

23 August 2023

**Reference number: IC-248981-Z6J5**

**Request**

You asked us: *"Can you send me the details of the breaches caused in the 6 who were convicted?"*

This was received as a follow up to your previous requests IC-233384-N3Z6 and IC-238436-H4V9 in which you asked us about Section 170 prosecutions that the ICO has undertaken.

We received your request on 2 August 2023.

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

**Our response**

Having conducted searches of our records, I can confirm we hold information in the scope of your request.

This information is withheld from disclosure due to Section 44 and Section 30 of the FOIA. These will now be explained in more detail below.

Some information has been withheld under section 44 of the FOIA. Section 44(1)(a) states:

*"(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it -*

*(a) is prohibited by or under any enactment"*

The enactment in question is the Data Protection Act 2018. Section 132(1) of part 5 of that Act states that:

*"A person who is or has been the Commissioner, or a member of the Commissioner's staff or an agent of the Commissioner, must not disclose information which—*

*(a) has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions,*

*(b) relates to an identified or identifiable individual or business, and*

*(c) is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources,*

*unless the disclosure is made with lawful authority."*

Section 132(2) lists circumstances in which a disclosure can be made with lawful authority, however none of them apply here. As a result, the information is exempt from disclosure.

Section 30(1) of the FOIA 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."*

The information you have requested falls into the category described in (a) and (b).

Section 30 is not an absolute exemption. 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:

- Disclosure of the requested information could demonstrate to individuals and organisations that the ICO is active in investigating activity of this

nature and this disclosure may actually encourage engagement with organisations.

- There is a legitimate public interest in promoting accountability and transparency of public authorities.
- Public disclosure of this information may, by way of demonstrating our proactive work in this area, discourage unlawful activities, which is in the public interest.

The factors in withholding the information are:

- Disclosure of the requested information may prejudice the outcome of any ongoing or future investigations by the ICO, which is not in the public interest.
- Disclosure may deter organisations from reporting possible contraventions to us as some organisations may be less inclined to share information with us if they know we may place it into the public domain. This will have a negative effect on the ICO's ability to conduct our regulatory functions, which is not in the public interest.
- Individuals, including victims, could be identified from the information held. This could result in harm to them which would not be in the public interest. Should individuals be identified then it would mean that disclosure has been in contravention of the main data protection principles, particularly in relation to [fairness](#).
- Disclosure of this information could provide individuals, looking to commit offences of this nature, with information that allows them to alter their behaviours and evade detection. This is not in the public interest.
- The ICO already provides transparency around the data breaches we receive as these are published in our [data sets](#).
- The ICO advises of the regulatory action we have taken on our [website](#). We believe this provides transparency around our actions as well as already discouraging unlawful activities.

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

### **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



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**For information about what we do with personal  
data see our [privacy notice](#)**