

9 August 2023

IC-244297-L2T9

Request

You asked us:

"Can you please disclose a list of the public authorities that you have written to with regards to their published FOI compliance statistics?"

I am referring to the statistics published by the Cabinet Office.

Can this information be provided for the last six months with the name of the public authority, the figure that triggered a enquiry from the ICO, the date of the relevant published statistics and the date of your correspondence included too?"

We received your request on 11 July 2023.

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

Our response

I can confirm that we hold some information in scope of your request. This information comes in two forms.

The first form of information we hold is our contact with six central government public authorities (PAs) to discuss potentially writing up case studies on their FOI/EIR practice, following the publication of the 2022 annual FOI statistics. The statistics in question can be found [here](#).

We contacted the Office of Rail and Road, the Wales Office, and the Debt Management Office because the statistics indicated that they received a low volume of requests and maintained a high level of compliance.

We contacted Ofgem, the Office of National Statistics, and the Department of Transport because the statistics indicated they received a high volume of requests and maintained a high level of compliance.

All six of these PAs were contacted on 29 June 2023. All statistics for each of these PAs were considered to gain a full understanding of their compliance, and there were no set criteria by which they were assessed.

The second form of information we hold relates to more formal contact with PAs regarding their overall FOI performance and compliance.

With regards to this correspondence, it is important to note that the Cabinet Office statistics form only part of the reason for our contact. There is a variety of intelligence which prompts our correspondence with central government departments on their timeliness performance.

The factors behind our correspondence can be found in our [FOI and Transparency regulatory manual](#). This sets out the way in which we conduct our correspondence of the manner described above.

When an enforcement notice or practice recommendation is issued as a result of this correspondence, we [publish it on our website](#). This page therefore contains some of the information in scope of your request. This information is technically withheld under section 21 of the FOIA. Further information on this can be found below.

The rest of the information we hold, regarding our contact with PAs either under consideration or where no formal regulatory action has been taken, has been withheld from our response with reliance on section 31 of the FOIA. Further information on this can be found below.

Information withheld

FOIA section 21

Please note that although we hold information falling with the scope of your request it is available to you outside of FOIA because it is published on our website as described above.

As a result, the information we hold is withheld in reliance on section 21 of the FOIA. This exempts information which is reasonably accessible to the applicant through means other than a request under the FOIA.

It is an absolute exemption, which means it is not necessary for us to consider any public interest test.

FOIA section 31

This exemption applies when disclosure would or would be likely to prejudice our ability to carry out our regulatory function.

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)*".

The purposes referred to in sections 31(2)(a) and (c) are -

"(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..."

The purposes at section 31(2)(a) and (c) apply when a regulator is determining whether or not there has been a breach of relevant legislation, and whether any further action is appropriate. The exemption at section 31 is not absolute, and we need to consider the public interest test by weighing up the factors for and against disclosure of the information we hold at this time, as well as any prejudice or harm which may be caused by disclosure.

We believe that disclosure of the PAs we have contacted for the purposes of considering formal regulatory action would be likely to prejudice our ability to effectively carry out our regulatory function.

Disclosure would be likely to inhibit effective and productive relationships with the various parties with which we communicate. The constructive and collaborative relationships we build and maintain are key to a successful regulatory strategy. PAs need to be able to work with us without fear that details of their correspondence with us will be made public prematurely, or at a later date, if it is inappropriate to do so.

Disclosure could also therefore result in parties being reluctant to engage with the ICO in the future, if they believe that information about correspondence of this nature is disclosed to the world at large.

There is also a risk of distracting from and causing interference to the investigative process in general and in relation to the specific PAs we have contacted, in particular in instances where such correspondence remains ongoing. Information disclosed in this instance could result in said information being misinterpreted.

With this in mind, I have now considered the public interest test for and against disclosure. The public interest factors in favour of disclosure are:

- Openness and transparency in the way in which we regulate public authorities handling of FOI and EIR requests, and their wider compliance with the legislation;
- Disclosure would help to demonstrate that the ICO is complying with its duties by monitoring public authorities compliance with FOI legislation; and
- Increased transparency in public authority compliance when responding to information requests.

The public interest factors in maintaining the exemption are:

- The public interest in ensuring the ICO are able to effectively monitor public authorities without revealing information prematurely that could be used in future enforcement activities;
- Ensuring that the ICO can have effective and productive relationships with the public authorities we regulate and that they continue to engage with us in an open, co-operative and collaborative way without fear that information about our correspondence with them is not made public prematurely or, as appropriate, at all;
- Allowing us a 'safe space' during our consideration of any regulatory activity arising as a result of this correspondence can be considered free from external influence, and to ensure the confidentiality of enquiries undertaken regarding each individual case; and
- The ICO has a demonstrable history of sharing information about our enforcement and regulatory activities when it is appropriate to do so, in line with our [communicating regulatory action policy](#). As mentioned above, we also publish any [formal regulatory action taken](#) as a result of these enquiries.

Having considered these factors, we have taken the decision that the public interest in withholding the information you seek outweighs the public interest in disclosure.

This concludes our response to your request.

Next steps

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint through our website](#).

Your information

Our [Privacy notice](#) explains what we do with the personal data you provide to us, and set out your rights. Our retention schedule can be found [here](#).

Yours sincerely