

12 September 2023

IC-251272-W0M4

Request

You requested the following information in relation to a reprimand published on 9 August 2023:

- 1) An unredacted copy of the reprimand or failing that, a version with any previously redacted information that the Commissioner does not consider to be exempt from disclosure under FOI.*
- 2) The name of the company the reprimand applies to*
- 3) Recorded information that shows whether the redactions were requested by the company or were applied by the Commissioner proactively, and why those redactions were made. If it is possible to summarise information that explains this, that would be fine, but I am requesting a summary based on recorded data, not a previously unrecorded explanation, even if that is something you wish to provide. If any previously unrecorded information is included, please highlight that clearly.*
- 4) Any recorded information that explains the purpose of publishing a reprimand in this heavily redacted form especially if there is specific information that relates to the publication of this particular reprimand in this form with the name of the company and much of the detail obscured to the point where it is difficult to understand what happened in the incident.*
- 5) How many reprimands have been issued but not published since John Edwards became the Information Commissioner.*

Your request, received on 31 July 2023, has been handled under the Freedom of Information Act 2000 (the FOIA).

Response

I can confirm that we hold some information in scope of your request.

- 1) *An unredacted copy of the reprimand or failing that, a version with any previously redacted information that the Commissioner does not consider to be exempt from disclosure under FOI.*

The redacted information was provided to us by the organisation during the course of our investigation and we do not have lawful authority to disclose it. The redacted information (with the exception of the organisation name, see below) is withheld under section 44 of the FOIA (& section 132 of the DPA). We explain this exemption in further detail below.

- 2) *The name of the company the reprimand applies to*

The reprimand was issued to Nohow International Ltd.

- 3) *Recorded information that shows whether the redactions were requested by the company or were applied by the Commissioner proactively, and why those redactions were made. If it is possible to summarise information that explains this, that would be fine, but I am requesting a summary based on recorded data, not a previously unrecorded explanation, even if that is something you wish to provide. If any previously unrecorded information is included, please highlight that clearly.*
- 4) *Any recorded information that explains the purpose of publishing a reprimand in this heavily redacted form especially if there is specific information that relates to the publication of this particular reprimand in this form with the name of the company and much of the detail obscured to the point where it is difficult to understand what happened in the incident.*

Please find attached information that falls in scope of these parts of your request. We agreed that we would not disclose the organisation name in the proactively published reprimand because the breach was reported to us prior to the implementation of our policy of publishing reprimands.

One email from Nohow International has been withheld under section 44 of the FOIA.

We also hold a document that falls in scope of the above and is subject to legal professional privilege. This is withheld from our response under section 42 of the FOIA. We explain this in further detail below.

5) How many reprimands have been issued but not published since John Edwards became the Information Commissioner.

30 reprimands have been issued but not proactively published since January 2022.

Information withheld – section 44

Information provided to us by Nohow International Ltd has been withheld under the provisions of section 44 of the FOIA which places prohibitions on disclosure. This exemption is an absolute exemption, which does not require a consideration of the public interest test of the type required by the qualified exemptions.

Section 44(1)(a) of the FOIA 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 and specifically section 132(1) of part 5 of that Act. This 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 the circumstances in which a disclosure can be made with lawful authority, however we find that none of them apply here. As a

result the information is exempt under the FOIA and withheld from our response.

Information withheld – section 42

One document is subject to legal professional privilege and is withheld from our response in accordance with section 42 of the FOIA.

Section 42(1) of the FOIA states:

"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."

There are two types of privilege covered by the exemption at section 42. These are:

- Litigation privilege; and
- Advice privilege.

We find that the information in scope of your request is subject to advice privilege. This covers confidential communications between the client and lawyer, made for the purpose of seeking or giving legal advice.

Section 42 is not an absolute exemption, so we must consider whether the public interest favours withholding or disclosing the information.

The factors in favour of lifting the exemption include:

- The public interest in the ICO being open and transparent;
- The public interest in transparency about our decision making in relation to the proactive disclosure of information about regulatory action we have taken.

With the public interest factors in favour of maintaining the exemption including:

- The disclosure of legally privileged information threatens the important principle of legal professional privilege;
- Maintaining openness in communications between client and lawyer to ensure full and frank legal advice;
- The disclosure of legal advice could have a chilling effect on both investigating officers and legal advisers by dissuading them from

discussing such matters in the future in the knowledge that it could potentially be made public.

Taking into account the above factors we conclude that the public interest lies in maintaining the exemption.

This concludes our response to your request.

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 receipt by you of this response. Any such request received after this time will only be considered 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 Customer Contact Team at the address given or visit our website if you wish to make a complaint under the FOIA.

Your information

Please note that our [Privacy notice](#) explains what we do with the personal data you provide to us and what your rights are. This includes entries regarding the specific purpose and legal basis for the ICO processing information that people that have provided us with, such as an [information requester](#).

The length of time we keep information is laid out in our retention schedule, which can be found [here](#).

Yours sincerely



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SK9 5AF

ico.org.uk twitter.com/iconews

Please consider the environment before printing this email

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



Information Commissioner's Office