

20 September 2023

IC-242049-H4X4

Request

We received your request on 15 September. You asked for the following information:

Please publish all information pertaining to the recent change to your "Investigations Policy for Alleged Criminal Breaches of s170, s173 Data Protection Act 2018, s132 Data Protection Act 2018, and s77 Freedom of Information Act 2000 by ICO Staff" What prompted the change and how does it benefit the public that no one outside of the ICO will ever see an investigation file of ICO staff by ICO staff if the staff investigating the allegations prefer to take their colleagues side.

It appears that apart from updating references to the current or revised legislation and ICO departments there is only 1 change made to the Policy and I am having difficulty understanding the public benefit to the change and how this change demonstrates the ICO's stated aims but I am sure publication of the extensive analysis and consultations with the relevant stakeholders by the ICO's Policy Team will make it far more transparent when its intention appears to be the exact opposite. I look forward to reviewing both sides of the argument that was won by the argument against transparency.

The change I am referring to is the addition of "and where there is prima facie evidence of a criminal offence," to 3.4

3.3 It may not be seen to be appropriate for the Commissioner to investigate an offence committed by himself or a current member of her staff as he may not be seen to be acting independently or objectively. Similarly it would not be appropriate for the Commissioner to prosecute an offence committed by himself or a current member of his staff.

3.4 However, the Crown Prosecution Service advises that organisations should have the necessary arrangements in place to conduct the initial or primary investigation to first establish whether a criminal offence has been committed. Therefore, the arrangements at the ICO will require for the ICO Criminal Investigations Team (CrIT) to carry out an investigation into the allegation. On completion, and where there is prima facie evidence of a criminal offence, and in the interests of transparency the completed case file will be referred to the Crown Prosecution Service for advice, and where necessary and appropriate, prosecution.

Can you outline with examples what the ICO's legal definition of Prima Facie Evidence is. I understand it to mean a very low threshold of proof.

Glossary: Prima Facie

A Latin term meaning "at first sight" or "at first look." This refers to the standard of proof under which the party with the burden of proof need only present enough evidence to create a rebuttable presumption that the matter asserted is true. A prima facie standard of proof is relatively low. It is far less demanding than the preponderance of the evidence, clear and convincing evidence and beyond a reasonable doubt standards that are also commonly used.

A prima facie standard of proof may be used in a variety of settings. For example, courts have held that a party who seeks discovery of purportedly privileged documents under the crime-fraud exception to the attorney-client privilege must make a prima facie showing that the contested documents were created in furtherance of a crime or fraud. Once the party seeking discovery makes this showing, the resisting party must then present its own rebuttal evidence showing that the contested documents were not created in furtherance of a crime or fraud.

Worth noting how people often mix up prima facie and Res ipsa loquitur. The difference between the two is that prima facie is a term meaning there is enough evidence for there to be a case to answer, while Res ipsa loquitur means that the facts are so obvious a party does not need to explain any more.

Prima facie is likely to create a lot of confusion and and who decides whether evidence is or ins't as wont their evaluation be skewed by whether they want to help prosecute or defend their colleagyue going to When and where was this Policy originally published as I cannot find it or the previous version anywhere. A copy of the policy with original meta tags would greatly assist transparency.

Also what was the detriment if Staff at the ICO failed to follow the previous version all 4 times allegedly it was required. I believe the most recent case was

non-compliant with the policy. Were the other 3 compliant with the policy or was the reason for the policy change to attempt to cover up non-compliance by the regulator when conducting internal investigation.

Who does oversee the ICO's use of Criminal investigatory powers. Can't find anything similar to what exists and easily found if you google search 'oversight of HMRC Criminal INvestigation Powers' or 'Gross misconduct by HMRC Staff'.

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 am refusing the Freedom of Information request you have made because it is vexatious, as per Section 14 (1) of the FOIA.

Section 14 (1) FOIA states that:

'14.—(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.'

The ICO's guidance explains that when deciding on whether or not a request is vexatious, the key question to be asked is,

'...whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress'.

The wording of your request is largely a copy of the wording of a previous request that we handled under the reference IC-238291-L9R9, which we received via What Do They Know and had reason to refuse because it was vexatious, providing no refusal notice pursuant to s.17(6) FOIA.

The issues raised do not appear to be of wider public interest and, as your request mimics the accusatory tone of the previous request referred to above, we are of the view that this request has been submitted under a different name in order to attempt to circumvent our previous decision to refuse this request.

We therefore consider this request to be vexatious, both by its nature and by the fact that it appears to have been made as part of a coordinated campaign against

the ICO, designed to exploit our resources and subvert our decision-making processes.

We therefore advise that we are relying on section 14(1) FOIA in refusing to comply with this request and we will not, in reliance on section 17(6) FOIA, provide any further acknowledgements or refusal notices in response to any similarly themed requests in the future.

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



Information Access Team

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ico.org.uk twitter.com/iconews

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see our [privacy notice](#)**