

26 October 2023

ICO Case Reference IC-262531-F6F8

Request for information

Request received 5 October 2023:

- 1. - How many allegations of a breach under section 173(3) of the DPA 2018 or section 77 of FOIA 2000 have the ICO received or investigated since these provisions came into force? How many of these allegations resulted in prosecutions or convictions? Please provide a breakdown by year, sector, and outcome.*
- 2. - How does the ICO ensure that its Case Officers are impartial and independent when dealing with complaints and investigations involving personal data, especially when they have personal familiarity with some data protection officers? What measures are in place to prevent or detect any collusion, corruption, or favouritism between them?*
- 3. - How does the ICO monitor and review its own performance and compliance with the DPA 2018 and FOIA 2000, especially in relation to its handling of subject access requests and FOI requests? What are the standards and criteria that ICO uses to evaluate its effectiveness and accountability?*
- 4. - How does the ICO deal with complaints and appeals from data subjects who are dissatisfied with its decisions or actions regarding their personal data? What are the options and remedies available to data subjects who feel that their rights have been violated by the ICO or by data protection officers who have acted unlawfully or unethically?*
- 5. - How does the ICO ensure that it is transparent and accountable to the public and to Parliament, as the regulator and enforcer of data protection and freedom of information laws in the UK? What are the mechanisms and processes that the ICO uses to report on its activities, achievements, challenges, and failures?*

Your requests have been handled under the Freedom of Information Act 2000 (the FOIA). This legislation provides public access to recorded information held by a public authority unless an appropriate exemption applies.

Our response to:

1. - How many allegations of a breach under section 173(3) of the DPA 2018 or section 77 of FOIA 2000 have the ICO received or investigated since these provisions came into force?

We hold some information in scope of this request.

To search all our Data Protection and Freedom of Information complaint cases for allegations would involve manually searching thousands of cases, exceeding the cost limit set out by section 12 of the FOIA. In addition, casework is deleted from our casework management system in line with our [Retention and Disposal Policy](#).

However, in all but the rarest cases, DPA section 173 allegations and FOIA section 77 allegations are referred to our Criminal Investigations Team (CRIT). As such, we regard searching records relating to these referrals to be the most accurate and complete way that we can respond to this request.

We do not hold information regarding the number of DPA section 173 referrals to CRIT. However, since 2018 (the earliest date for which we hold information), 5 investigations were commenced. 11 'incidents' were also created in the investigations casework management system, and 5 of these incidents were progressed to an investigation.

Since May 2016 (the earliest date for which we hold information), 261 referrals have been made to CRIT regarding allegations of FOIA section 77 breaches. Since 2018 (the earliest date for which we hold information), 10 investigations were commenced. 26 'incidents' were also created in the investigations casework management system, and 1 of these incidents was progressed to an investigation.

Our response to:

*How many of these allegations resulted in prosecutions or convictions?
Please provide a breakdown by year, sector, and outcome.*

We do hold information in scope of this request.

One DPA section 173 investigation resulted in a caution being issued to a letting agent in 2023.

One FOI section 77 investigation progressed to a conviction of a town council employee in 2018. The employee was fined £400 and ordered to pay costs of £1493.75, plus a victim surcharge of £40.

One FOI section 77 investigation progressed to a prosecution of a district council employee in 2018. The employee was found not guilty.

We publish details of our [Enforcement action](#) on the ICO website. This includes prosecutions. You may also be interested in our response to a previous request on this subject that is available on our disclosure log under reference [IC-241022-G7G3](#), and in our [ICO Prosecution Policy Statement](#).

Our response to:

2. - How does the ICO ensure that its Case Officers are impartial and independent when dealing with complaints and investigations involving personal data, especially when they have personal familiarity with some data protection officers? What measures are in place to prevent or detect any collusion, corruption, or favouritism between them?

We do hold information in scope of this request.

ICO staff are subject to the [ICO Code of Conduct](#) and [ICO Service Charter](#), and operate in line with [Our service standards](#), our [Regulatory Action Policy](#) and our [Counter Fraud Policy](#). Any complainant who is dissatisfied with the way their data protection complaint has been handled can [Make a complaint](#) to the

ICO. Staff not meeting the expected standards are subject to the ICO [Managing Poor Performance Policy](#).

Our response to:

3. - How does the ICO monitor and review its own performance and compliance with the DPA 2018 and FOIA 2000, especially in relation to its handling of subject access requests and FOI requests? What are the standards and criteria that ICO uses to evaluate its effectiveness and accountability?

We do hold information in scope of this request.

