

5 June 2023

Case Reference IC-235379-M2J3

Your request

You asked us for the following: [For clarity we have identified, numbered and emphasised what we consider to be your questions and requests]

"Thank you for confirming that The Information Commissioner has abused his position to publish the basic facts of all cases except the Criminal Complaints against his own Data Protection Officers, in your reply to Case Reference IC-232761-H9B6.

How can the Information Commissioner think he has any moral or legal authority when he exempts his own office from his "name and shame" policy. You name data controllers and shame thousands of data controllers for having a complaint registered against them which I think is manifestly unfair and undemocratic. That you exempt your own staff accused of committing Criminal Offences under DPA 2018 surely brings the regulators' office into disrepute. Open, transparent and accountable is the stick you beat every other organization with and a never ending stream of hypocrisy, holding the ICO up as a beacon of light in these dark times.

I will repost my questions you declined in the public interest, your indignant reply and some further questions I would like you to answer for me.

1. Thank you for the information but If you could clarify which part explains the fact that I cannot seem to find even one of the following cases in the data sets published:

Reference	Year	Alleged offence	Outcome
INV/0241/2022 Insufficient evidence	2022	s173	NFA -
INV/0431/2022 Insufficient evidence	2022	s132	NFA -
INV/0677/2021 Insufficient evidence	2021	s132	NFA -

According to IC-217201-N0L8: on this site on 13 March 2023 these are references to cases of the ICO Criminal Investigations Unit investigating Criminal Offences being committed by their colleagues at the ICO.

In the introduction to the data sets on the ICO's website it states: "It is important to note that we are not publishing this information in league tables or after analysis. We predominantly use our casework management system to track and progress individual cases. We don't use this data in isolation to decide whether regulatory action is appropriate in any particular case, but we might use it to help identify potential trends or to see the size and progress of our caseload. Each line in the data represents a piece of work undertaken to consider a potential contravention of the legislation we oversee."

I took to mean it was there was no editing of the data sets as you would surely edit after analysis which the ICO say "not. after analysis."

- 2. As each line in the data sets represents "a piece of work undertaken" by the ICO should the public understand that if a case reference is not published in the data sets that this represents that there was no work undertaken by the ICO on a case that is concluded and does not occupy a line in your data set?**

Arguably, internal criminal investigations of ICO staff by their fellow staff should appear in their own data set if the Information Commissioner wanted to be Open, transparent and accountable about the work the ICO does.

- 3. How does the public or the individuals who believe they are victims know these Criminal Investigations actually took place. Do these cases exist?**
- 4. What controls are in place to ensure such cases are handled appropriately and properly investigated in the public's interest. What are the procedural safeguards that ensure processing of victims complaints is lawful, fair and transparent?**

I understood that data sets are like a journal roll - noting and recording all "transactions" or cases in this scenario.

5. Can you please, as a priority explain why I cant easily find these cases and point out exactly where they do appear because I can't find a valid argument or exemption that would explain their absence from the data-sets.

Surely it is a complete waste of time publishing data sets that don't include information about cases that should be highlighted to the public in the public's interest. The introduction to your data sets I find misleading if they do not publish all work undertaken by the Information Commissioner. How does the public know that what you have replied with is factually correct. If you only inform the public how many cases you have concluded that you choose to and there is no reliable complete public record of how many there should be then how can we know how many cases are not disclosed or potentially might not even exist."

Where your questions satisfy the criteria of a valid information request, we have considered your request under the Freedom of Information Act 2000 (FOIA).

Our response

1. Having already provided the recorded information within scope of your request for the rationale for not publishing certain investigations, we can merely advise that the relevant part of the [policy](#) relating to the publication of criminal investigations is headed 'Criminal Investigations', and can be found on page 7 of the document.

You will note that we state that "we may publicise details once we reach an outcome..." But this does not commit us to do so as part of our proactively disclosed datasets.

We should reiterate that we do not include **any** criminal investigations in our datasets, not simply those which relate to ICO staff.

You may also find the minutes from a decision on dataset publication recorded in a [directors meeting](#) in 2021 useful.

2. This is not a request for recorded information and therefore not a valid request under the FOIA. However, we can reiterate that we nowhere state that the datasets exhaustively constitute all of our casework. Indeed, we provide a link to the policy referenced in 1. throughout the introduction to the datasets. It is also evident that there is no dataset included which relates to criminal investigations.

3. This again appears to be an enquiry or request for the production of new information rather than a valid request

under the FOIA. However, by way of advice and assistance, we can advise the following:

Those bringing accusations of criminal activity are involved and informed as appropriate on each case. The public may request the information under the FOIA, as is evident from the information request response to which you make reference in your request. The cases you reference do indeed exist.

4. Besides our published privacy policy (available on our website), we can confirm that we hold an [Investigations Manual](#) and an 'Allegations Against ICO Staff' policy (attached) which constitute the recorded information within scope of your request.
5. Again, this appears to be a request for new information in the form of an explanation and thus not a valid request. We can reiterate that we are not required to justify what is specifically not included in the datasets, though our communications policy referenced throughout our responses to you does so in general terms. To clarify, no information is 'exempted' from the datasets as they constitute proactive disclosure, not a response to a FOIA request.

In summary, the only valid request you appear to have made in your email (4.) has now been responded to. We have provided advice and assistance to each of your enquiries on a discretionary basis, despite their not being valid information requests.

Across the two requests you have submitted on this topic, we feel we have exhausted our capacity to provide you with recorded information and advice and assistance. Please note, substantively repeated requests may be refused under section 14 and no notice provided under section 17(6) of the FOIA.

This concludes our response.

We hope you find this information helpful.