

**Date:** 10 November 2021

**IC-125203-C2B0**

## Request

You have requested the following:

*"In early 2019 representatives of Police Scotland met with colleagues from the Information Commissioners Officer (ICO) to discuss matters relating to the Public Protection business areas, including the possibility of the lawful processing condition of Public Task (Article 6(1)(e) being utilised for non-statutory agencies.*

*To that purpose, from February 2019 onward, Police Scotland worked closely with all relevant authorities and partners to consider further opportunities to share information regarding individuals assessed as requiring intervention to prevent future harm but who fell below thresholds for child or adult protection measures. This preparation also collated further information ascertaining their organisational purpose and services provided in order to furnish a new legal framework.*

*Please supply the following recorded information in electronic format Under FOIA. Please provide all correspondence, and reports between the ICO, The Police Service of Scotland (Police Scotland) when the ICO met with Police Scotland in early February 2019*

*To be clear, please provide all correspondence including but not limited to the exchange of letters emails/minutes of meeting, agenda's and ministerial briefs (official sensitive information can be redacted) including telephone calls & records, conference calls & records, between the ICO, Police Service of Scotland relating to the meeting in early February 2019."*

Your request has been handled under the Freedom of Information Act 2000 (the FOIA). As you are probably aware, this legislation provides public access to recorded information held by a public authority unless an appropriate exemption applies.

## Our response

In a previous disclosure on our [disclosure log](#), we disclosed a letter we received from Police Scotland, dated 23 July 2019, which alluded to two meetings in early February 2019. These were on 6 February 2019 and 15 February 2019. As these were likely candidates in scope of this request, I have focused my reasonable searches on information relating to these meetings.

During my internal consultation, I have been advised that we did visit Police Scotland on 6 February 2019. However, this was not a formal meeting and no notes were taken. Therefore, we do not hold any further information in relation to this meeting.

However, I have located a meeting note dated 15 February 2019 relating to a meeting between the ICO and Police Scotland. The purpose of the meeting was to discuss feedback on the DPIA for the iVPD. I have attached a copy of the meeting note. You will note that the names and initials of external attendees have been redacted from the document. I have exempted this third party personal data relying on section 40(2) of the FOIA. I have provided further details below about this exemption.

The meeting note detailed the following action: *"DF to send to Police Scotland a copy of the letter the ICO sent to the policing sector in England and Wales on data sharing for victim support"*. As this email would be related to the meeting, I have attempted to locate what we sent to Police Scotland. However, following my searches, I do not consider we hold this information. This is likely owing to the fact that our retention period for emails is 12 months.

We do still hold a copy of the letter shared with the policing sector in England and Wales, and which we agreed to share with Police Scotland. Given the recorded action was to share a copy of this letter, I have disclosed it in the attached bundle.

The substance of the letter is the challenge of using consent as a lawful basis for processing. While the principles explored in the letter are as relevant now as they were at the time the letter was drafted, the context in which the advice was originally drafted has changed, taking into account the release of the revised statutory *Code of Practice for Victims of Crime in England and Wales* which came into force on 1 April 2021.

I was not able to locate further information in scope of your request during my enquiries. I hope you find the information helpful.

## **FOIA section 40(2)**

You will see that some of the third party personal data has been redacted in our response.

Section 40(2) of the FOIA exempts information if it is personal data belonging to an individual other than the requester and it satisfies one of the conditions listed in the legislation.

We find that the condition at section 40(3A)(a) applies in this instance: that disclosure would breach one of the data protection principles. The principles are outlined in the General Data Protection Regulation (GDPR) with the relevant principle on this occasion being the first principle as provided by Article 5(1): that personal data shall be processed lawfully, fairly and in a transparent manner.

We do not consider that disclosing this information into the public domain is necessary or justified. There is no strong legitimate interest that would override the prejudice to the rights and freedoms of the relevant data subjects. We have therefore taken the decision that disclosing this information would be unlawful, triggering the exemption at section 40(2) of the FOIA.

## **FOI review procedure**

If you are dissatisfied and wish to request a review of our decision or make a complaint about how your request has been handled you should write to the Information Access Team at the address below or e-mail [icoaccessinformation@ico.org.uk](mailto:icoaccessinformation@ico.org.uk).

Your request for internal review should be submitted to us within 40 working days of receipt by you of this response. Any such request received after this time will only be considered at the discretion of the Commissioner.

If having exhausted the review process you are not content that your request or review has been dealt with correctly, you have a further right of appeal to this office in our capacity as the statutory complaint handler under the legislation.

To make such an application, please write to our Customer Contact Team at the address given or visit our website if you wish to make a complaint under the FOIA.

## Your information

Please note that our [Privacy notice](#) explains what we do with the personal data you provide to us and what your rights are.

This includes entries regarding the specific purpose and legal basis for the ICO processing information that people that have provided us with, such as an [information requester](#).

The length of time we keep information is laid out in our retention schedule, which can be found [here](#).

Yours sincerely



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