

2 October 2023

IC-259427-H4R0

Request

We received your request on 25 September. You asked for the following information:

Please provide me, for the past 5 years, with the number of times that the ICO formally decided not to commence proceedings under s54 of the FOI 2000 after being formally asked to do so and giving consideration to the matter.

Where the ICO has formally decided not to commence proceedings under s54 (and issued the Letter "E" disclosed in IC-165258-G5K9), please provide a summary/digest (s11 of FOI) that summarizes the reasons that lead to these decisions.

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

Our response

I can confirm we hold information falling within the scope of your request, however have to confirm that locating the full extent of the information requested would breach the cost limit envisaged by section 12 of the FOIA.

I have provided some more detail about why this is the case in this instance below, along with some advice about how a refreshed request, with a more narrow scope, may elicit information which is of interest to you.

FOIA section 12

Section 12 of the FOIA makes clear that a public authority is not obliged to comply with an FOIA request if the authority estimates that the cost of complying with the request would exceed the 'appropriate limit'.

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 stipulates that the 'appropriate limit' for the ICO is £450. We have determined that £450 would equate to 18 hours work.

The ICO receives around 5000 complaints under the FOIA/EIR each year. The details of these complaints, along with the details of thousands of other enquiries and concerns regarding the other laws we oversee, are processed within a casework management system.

An electronic record is created for every case, every complainant and every 'complained about' organisation. This is because part of our role is to improve the information rights practices of organisations by gathering and dealing with concerns raised by members of the public.

The system allows us to search for the cases we have dealt with in a number of different ways, such as by the unique reference number the case was given, the name and address of the person who contacted us and the name of the body that has been complained about. We can also search for cases on the basis of the broad nature of the complaint, such as that it relates to the use of a specific exemption or a breach of s.10 FOIA.

It is routine procedure for the ICO to make a s.54 referral in circumstances where we are aware that a Decision Notice has not been complied with, but this will not be pursued if the public authority subsequently complies with the Decision Notice.

However, whether a s.54 referral has been made or considered is not recorded as part of the searchable case details, but would only be held within the correspondence held on the case.

Additionally, not all s.54 referrals are requested by complainants. In some cases a complainant may make us aware that a DN hasn't been complied with and request that the ICO seeks informal resolution and we may then proactively take s.54 action if informal resolution doesn't work. The information about whether the s.54 referral followed a request from the complainant or otherwise is again only held in the case correspondence.

As such, to establish the information that we hold and which falls within the

scope of request would require a manual search at the correspondence on thousands of cases.

This would equate to far in excess of the 18 hour limit which would accrue a charge of £450 or less, triggering the provisions of section 12 of the FOIA.

Additionally, referrals may be made by various means, including via a case officer's Outlook account. They may also be made over the phone and not necessarily recorded on the case file, so all of the relevant information may not be found even if these searches were undertaken.

Advice and assistance

Due to the way this information is held, I am not able to advise you of a way that this request could be narrowed in a way that would reliably find enough information to provide a representative picture of the numbers of these referrals that are being made and the reasons for them. In order not to breach the costs limit, the search period would have to be limited to such an extent that it may be the case that no relevant information is found, or that otherwise the data we would be able to provide would be limited and not useful in assessing how common these referrals are and the reasons for not pursuing them.

If you are interested in this information in respect of a particular public authority I would suggest that you make a new request with the scope limited to complaints against that public authority, and we are likely to be able to respond without breaching the costs limit, however this does depend on the number of complaints that we have handled about that public authority. Please note that we would not be able to provide data for the last 5 years as complaints data is deleted in line with our retention schedule. Additionally, any request which requires intensive manual searching will require consideration of whether the value of the information sought would justify the work involved in doing so.

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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