

22 May 2023

IC-228371-K0N0

Request

On 20 April 2023 you requested the following information:

- *Copies of any guidance given to PimEyes by the ICO in relation to their activities since 1/1/2016.*
- *Copies of any assessment, inspection, report examining, evaluation or similar of PimEyes technology dated since 1/1/2016.*
- *Any correspondence sent by the ICO to PimEyes, or its staff, containing information, guidance, advice or similar about the company's application of data protection rules.*
- *A copy of any internal decision or reasoning to cease investigating PimEyes for data protection breaches*

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.

Response

I can confirm that we hold information in scope of your request.

We opened a case into the data protection compliance of Carribex Ltd (t/a PimEyes). We decided not to formally investigate the company. The case was concluded on 23 March 2023 with an outcome of 'no further action'.

Please note that the organisation is currently under investigation by another data protection authority. We are withholding the requested information at this time because disclosure would be likely to prejudice this investigation.

FOIA section 31

The information is exempt from disclosure under section 31(1)(g) of the FOIA. This is an exemption relating to information which, if disclosed, would or would be likely to cause prejudice to the regulatory functions of any public authority.

Specifically, the exemption at section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information:

"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 ..."

These purposes apply when a data protection authority is considering whether or not a data controller has met its obligations in respect of data protection legislation.

The exemption at section 31 is not absolute, and we must therefore consider the prejudice or harm which may be caused by disclosure of the information you have sought, as well as applying a public interest test by weighing up the factors in favour of disclosure against those in favour of maintaining the exemption.

Given that there is currently an ongoing investigation into the actions of Carribex Ltd, in considering the prejudice or harm that disclosure may cause we have taken into account the factors that would, in our view, impact on the release of the information at this stage.

Firstly, we take the view that to release the information you have asked for could prejudice the other authority's ability to conduct their investigation in an appropriate manner. For example, it is probable that any disclosure at this stage would discourage ongoing discussions between the authority and Carribex Ltd and may damage their ability to conduct and conclude the investigation fairly and proportionately.

In our view harm could be caused if, as a result of disclosure, Carribex Ltd were reluctant to enter into any further discussions if information had already been disclosed in response to information requests. This is likely to result in other parties being reluctant to engage with data protection authorities - including the ICO - in the future. In addition, any information released at this stage could be misinterpreted, which in turn could distract from the investigation process.

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

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

- increased transparency into the way we conducted our enquiries
- transparency about our reasoning for closing the case, particularly where we have decided not to formally investigate or take any action.

The factors in withholding the information are –

- the public interest in the ability of other data protection authorities to conduct their investigations appropriately
- the public interest in data controllers being open and honest in their correspondence with the ICO about their activities in response to our enquiries without fear that their comments will be made public prematurely or, as appropriate, at all;
- the public interest in meeting another data protection authority's expectation of non-disclosure having ascertained their views on this individual request.

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 at this time.

This concludes our response to your request.

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.

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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