

Our reference: 1009363



Dennis Fallon
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15 September 2021

Dear Mr Fallon

Your request for information

Thank you for your email of 18 August 2021 which has been passed to me to consider. You are complaining about our response to your request of 28 June 2021.

In reference to your opening paragraphs, I confirm I have read all of your emails in respect of this and your previous related requests (our references 1009057 & 1009288) and am left in no doubt that your purpose in making your request of 28 June was to continue your complaint about our decision to redact certain information from the referral form that you requested on 25 February 2021 (request reference 1009057). My conclusion is that you are pursuing these matters because you believe our refusal to be the result of a deficient internal review process or an inadequately qualified or trained internal reviewer.

I consider, therefore, that it was entirely reasonable for us to advise in our email of 27 July that you should be focused instead on the arguments we have put forward in support of our refusal of your request of 25 February, which we believe to be well founded, and consider instead whether you wish to make a complaint to the Commissioner.

Our email of 27 July set out the formal requirements as to the procedure to be followed by public authorities when carrying out internal reviews under the FOIA. We said:

“We would emphasise that neither the FOIA nor the Code of Practice issued under section 45 prescribes that internal reviews should be carried out by any particular person in the relevant public authority and there are no requirements as to their background, experience, training or qualifications. The Code of Practice states only that the procedure “should provide a fair and

thorough review of procedures and decisions taken in relation to the Act” and “It is best practice, wherever possible, for the internal review to be undertaken by someone other than the person who took the original decision”.

It follows that any information we provide as to the particular qualifications and experience of Mr Benson would not assist you in pursuing your complaint, since the outcome would be decided entirely under the criteria contained in the guidance concerning the exemption for personal information, and the previous decisions of the Commissioner, Tribunal and Courts on which the guidance is based. For this reason, we suggest that the information you are now requesting could not make any difference to your right of access to the disputed information.”

It is clear that you either do not accept any part of this statement or have chosen to disregard it, otherwise you would not be continuing to pursue your request of 28 June. I can confirm that we will not be re-opening Mr Benson’s review of your request of 25 February on the basis of your email of 18 August 2021 or any other emails in which you suggest that our handling of your request was deficient.

The remainder of this letter responds to the other matters you raised in your email of 18 August 2021.

“Reference Q1 there has been NO answer as to who first read the initial FOI request, or why it was sent to Mr Benson and no disclosure of any attachment. It is unsatisfactory to have to presume that no one forwarded the request to Mr Benson, that he accessed it directly himself from IOPC mail before forwarding it to an underling to deal with. It is confusing that he has an independent key role in dealing with FOI requests when his primary concern is finance and there are two senior FOI and DP advisors in post.”

I do not agree that we failed to answer your question about who dealt with the FOI request. We said in our email: “There are two Senior FOI and DP Advisors who deal with FOI requests on a day to day basis”. Therefore, the request and review were received and processed by one of our Senior FOI and DP advisors.

You hold all of the information that Mr Benson received with the advisor’s submission with the exception of the disputed redactions.

In relation to Mr Benson’s role as reviewer we would refer you to our previous advice (as quoted above) as to the formal requirements relating to the carrying out of reviews and would repeat that Mr Benson is a senior person who was not involved in the initial handling of the request.

“Reference Q1 I asked who is head of your FOI section and number of assistants and the response was “The FOI and DP team is headed up by our Data Protection Officer(DPO), there are two Senior FOI and DP Advisors who deal with FOI requests on a day to day basis”. Please advise why you have not provided the name of your DPO and why their job title is limited to Protecting Data and does not include Freedom of Information.”

I am the IOPC's DPO. We did not understand your request as requiring my name. In relation to your further point, I would observe that a job title need not describe all the work carried out by the person who occupies that role.

“Reference FOI Q1 there was NO response provided to how FOI training is given, or if certificates of completion are given, and NO copy of your in house training. The only `copy of training` provided was a pdf attachment which consisted of ONE slide entitled `1009363 FOI training slide IAO annual training` which implies that the training is provided by a series of slide projections presented to your office staff by your DPO each year and which you refuse to disclose for unexplained reasons Apparently there are no certificates of completion provided and no tests of comprehension, simply a box ticking exercise on personal files. If this is incorrect please clarify.”

We answered your questions about training and qualifications in our email of 18 August. We said:

“We would emphasise that neither the FOIA nor the Code of Practice issued under section 45 prescribes that internal reviews should be carried out by any particular person in the relevant public authority and there are no requirements as to their background, experience, training or qualifications. The Code of Practice states only that the procedure “should provide a fair and thorough review of procedures and decisions taken in relation to the Act” and “It is best practice, wherever possible, for the internal review to be undertaken by someone other than the person who took the original decision”.

