

20 March 2024

Case reference: IC-290556-V3W0

We are now in a position to respond to your information request of 27 February.

Request

"I write with specific reference to your recent enforcement against a company for processing of biometric data of employees. I would be grateful if you could consider the following request items. [\[link\]](#)

Could you please provide;

1) Reason for the delay in commencing the investigation and the outcome being issued. I understand that there is an approx 4 year delay from start to finish.

2) I note that the investigation was commenced following an observation by a member of staff of the ICO. It is my understanding that any person requires to complain directly to the organisation prior to the ICO being able to investigate. Please provide details of procedures for ICO members to be able to directly instigate an investigation in these circumstances, and if this is something that is now available to members of the public or only reserved as a privilege for ICO employees.

3) Is the ICO aware of any link between the individual Serco employee who complained and the ICO member of staff who observed the use of biometric processing? By link, I mean family, friend, partner, etc. but I do not require to know exactly how they are linked. A simple yes or no will be sufficient.

4) Please provide details of any biometric data processed by ICO for their employees, including details of reasons and any associated DPIAs, LIAs, RoPA, etc."

We have handled your requests for recorded information in questions 2 to 4 under the Freedom of Information Act 2000 (FOIA).

Our response

Please find below information in response to your questions 1 to 4.

1. Reason for the delay in commencing the investigation and the outcome being issued. I understand that there is an approx 4 year delay from start to finish.

The relevant team has provided the following explanation in regards to your question.

The investigation commenced at the end of 2019 and was paused during the COVID-19 pandemic when leisure centres were closed due to lockdown restrictions and the processing in question was not taking place. After restrictions for such venues were lifted, the investigation had to be refreshed. In addition, there was more than one change of Investigation Officer (IO) due to staff moving to new roles. This added to the total time taken to complete the investigation as each new IO had to review the whole investigation before deciding on the appropriate next steps.

Please note, a request for recorded information held on the investigation file may be subject to FOIA exemptions.

2. I note that the investigation was commenced following an observation by a member of staff of the ICO. It is my understanding that any person requires to complain directly to the organisation prior to the ICO being able to investigate. Please provide details of procedures for ICO members to be able to directly instigate an investigation in these circumstances, and if this is something that is now available to members of the public or only reserved as a privilege for ICO employees.

We do not hold recorded information within scope of your request in question 2 for, "...details of procedures for ICO members to be able to directly instigate an investigation in these circumstances...".

It may help to explain that the ICO has broad discretion on how it exercises its regulatory and enforcement powers. You can find further information on the approach we take in our ICO25 strategic plan [here](#).

We do ask that individuals raise their data protection concerns with the relevant data controller before bringing a complaint to us. This is because in many instances the issue can be resolved without referral to the regulator. For example, chasing a response to a pending information rights request which is

subsequently issued. We provide further detail on our data protection complaint handling process on our website [here](#).

In terms of an intelligence referral, there is no requirement for an individual to raise concerns with the data controller prior to alerting us. A member of the public, or an ICO employee, can raise a concern with us on the processing practices of a data controller. Any such referral will be assessed on its merits and taken forward as appropriate. Any decision to commence an investigation is taken with consideration of a number of factors, including (but not limited to) ICO25, our strategic priorities and resources available.

We also use the data protection concerns (complaint cases) raised with us to build up a picture of compliance by organisations over time. This can result in a referral to our investigation teams based on the intelligence we have gathered.

Whilst not in scope of your request, you may find our internal [whistleblowing policy](#) helpful in your area of interest. We also publish details of external whistleblowing disclosures on our [website](#) and [annual reports](#). The ICO is a 'prescribed person' under the Public Interest Disclosure Act (1998).

3. Is the ICO aware of any link between the individual Serco employee who complained and the ICO member of staff who observed the use of biometric processing? By link, I mean family, friend, partner, etc. but I do not require to know exactly how they are linked. A simple yes or no will be sufficient.

We do not hold information within scope of your request in question 3.

4. Please provide details of any biometric data processed by ICO for their employees, including details of reasons and any associated DPIAs, LIAs, RoPA, etc.

We do hold some information within scope of your request in question 4. ICO staff have the option to use facial recognition technology (FRT) as biometric user authentication for portable devices (laptops/tablets). Staff can choose not to use this feature. You can find more information about Windows Hello via the Microsoft website [here](#).

We have previously responded to a request about the ICO's use of FRT, which is available on our disclosure log under [IC-197805-G8Q7](#).

You can find our draft Data Protection Impact Assessment (DPIA) for Windows Hello on our disclosure log under [IC-203321-W1K8](#) (see pages 409 to 428 of the

disclosure). We have been advised by the relevant team that this DPIA is in force but will be reviewed in order for it to be completed.

The published information within scope of your request is technically withheld under section 21 of the FOIA, which explains that we are not required to provide information in response to a request if it is already reasonably accessible to you from another source.

This concludes our response to your requests. We hope you found the above information helpful.

Next steps

You can ask us to review our response to your requests for recorded information in questions 2 to 4. 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 sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely



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**For information about what we do with personal data
see our [privacy notice](#)**