

8 June 2023

ICO Case Reference IC-232323-S2L7

Request

On 14 May 2023 you requested the following information:

My objective is to gather specific details regarding the enforcement of offences outlined in Section 170 of the Data Protection Act 2018 (DPA 2018). I would appreciate your assistance in providing the following information pertaining to Section 170 offences handled by the ICO since June 1, 2018:

Number of Section 170 Offences:

- a. The total number of cases involving Section 170 offences that the ICO has handled during the specified period.*
- b. The breakdown of these cases by sector, if available. If feasible, please provide information on the sectors involved, such as healthcare, finance, education, public sector, etc.*

Investigation and Enforcement Actions:

- a. The number of Section 170 cases that were subject to investigation by the ICO during the specified period.*
- b. The outcome of these investigations, including the number of cases resulting in enforcement action taken by the ICO.*
- c. Any details or explanations of the types of enforcement action pursued, such as fines, prosecutions, or other measures, in relation to Section 170 offences.*

Internal Policies and Procedures:

- a. Any official documentation, guidelines, manuals, or policies in place within the ICO that outline the internal procedures for handling complaints and investigations related to Section 170 offences.*

b. Information on the criteria or factors considered by the ICO when determining whether a Section 170 offence should proceed with enforcement action, including any guidelines or decision-making frameworks used.

c. Any specific measures or protocols in place to ensure consistency, fairness, and proportionality in the handling of Section 170 offences.

We have dealt with your request in accordance with the Freedom of Information Act (2000).

Response

We hold information that falls under the scope of your request. Each point has been addressed below.

The total number of cases involving Section 170 offences that the ICO has handled during the specified period.

We hold records of 1048 incidents reported to the ICO that relate to unlawful obtaining of personal data. These include 29 data protection complaint cases and 1019 incidents which were reported to our Criminal Investigations Team.

The breakdown of these cases by sector, if available. If feasible, please provide information on the sectors involved, such as healthcare, finance, education, public sector, etc.

We hold sector breakdowns for the 29 data protection complaint cases, and these are provided below.

Sector	Number of cases	Breakdown by sub sector
Education and childcare	3	Academy and Free Schools – 1 Training Company – 1 Maintained schools – 1
Finance, insurance and credit	2	Financial services and advice – 1 Debt collection/tracing – 1
General business	4	Training Company – 2 Supplier of services – 1 Business advice and consultancy – 1
Health	3	Secondary care – 1 Public health – 1 Unassigned – 1

Justice	3	Police forces – 3
Land or property services	1	Individuals – 1
Local government	3	District Council – 2 Unitary Authority (London Borough, Mets and Councils in Scotland and Wales) – 1
Marketing	1	Unassigned – 1
Media	1	Journalists – 1
Online Technology and Telecoms	2	Customer profiling and data analytics – 1 Service providers – 1
Political	1	Unassigned – 1
Religious	1	Religious organisations – 1
Retail and manufacture	4	Supplier of services – 2 Supplier of goods – 2

The remaining 1019 incidents are recorded on a different case management system, and are not assigned sectors or sub sectors. Therefore we do not hold a breakdown by sector for these incidents.

The number of Section 170 cases that were subject to investigation by the ICO during the specified period.

92 cases were investigated by our Criminal Investigations Team.

The outcome of these investigations, including the number of cases resulting in enforcement action taken by the ICO.

67 of these investigations have outcomes assigned:

No further action – 48 cases
Caution – 13 cases
Prosecution (guilty) – 5 cases
Prosecution (not guilty) – 1 case

The remaining 25 investigations have not yet been assigned outcomes.

Any details or explanations of the types of enforcement action pursued, such as fines, prosecutions, or other measures, in relation to Section 170 offences.

See the breakdown provided in response to the previous point.

Any official documentation, guidelines, manuals, or policies in place within the ICO that outline the internal procedures for handling complaints and investigations related to Section 170 offences.

Please see the attached disclosure. Our searches focused on materials that specifically refer to section 170, rather than more general processes that apply to multiple different types of case.

Pages	Document
1-7	Section 170 process
8-9	Approach to s.170 letters
10	Process for which letter to send re: s.170
11-12	Letter A
13-14	Letter B
15-16	Letter C
17	Letter D
18-33	Section 170-173 - Presentation
34-43	Section 170-173 – Script for trainer
44-54	Section 170-173 Refresher training - Presentation
55-63	Section 170-173 Refresher training – Script for trainer

Some of this information has been redacted in accordance with Section 30 of the FOIA. This is marked by the black boxes in the attached disclosure bundle. More information about this and the exemption can be found on pages 5-6 of this letter.

