

7 March 2023

ICO Case Reference IC-216658-H4Q9

Request for information

Request received 16 February 2023:

"As an FOI, please could I request information on:

(i) the process for informing victims of data breaches about whether ICO plan to take legal proceedings against the perpetrator, (ii) whether victims are updated and shared with information pertaining to decisions to prosecute, (iii) whether victims have the right to review for decisions on prosecutions as per online guidance [ico-right-to-review-scheme-for-victims-of-crime.pdf](#)"

Your request has been handled under the Freedom of Information Act 2000 (the FOIA). As you are likely aware, this legislation provides public access to recorded information held by a public authority unless an appropriate exemption applies.

Our response

We do hold some information in scope of your request. Please see the 'Information' section below.

Advice and Assistance

Your request appears to be an enquiry about how and when the ICO communicates with individuals (data subjects) whose personal data has been breached, not how ICO communicates with organisations (data controllers) who have experienced a data breach. However, we should clarify that in instances when the ICO is bringing a prosecution following a personal data breach, we consider the 'victim' to be the data controller as they are the holder of the data.

It should also be noted that when data controllers report a personal data breach to the ICO we ask that they do NOT provide details of the data subjects affected. Therefore, we are not party to the details of those affected by personal data breaches when they are reported to us by data controllers.

It may also be helpful to understand that personal data breach reports differ from data protection complaints. A personal data breach report is made to the ICO by the data controller that has experienced the breach. Data protection complaints are complaints received from data subjects who believe there has been an infringement of their data protection rights. We may contact data subjects regarding a personal data breach, but only in the event of a prosecution where the data subjects are witnesses.

We should also explain that ICO may initiate an investigation following a personal data breach report from a data controller, but are unlikely to do so following a data protection complaint by a data subject. We may decide to take regulatory action on the basis of a number of data protection complaints, but only in extreme circumstance.

When a personal data breach occurs, ICO expects the data controller to keep data subjects informed about the breach, rather than this being the responsibility of the ICO. You can read more about this on our website at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/personal-data-breaches/>.

You can also read more about what to expect, including the possible outcomes, when a data subject makes a data protection complaint to the ICO at <https://ico.org.uk/make-a-complaint/data-protection-complaints/what-to-expect/>.

Information

With regard to points (i) and (ii) of your request, the following resources explain the investigative and prosecution processes of the ICO:

ICO Investigations Manual

<https://ico.org.uk/media/about-the-ico/disclosure-log/4018514/investigations-manual-final-disclosure-redacted-3.pdf>

ICO Prosecution Policy Statement

<https://ico.org.uk/media/about-the-ico/policies-and-procedures/1882/ico-prosecution-policy-statement.pdf>

ICO Regulatory Action Policy

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

Technically the information above is withheld under section 21 of the FOIA. Section 21 states that we don't need to provide you with a copy of information that is already reasonably accessible to you. We have provided the links above for your convenience.

With regard to point (iii), please find attached an updated version of the 'ICO right to review scheme for victims of crime' document. Version 2.0 referred to the Victim's Code published in October 2015, whereas version 3.0 has been updated to include reference to the Code of Practice for Victims of Crime in England and Wales, published in November 2020. Please note that the Victim's Code and the newer Code of Practice are not ICO publications.

This concludes our response to your request. I hope that the information provided is helpful to you.

FOI review procedure

If you are dissatisfied and wish to request a review of our decision or make a complaint about how your request has been handled you should write to the Information Access Team at the address below or e-mail icoaccessinformation@ico.org.uk.

Your request for internal review should be submitted to us within 40 working days of your receipt of this response. Any such request received after this time will be considered only 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 and Compliance team at the address given, or visit our website at <https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/>.

Your information

Our Privacy Notice at <https://ico.org.uk/global/privacy-notice/> explains what we do with the personal data you provide to us and what your rights are. This notice includes entries regarding the specific purpose and legal basis for the ICO processing information that people such as information requesters have provided to us.

The length of time we keep information is laid out in our Retention and Disposal Policy. This can be viewed at <https://ico.org.uk/about-the-ico/our-information/policies-and-procedures>.

Yours sincerely

Information Access Team

Risk and Governance Department

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