

26 October 2023

## **IC-265559-K0J4**

### **Request**

You asked us:

*"I am emailing in regard to the ICO's preliminary enforcement action notice to Snap as issued on 6 October 2023 (UK Information Commissioner issues preliminary enforcement notice against Snap | ICO).*

*The full preliminary enforcement action is not publicly available on the ICO website.*

*Please may you kindly send me the full notice for research and learning purposes?"*

We received your request on 20 October 2023.

We have handled your request under the Freedom of Information Act 2000 (the FOIA).

### **Our response**

We can confirm that we hold information in scope of your request. As explained in the [press release](#), we have issued a preliminary enforcement notice to Snap, this was issued on 6 October 2023.

However, we are withholding the notice pursuant to section 31(1)(g) of the FOIA. This is an exemption relating to information which, if disclosed, would or would be likely to cause prejudice to our ability to regulate the legislation we oversee.

Specifically, 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)."*

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state:

*"(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 when the Information Commissioner is considering whether or not a data controller has breached data protection law.

The exemption at section 31 is not absolute, and we must therefore consider the prejudice or harm which may be caused by disclosure of the information you have sought, as well as applying a public interest test by weighing up the factors in favour of disclosure against those in favour of maintaining the exemption.

Our investigation into the actions of Snap is still ongoing. The findings presented in the notice are provisional, and we will consider any representations made by Snap before a final decision is made about whether or not Snap has breached data protection law.

In considering the prejudice or harm that disclosure may cause we have taken into account the factors that would, in our view, impact on the release of the information at this stage.

We take the view that to release the information you have asked for could prejudice the ICO's ability to conduct the investigation in an appropriate manner. For example, it is likely that any disclosure at this stage would discourage our ongoing discussions with Snap, which would in turn damage our ability to conduct and conclude the investigation fairly and proportionately.

Disclosure at this stage could also jeopardise the ICO's ability to obtain information either relating to this case or others in the future.

In our view harm could be caused if either party is reluctant to enter into any further discussions because information has been disclosed in response to information requests. This is likely to result in other parties being reluctant to

engage with the ICO in the future. In addition, any information released at this stage could be misinterpreted, which in turn could distract from the investigation process.

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

In this case the public interest factors in disclosing the information are –

- increased transparency in the way in which the ICO conducts its investigations.
- transparency about the ICO's investigation into Snap.
- the understandable interest in our view on Snap's data protection compliance from affected members of the public.

The factors in withholding the information are –

- the public interest in maintaining organisations' trust and confidence that ICO investigations will be conducted fairly and without external interference or influence.
- the public interest in maintaining effective relationships with parties it communicates with. Organisations should be confident that the ICO will engage in a constructive and collaborative way without fear that information will be made public before any conclusion has been reached.
- the ICO has a commitment to publishing information relating to regulatory activities when it is appropriate to do so.

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 to your request.

### **Next steps**

You can ask us to review our response. Please let us know in writing if you want us to carry out a review. Please do so within 40 working days.

You can read a copy of our full review procedure [here](#).

If we perform a review but you are still dissatisfied, you can complain to the ICO as regulator of the FOIA. This complaint will be handled just like a complaint made to the ICO about any other public authority.

You can [raise a complaint through our website](#).

## **Your information**

Our [Privacy notice](#) explains what we do with the personal data you provide to us, and set out your rights. Our retention schedule can be found [here](#).

Yours sincerely



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