22 December 2022

IC-200632-S2T5

Request

On 23 November 2022, you clarified your request for:

*All information held concerning our views on the implications for us in light of the repeal of the Biometrics and Surveillance Commissioner role, which Professor Sampson talks about in the link provided.*

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

Response

We can confirm that we hold information in scope of your request. However, this information forms part of the ongoing discussions between the ICO and Government regarding the Data Protection and Digital Information Bill (DPDI), and the implications for the ICO if the roles of the Biometrics Commissioner (BC) and the Surveillance Camera Commissioner (SCC) were repealed.

This is very much a live policy issue for us. The DPDI has recently had its first reading in the Commons, and the suite of reforms it may bring to the data protection regime in the UK could very well be subject to change.

We therefore consider that disclosure of the information you have requested at this time would prejudice the ICO’s ongoing participation in policy development around the DPDI, and would likely inhibit further information sharing with other stakeholders.

We have taken the decision to withhold the information you have requested as we consider it to be exempt pursuant to sections 36(2)(b)(ii) and 36(2)(c). We will explain the application of these exemptions further below.
Information withheld - section 36 FOIA

Section 36 of the FOIA applies to information which, if disclosed, could prejudice the effective conduct of public affairs.

In the circumstance of your request we consider that both section 36(2)(b)(ii) and section 36(2)(c) are engaged. These are as follows:

(2) Information to which this section applies is exempt information if in the reasonable opinion of a qualified person disclosure of the information under this Act—
   a. would, or would be likely to, inhibit— (ii) the free and frank exchange of views for the purposes of deliberation
   c. would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

We have sought the opinion of our qualified person, John Edwards, the Information Commissioner. He has confirmed his view that the exemption at section 36 of the FOIA is engaged and concluded that the disclosure of this information would be likely to inhibit the free and frank exchange of views for the purposes of deliberation, and would be likely to prejudice the effective conduct of public affairs.

The Information Commissioner considered the information in scope of your request, as well as specific and detailed arguments which we are unable to replicate in full in our response to you. However, these were broadly that:

1. Disclosure at this time would affect relationships that we have with key stakeholders and the result of this would be a loss of free and frank sharing of sensitive information or early insight into policy.
2. Policy development in this area remains active, especially given the Secretary of State’s commitment to look at the DPDI package again and consider further amendments given the change in government. Disclosure would limit the ICO’s ability to participate in and influence policy development.
3. Disclosure at this time would divert resource away from developing and engagement strategy for future communications to managing the harms resulting from the disclosure to our relationships with key stakeholders.

The key counter-argument against applying s.36 is that it is important the ICO is transparent with its thinking with the public where possible, especially in relation
to important policy change such as the DPDI. We appreciate that there is a genuine interest from the public in the development of policy and legislation that will have a direct effect on their data protection rights.

However, while we appreciate the interest in transparency, the critical issue with your request is its timing, namely the fact that it relates to an issue which is very much live. Having considered the public interest arguments we are satisfied that public interest is better served at this point in time by maintaining an open dialogue between us and other stakeholders.

We are sorry we’ve not be able to provide you with the information you’re requested but we hope we have adequately explained our reasons for refusing your request at this time.

**Next steps**

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint through our website](#).

**Your information**

Our [Privacy notice](#) explains what we do with the personal data you provide to us, and set out your rights. Our retention schedule can be found [here](#).

Yours sincerely

Information Access Team