

23 May 2023

Case Reference IC-232761-H9B6

Your request

You asked us for the following: [numbers added]

"The data sets include information on the organization, sector, nature of the issues and outcome following the ICO's consideration.

- 1. How many closed cases are withheld and not published in the datasets.*
- 2. If there are closed cases not published in the datasets what is the reason for non disclosure?*
- 3. If there are closed cases not published in the datasets how many relate to private companies and how many relate to public sector organisations?*
- 4. If there are closed cases not published in the datasets involving public sector organisations please list which organisations and how many cases each have withheld from data sets and the reason for those closed cases being exempt from publication."*

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. & 3. The ICO does hold information in scope of this part of your request.

We hold information we hold on cases not disclosed along with the public disclosure of our datasets from Quarter 3 of the financial year 2021 to Quarter 3 of the financial year 2022 as follows:

2021: 11 Public organisations and 6 Private companies.

2022: 8 Public organisations and 2 Private companies.

2. Cases are taken out if they involve a whistle-blower, are connected to some other ongoing investigation or are in any other way considered very sensitive. It is up to the area of the business with ownership of the case to make this judgement.

Some cases are automatically restricted because an exemption under the FOIA applies to any information relating to that authority or category of information at issue. The ICO neither confirms nor denies they have received/handled cases about these categories of information/authorities.

4. We can confirm the following five data protection complaints as follows:

IC-83929-F0W7 Gildredge House Free School

IC-66174-F0F9 Bassingham Primary School

IC-49793-V3V9 Sutton Valence Primary School (Complaint withdrawn.)

IC-62464-W4T4 Sir Thomas Richs School

IC-85028-S2F4 Swanmore C of E School

The rationale in 2. Was relied on by the relevant area of the business to request the exclusion of these cases, but no specific explanation was given for each.

The remaining unpublished cases relate to investigations carried out by the ICO.

One related to the Home Office, and has been excluded due to security concerns relating to the case.

One relates to a whistle-blowing disclosure, which we are withholding in line with our [Enforcement communications policy](#) which stipulates that publications "will not contain any information that would identify individual whistle-blowers or their employers, including ex-employers."

10 Of the cases are exempt from publication and disclosure, but to identify the exemption would itself undermine the exemption itself. We will therefore make a note of the exemption on the case, but will not explain it as part of this disclosure.

Two of the cases were excluded due to the nature and sensitivity of the investigation and are exempt from disclosure under section 31 as to do so may prejudice our ability to regulate the relevant

legislation in future. We shall explain our reliance on this exemption below.

Section 31

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 carry out a public interest test to weigh up the factors in favour of disclosure and those against.

Disclosure could jeopardise the ICO's ability to obtain information relating to this case or others in the future.

Disclosure is likely to result in these or other parties being reluctant to engage with the ICO in the future.

Any information released 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 in ICO investigations.

The factors in withholding the information are –

- the public interest in maintaining organisations' trust and confidence that ICO engagement will be afforded an appropriate level of confidentiality
- the public interest in maintaining the ICO's ability to conduct the investigation into complaints as it thinks fit,

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.

This concludes our response.

We hope you find this information helpful.