

21 February 2023

Case reference IC-212527-L7B5

Request

Your request relates to a data breach involving Fat Face Ltd, where a reprimand was issued to them by the ICO in November 2022.

You asked us:

"We note you issued a reprimand following the completion of your investigation on the 07/11/2022. We would be grateful if you could please disclose to us the full outcome of your investigation and details of any advisories and/or penalties that were issued in this matter".

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

Our response

Information Withheld

To provide the information requested would involve disclosure of the content of the reprimand issued.

We have withheld the reprimand information because it is exempt from disclosure under section 31(1)(g) of the FOIA.

You may be aware the Information Commissioner expressed commitment to publishing reprimands issued by the ICO, unless there is a good reason not to:

<https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/11/how-the-ico-enforces-a-new-strategic-approach-to-regulatory-action/>

This is a case where we must rely on an exemption to withhold the reprimand details. We can rely on Section 31(1)(g) of the FOIA where disclosure:

"would, or would be likely to, prejudice – ... the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state:

"(a) the purpose of ascertaining whether any person has failed to comply with the law" and

"(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ..."

Section 31 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to consider the public interest.

Please note we cannot disclose the specific details of why the exemption applies.

This approach is backed up by Section 17(4) of the FOIA which overrides the obligation for a public authority to explain why an exemption applies (under S17(1)(c)), if the explanation itself would involve disclosing exempt information.

The specific explanation would involve disclosing information held by the ICO which is also exempt under Section 31(1)(g) of the FOIA.

In this instance, we deem that the public interest is in favour of withholding the explanatory information concerning this case in order to preserve the ICO's regulatory capability.

Reprimand considerations

Prejudice test

We are unable to state the specific details and consider disclosure of the reprimand would likely serve to damage trust in the ICO. Disclosure of specific details would prejudice our regulatory functions in the same way disclosure of the reprimand itself would, as it would negatively affect our ability to obtain information relating to other such cases in the future.

It is likely to result in parties being reluctant to engage with the ICO, impacting our ability to effectively complete statutory tasks and use our statutory powers as a data protection and freedom of information regulator, particularly when receiving information about and responding to complaints, cases, investigations and other regulatory matters.

Public interest test

With this in mind, we have considered the public interest test for and against disclosure.

In this case the public interest factors in disclosing the information are –

- Increased transparency concerning the way in which Fat Face Ltd has responded to the ICO's enquiries and any data practices relevant to the incident.
- Increased transparency regarding the way in which ICO conducts its investigations thereby promoting assurance as to how similar cases in future may be handled.
- Increased transparency regarding those circumstances, and types of incident, which justify the issuing of a reprimand.

The factors in withholding the information are –

- The public interest in maintaining organisations' trust and confidence, when dealing with the ICO, which in turn encourages willing engagement and future compliance.
- The public interest in organisations being open and honest in their correspondence with the ICO, which allows us to conduct our investigations appropriately, take proportionate action and provide relevant guidance.
- The public interest in maintaining the ICO's ability to conduct thorough and appropriate investigations into cases where we are provided with detailed, comprehensive and accurate information from data controllers.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

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



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