Section 170 is also mentioned in our guide to assessing data breaches. This has already been published in response to a previous request and can be found here:

<https://ico.org.uk/about-the-ico/our-information/disclosure-log/ic-221954-z9d7/>

In determining whether to proceed with a prosecution or caution, we consider the ICO Prosecution Policy statement and the Regulatory Action Policy. We also consider and apply the full code test found in the Crown Prosecution Service Code for Crown Prosecutors. Links to these documents are provided below.

[ico-prosecution-policy-statement.pdf](#)

<https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

<https://www.cps.gov.uk/publication/code-crown-prosecutors>

Technically this information is exempt from disclosure in accordance with Section 21, as this is already available to you.

b. Information on the criteria or factors considered by the ICO when determining whether a Section 170 offence should proceed with enforcement action, including any guidelines or decision-making frameworks used.

While enforcement is mentioned in some of the documents disclosed in response to the previous point, we do not hold any documents about enforcement action that specifically refer to criteria used in Section 170 cases. Decisions regarding enforcement are made in accordance with our Regulatory Action Policy (see above link and the other guidance cited in response to the previous point).

c. Any specific measures or protocols in place to ensure consistency, fairness, and proportionality in the handling of Section 170 offences

As above, we do not hold any information about this that specifically relates to Section 170. We investigate these cases in accordance with our Investigations Manual.

[investigations-manual-final-disclosure-redacted-3.pdf \(ico.org.uk\)](#)

Please also see the guidance cited in our response to the previous points.

Information withheld - Section 30

Some of the information you have requested is exempt from disclosure under section 30 of the FOIA.

Section 30(1) states:

"Information held by a public authority is exempt information if it has at any time been held by the authority for the purposes of-

(a) any investigation which the public authority has a duty to conduct with a view to it being ascertained- (i) whether a person should be charged with an offence, or (ii) whether a person charged with an offence is guilty of it,

(b) any investigation which is conducted by the authority and in the circumstances may lead to a decision by the authority to institute criminal proceedings which the authority has power to conduct, or

(c) any criminal proceedings which the authority has power to conduct.”

Some of the information in the attached documents was held for the purposes of criminal investigations and is exempt pursuant to s.30(1). Section 30 is not an absolute exemption. This means we need to carry out a public interest test.

Factors in favour of disclosure include:

- There is public interest in Section 170 cases; and
- There is a public interest in the ICO being open and transparent about its consideration of this type of case.

Factors against include:

- Disclosure of the information could enable the identification of particular third parties and investigations. This is likely to prejudice the ICO's relationship with these parties and may discourage them from cooperating with the ICO in future;
- Disclosure may also discourage other parties in similar circumstances from fully cooperating with the ICO's enquiries in relation to future investigations, and this is likely to have a strongly prejudicial effect on the ICO's ability to investigate such matters more broadly (particularly if said parties believe that such information will be routinely considered for public disclosure);
- Some of the withheld information is connected with live issues, so there is a real risk that disclosure could prejudice ongoing investigations, legal processes and/or other connected matters which the ICO may need to investigate in the future; and
- There is a strong public interest in the ICO being able to conduct criminal investigations effectively and without risk of prejudice.

Having considered these factors we have taken the decision that the public interest in withholding the information you have requested outweighs the public interest in disclosing it at this time.

Advice and assistance

As noted above, we do not record sectors for all Section 170 cases as they are processed using more than one case management system. In some cases multiple parties may be involved. We can consider requests in relation to particular data controllers and/or individual cases, but where requests concern third party data, live issues or other sensitive details, the information may be subject to exemptions.

We publish some information about cases we deal with here:

<https://ico.org.uk/about-the-ico/our-information/complaints-and-concerns-data-sets/>

We also publish some details about action we've taken here:

<https://ico.org.uk/action-weve-taken/>

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,



Information Access Team
Risk and Governance Department, Corporate Strategy and
Planning Service
Information Commissioner's Office, Wycliffe House, Water
Lane, Wilmslow, Cheshire SK9 5AF
ico.org.uk twitter.com/iconews
Please consider the environment before printing this email
**For information about what we do with personal
data see our [privacy notice](#)**