We use a casework management system called ICE360 to manage and monitor information requests submitted to the ICO. This includes subject access requests made under DPA 2018, and FOI requests made under the FOIA. Amongst other information, the date of receipt of the request is recorded, along with the statutory due date, and the date of the ICO response once the request case is closed.

We aim to respond to 100% of information requests within the statutory timeframes set by the legislation. This is detailed in [Objective one: Safeguard and empower people](#) of the [Annual action plan: October 2022 – October 2023](#); part of the [ICO25 strategic plan](#).

We publish our request handling performance statistics in our [Annual reports](#), and in more detail on our website at the [Request information from us](#) page. Here you will also find our [Information Access Manual](#) which explains the processes and procedures we use for processing information requests, along with our [requests handling procedure](#).

Our response to:

4. - How does the ICO deal with complaints and appeals from data subjects who are dissatisfied with its decisions or actions regarding their personal data? What are the options and remedies available to data subjects who

feel that their rights have been violated by the ICO or by data protection officers who have acted unlawfully or unethically?

We do hold information in scope of this request.

ICO publishes guidance on [What to expect from the ICO when making a data protection complaint](#). If a complainant disagrees with the outcome of a data protection complaint, they can ask for a case review. This is detailed on the [Complain about us](#) page of the ICO website in the section titled 'Complaints about our decision making'. This page also provides guidance on how to make a service complaint. We have also published our complaints form and [Service complaint policy](#) on this page.

If complainants remain dissatisfied, they can then make a complaint to the Parliamentary and Health Ombudsman (PHSO), via their MP. Again, this is detailed on the [Complain about us](#) page of the ICO website, and in [Our service standards](#).

Individuals also have the right to apply to a court if they believe there has been a contravention of their rights under data protection legislation.

Our response to:

5. - How does the ICO ensure that it is transparent and accountable to the public and to Parliament, as the regulator and enforcer of data protection and freedom of information laws in the UK? What are the mechanisms and processes that the ICO uses to report on its activities, achievements, challenges, and failures?

We do hold information in scope of this request.

The previously mentioned [ICO25 strategic plan](#) details our approach to transparency and accountability. We also have a [High-performance strategy](#) that we have detailed on our website. We report on our activities in our [Annual reports](#), and in the [Our information](#) area of the ICO website. We fulfil our obligations under section 19 of the FOIA (Publication schemes) via our [publication scheme compliance](#).

The ICO is an independent regulator. Our [Relationship with the Department for Science, Innovation and Technology](#) (DSIT), our sponsoring government department, is explained on our website. Previously ICO was sponsored by the Department for Culture, Media and Sport (DCMS) and the [Management agreement 2018-2021](#) between ICO and DCMS is also published on our website, along with further information about our [Decision making structure](#).

We also publish information about our activities in our [Media centre](#) and in the [Action we've taken](#) section of our website. We detail our [Enforcement action](#) on our website, and proactively publish our [Complaints and concerns data sets](#).

FOIA Section 21

Most of the information provided in our response to your questions numbered two to five is already reasonably accessible to you. Therefore, technically it is withheld under section 21 of the FOIA. Section 21 states that we do not need to provide you with a copy of information when you already have access to it. However, we have provided the links above for your convenience.

Future requests

We would like to draw your attention to the ICO guidance on [Dealing with vexatious requests \(section 14\)](#).

The requests quoted on page one of this response are only part of the email that you sent to us. The wider email implies that individuals at the ICO have not performed their work to your satisfaction, and that they are biased in favour of data controllers.

For example, you suggest that *"some data protection officers and ICO Case Officers may abuse their power and violate data protection rights by colluding or favouring each other, especially when they have personal familiarity with each other."* Accusations and grievances expressed in the form of FOI requests may result in such requests being refused as vexatious, in line with our public guidance on refusals under the legislation: [When can we refuse a request for information?](#)

The right of access in information legislation is not an appropriate means by which to express frustration or dissatisfaction with the handling of complaint cases, or about members of ICO staff, or the ICO as an organisation. Individuals should not combine a request for information with a complaint about the public body or a comment about their actions. We have guidance on [How to write an effective request for information](#) on our website, which you may find helpful.

You may wish to note the above when making any further information requests.

This concludes our response. We hope you find this information helpful.

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 accessicoinformation@ico.org.uk, or the postal address below.

Your request for internal review should be submitted to us within 40 working days of your receipt of this response. Any such request received after this time will be considered only 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 FOI Complaints and Compliance team at the address given, or visit our website at [Official information concern | ICO](#).

Your information

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

The length of time we keep information is laid out in our [retention and disposal policy](#).

Yours sincerely

Information Access Team

Strategic Planning and Transformation

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