

4 April 2023

ICO Case Reference IC-223402-H8L5

Request

On 23 March 2023 you made the following request:

- 1. Council Authorities in England that you have applied warnings or penalties to for breaches of GDPR for 2020,2021 and 2022 shown separately.*
- 2. What those warnings or penalties were applied for, which specific part of the Act.*
- 3. If you apply penalties or warnings to organisations in general for a breach that involves failing to respond to GDPR requests at all or with significant delays, as I understand this is considered a breach.*
- 4. If there is a benchmark on how many complaints you receive about failures to respond before any action is taken.*
- 5. Which part of the Act would be breached if a response was not made to a request or there were significant delays.*

In a subsequent email on 24 March 2023 you made a further request, which we have addressed alongside points 1-5.

- 6. I would also like clarification on if the GDPR has provisions for how the size, in terms of budget and staff for an organisation to run their GDPR Department is determined. If there is none, can the ICO comment on how it assesses if an organisation is failing to meet its GDPR obligations because it has to small a department to deal with requests, and if that is a breach in itself of the GDPR. I suspect there will be a policy?*

We have dealt with points 1, 2 and your request for a policy in relation to point 6 in accordance with the Freedom of Information Act (2000).

We consider the other parts of your request to be queries rather than requests for recorded information, and we have dealt with these accordingly below.

Response under the FOIA

In relation to points 1 and 2, we do not hold any information about any warnings or penalties in relation to breaches of GDPR by council authorities in England during the periods specified in your request.

In relation to point 6 the ICO does not have a dedicated policy that fits your description, although some of our published guidance may be of interest and we have provided some links under Advice and Assistance below.

Response to queries

In relation to points 3 and 4, failure to respond to a request within statutory timeframes is a breach of the GDPR, and there is no benchmark on how many complaints we receive about this before any regulatory action is taken.

Action taken (including any warning or the issuing of a penalty notice) usually depends on the impact of any failing – in which case we would not wait for a certain number of complaints before considering formal action. As a regulator we often educate organisations on best practice and advise them on action they should take to improve their information rights practices.

In appropriate cases, the ICO may take action against a controller or processor if they fail to comply with data protection legislation. For example, we could issue a controller or processor with a:

- warning;
- reprimand;
- enforcement notice; or
- penalty notice.

The ICO will exercise these enforcement powers in accordance with our [Regulatory Action Policy](#).

However, the likely outcome would be that the ICO requests the data controller to provide a response to the requester by a certain date, and compliancy advice may be provided to assist them in improving their information rights practices.

Regulatory action is only taken in the most serious cases, or if the organisation is consistently performing poorly with their data protection obligations.

In response to point 5, the part of the Act that is breached would depend on the type of request. For example, failure to respond to a subject access request

would be a breach of Article 15. We have provided some links to the relevant parts of our guidance under Advice and Assistance below to assist you with exploring this topic further.

In relation to point 6, please note that the legislation does not stipulate how much resource (including staff, time, money etc.) a data controller must invest in compliance, therefore this in itself would not be a breach of GDPR.

As previously mentioned we do not hold a definitive policy that specifies how many staff a data controller should employ or what they should spend on compliance. This is because what represents a suitable level of resourcing will differ depending upon the organisation and the volume and complexity of requests that they receive. Therefore concerns about any shortcomings in these areas will be raised on a case by case basis and any advice and/or action in relation to this will depend on the specific circumstances and the individual data controller.

Advice and Assistance

Some of our published information and guidance may be relevant to the topics covered by your request. For example, you can see what we hold about breaches of the legislation in relation to different sectors and organisations (including councils), and action we've taken in relation to data controllers, by visiting the links below:

[Complaints and concerns data sets](#)
[Action we've taken](#)

Some of our published guidance may also be of interest, for example, the [Accountability Framework](#) guidance in which the [Leadership and oversight](#) and [Individuals' rights](#) sections might be relevant.

There is also an [Accountability and governance](#) section in our GDPR Guide.

This concludes our response to your request.

Next Steps

Please come back to us in the first instance if you would like a clarification or a review of the way your request has been handled. If you remain dissatisfied you can then request a review of our decision under the FOIA or make a complaint

about how your request has been handled by writing to the Information Access Team at the address below or email 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 FOI Complaints & Appeals Department at the address below or visit our website if you wish to make a complaint under the Freedom of Information Act.

A copy of our review procedure can be accessed from our website [here](#).

Your rights

Our [privacy notice](#) explains what we do with the personal data you provide to us and what your rights are, with a specific entry, for example, for [an information requester](#). Our retention policy can be found [here](#).

Yours sincerely,



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Risk and Governance Department, Corporate Strategy and
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