This is an accurate statement of the formal requirements for FOI reviews that you appear to have disregarded as irrelevant or incorrect. I consider that you would be very unlikely to accept any further response we provide on this subject while you continue to base your enquiries on your mistaken beliefs about how the review process should work in practice.

In your email of 25 May (our reference 1009288) you asked “...what FOI training or legal qualifications have been achieved by Mr Benson to enable him to complete FOI reviews...”. We responded by referring to our briefings to all staff on data protection and FOI. I can confirm, however, that these briefings are not relevant to Mr Benson's role as a FOIA reviewer and so are not required to enable him to complete reviews. I can also confirm that we do not hold information on the subject of Mr Benson's training as a reviewer because there is no in house training in the form of slides or other recorded information designed for this particular purpose. I am sorry that this has not been made clear to you before now.

As we said in our email of 27 July, IAOs receive an initial induction to their role from me as the DPO. We do not hold any recorded information relating to this induction.

“Reference FOI Q3, you have NOT advised when Mr Benson received his training or refreshers which could lead to the presumption that he has never received the IOPC FOI training and is therefore acting on his own initiative. Please advise why you have not disclosed who Mr Benson reports to, the presumption it is that Michael Lockwood but why will you not confirm it”.

In relation to the training of a FOIA reviewer I would refer you to my response as above and must again direct you to the information we gave you in our email of 18 August:

“We would emphasise that neither the FOIA nor the Code of Practice issued under section 45 prescribes that internal reviews should be carried out by any particular person in the relevant public authority and there are no requirements as to their background, experience, training or qualifications. The Code of Practice states only that the procedure “should provide a fair and thorough review of procedures and decisions taken in relation to the Act” and “It is best practice, wherever possible, for the internal review to be undertaken by someone other than the person who took the original decision”.

I would repeat that this is the correct position whether you accept it or not.

I am sorry that we omitted to provide the name of Mr Benson’s line manager. This is Tom Whiting, Deputy Director General, Strategy and Corporate Services.

“Finally, the major issue of concern is why Mr Benson, your Finance Officer, has the absolute authority to act on behalf of the IOPC to approve the redaction of FOI disclosures which seems contrary to the guidance for organisations provided by the ICO, Quote "Understanding whether you are processing personal data is critical to understanding whether the UK GDPR applies to your activities. Personal data is information that relates to an identified or identifiable individual. Information which is truly anonymous is not covered by the UK GDPR".

<https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/key-definitions/what-is-personal-data/>”

In reference to your comment about Mr Benson’s “absolute authority” I would refer you again to the information we gave you on 18 August about the requirements for a review process.

In line with these requirements, Mr Benson decided your review as a senior person at the IOPC who was not involved in the initial handling of the request. As previously stated, we believe our decision to be well founded.

You appear to be saying that the ICO guidance on personal data confirms that Mr Benson should not have reached the decision that he did. I do not agree with your interpretation. I must emphasise again, therefore, that instead of seeking information about our review process which could not support your belief that our decision was wrong, you should be considering whether to make a complaint to the Commissioner to the effect that the disputed information is not exempt under section 40(2).

“I am annoyed by the political nature of your answers which do not address the questions posed but I would appreciate appeal review of all the points raised, especially your defiant stance which conflicts with the UK GDPR guidance regarding the data of individuals who cannot be identified.”

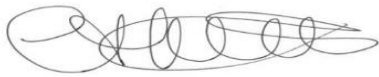
We have explained our procedure for handling internal reviews and why this is compliant with the Code of Practice. We included this information in response to your emails in which you said that you were questioning our review process because you did not accept Mr Benson's decision. For all the reasons we have given I agree with our conclusion that the information you had requested would not help you with your underlying complaint about the redactions we made to the referral form. In my view, our advice to you was entirely appropriate in all the circumstances of your request.

I find, however, that we have provided the information we hold under the terms of your request.

I have understood your request that we review our "defiant stance which conflicts with GDPR" as repeating your complaint that our redactions under request 1009057 were not justified. I would refer you to our previous advice on how to challenge our decision and repeat that we will not be reconsidering the outcome of the internal review.

This completes my consideration of your email of 18 August 2021.

Yours sincerely



Gemma Thomas

Data Protection Officer

Independent Office for Police Conduct (IOPC)