

23 August 2023

Case Reference IC-252019-Z2Y2

Your request

You asked us for the following:

"what was involved in the audit of the MPS that you mention and what punitive (enforcement) or resolutative measures were imposed or agreed with them, as it doesn't appear that the MPS were one of the organisations cited recently as having enforcement action applied by The Commissioner, when questioned in Parliamentary Committee in June this year, even though it seems they are one of the worst culprits for being in backlog? Q4 Chair: "Are there any public authorities with whom you are working to reduce their backlogs and processes and could you describe those processes they are able to put in place so that they can perform better? John Edwards: We have issued an enforcement notice in respect of the Department for International Trade, and we have seen them come into conformity as a result, so that is very encouraging. In addition to that Department, we have issued enforcement notices against a couple of local authorities." I would be pleased to receive copy of the report from your audit of the MPS if you can provide to me."

We have identified the underlined sections as valid requests for information.

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

The ICO audited MPS in November 2021 and we published an Executive Summary on our website. This has since been taken down but can be found in the National Archives by following this link:

https://webarchive.nationalarchives.gov.uk/ukgwa/20220201210413mp_/https://ico.org.uk/media/action-weve-taken/audits-and-advisory-visits/4018997/metropolitan-police-service-executive-summary-v1_0.pdf

As this information is available to you by other means, it is technically exempt from disclosure under section 21 of the FOIA.

The detailed report, and any further data on our engagement with MPS for this report and the follow-up of January 2023 are exempt from disclosure under section 31 of the FOIA as such a disclosure may prejudice our regulatory functions. We will now explain our reliance on this exemption.

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 contained in sections 31(2)(a) and 31(2)(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 ..."

These purposes apply if the Information Commissioner is considering whether or not a data controller is meeting its obligations in respect of data protection legislation.

The exemption at section 31 is not absolute, so we must consider the prejudice or harm which may be caused by disclosure of the information sought. We must also apply a public interest test, weighing up the factors in favour of disclosure against the factors in favour of maintaining the exemption.

We take the view that to release the information you have asked for could prejudice the ICO's ability to engage with MPS. The engagement was not compulsory; it was carried out voluntarily and with an understanding of confidentiality, so the efficacy and ease of engagement with MPS in future could be adversely affected if the requested information is disclosed.

Disclosure could also jeopardise the ICO's ability to obtain information from other organisations, be it relating to this matter or

something else, thus damaging our ability to carry out our regulatory functions in future. To ensure full and honest exchange of information, data controllers must have confidence that the ICO will not disclose information where inappropriate to do so. Harm could be caused to the ICO's regulatory function if parties were reluctant to enter into such engagement.

With this in mind, we have then considered the public interest test for and against disclosure.

In this case, the public interest factors in favour of disclosing the information are:

- Increased transparency of the way in which the MPS has responded to the ICO's enquiries;
- Demonstration of how the ICO complies with its duties through overseeing the methods and performance of other organisations in line with data protection legislation;
- Increased transparency in the way in which the ICO conducts engagements with other organisations.

The factors in favour of withholding the information are:

- The public interest in maintaining the confidentiality of information considered as part of our engagement with other organisations;
- The public interest in ensuring that data controllers are not deterred or inhibited from engaging voluntarily, fully and candidly with the ICO now and in the future, especially when organisations have engaged with us with an understanding of confidentiality;
- Ensuring that the ICO is able to have effective and productive relationships with the data controllers we regulate and that they continue to engage with us in an open, cooperative and collaborative way without fear that information they provide to us will be made public prematurely or, as appropriate, at all;
- The strong public interest in the ICO not disclosing information about the specific measures that data controllers have in place to protect the security of personal data where such a disclosure could undermine the effectiveness of those measures.

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.