains information voluntarily supplied by the union, including personal data. This letter is exempt from disclosure under Section 31 (1) (g). 6. Email dated 16 May 2018 which contains information voluntarily supplied by the union, including personal data. This email is exempt from disclosure under Section 31 (1) (g). 7. Undated letter, stamped ‘received on 16 August 2018’ which contains information voluntarily supplied by the union, including personal data. This letter is exempt from disclosure under Section 31 (1) (g). 8. Email dated 18 October 2018 which contains information voluntarily supplied by the union. This email is exempt from disclosure under Section 31 (1) (g).   I have considered whether these documents could be redacted and released to you, but have determined that so much information would have to be redacted in each of them that the document would become nonsensical, and as a result, that each document should be withheld. This complies with the guidance on redaction produced by the National Archives (<https://www.nationalarchives.gov.uk/documents/information-management/redaction_toolkit.pdf>). It’s important to note that the scope of redactions in each document would be driven not only by the need to remove the specific information which is being withheld under Section 31 (1) (g), but also to ensure that the redactions are not made deducible from the surrounding text.  I have also considered alternatives to redaction, including whether I could provide you with a summary of the disclosable information. I have decided that you already possess the equivalent of a summary of this information, in the form of the conclusion letter for case CO/795T/8/17-18 provided to you by Gerard Walker on 30 October 2018.  **Appeals Procedure**  If you are still dissatisfied you may ask the Information Commissioner for a decision as to whether your request for information has been dealt with in accordance with the FOIA. Her address is:  Wycliffe House  Water Lane  Wilmslow  Cheshire  SK9 5AF  Yours sincerely  Thomas Price  Assistant Certification Officer  Direct: 0330 109 3613  Email: thomas.price@certoffice.org | | |
|  |  | | |