



27 November 2023

Dear 

Case Reference IC-267153-Z5K3

Request for Information

Further to our acknowledgement of 31 October 2023 we can now respond to your information request of 27 October 2023.

Request



You also asked for information about any action we are taking against SSE more broadly.

We have handled this as a subject access request (SAR) and a Freedom of Information Act 2000 (FOIA) request.

Our response



Obligation to confirm or deny

Although we have provided you some updates in regards to your case, we can neither confirm nor deny whether we hold information which indicates a broader intention to take enforcement action against OVO Energy.

To be clear, we would not be able to confirm or deny this information about any data controller, regardless of whether there was a recorded intention to take enforcement action against them or not.

FOIA section 31

We can rely on section 31(1)(g) of the FOIA where disclosure:

"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..."

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ..."

The duty to confirm or deny does not arise if, or to the extent that, it would prejudice the matters set out in section 31.

Section 31 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

Prejudice test

If we commit to confirming whether we are taking enforcement action against data controllers or not, we are likely to create distrust and uncertainty towards to the ICO about what we communicate to the public and when we choose to do it.

It would also create unnecessary work if we had to engage with data controllers at unpredictable stages to obtain their views on the disclosure of this information to the public. This would distract relevant staff from their core regulatory work and undermine any planned publication processes.

In cases where we are intending to take action, it is always likely to be inappropriate to make our intentions public before them matters have been finalised, particularly if the relevant information has not been communicated to the data controller at that stage.

Likewise, if we are selective about whether we confirm or deny enforcement action, whether there is an intention or not, we would risk undermining our broad intentions to be a fair and impartial regulator. We therefore should apply the same principle in cases where there is no intention to take action.

Overall we would consider that this kind of disclosure is likely to prejudice our regulatory capabilities, primarily because it would jeopardise our relationship with data controllers. This would make it harder for us to engage with them to guarantee high standards of data protection, and so we would consider this is an appropriate justification for relying on this exemption.

Public interest test

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 about our intentions to enforce data protection legislation

The factors in withholding the information are:

- the public interest in maintaining organisations' trust and confidence that any confirmation, or recorded information, about enforcement action,

whether planned or not, will be kept confidential until it is appropriate to make it public

- the public interest in ensuring that ICO staff are not drawn away from core services to handle unnecessary enquiries or engagement resulting from disclosures
- the public interest in maintaining planned publication processes to maintain consistency and assurance about what we communicate into the public domain

Having considered these factors, we are satisfied that the public interest favours disclosure so the exemption falls away.

While there is likely to be an inherent interest in knowing if we are going to take enforcement action against a data controller, particularly if they are a high-profile controller or processor of large-scale personal data, we consider that there is a stronger public interest in ensuring that the ICO maintains the best possible regulatory position by providing assurance to data controllers that we will be fair and consistent about what information we communicate to the public. This means that we have the best chance of engaging effectively with them and ensuring high data protection standards for people.

Next steps

In the first instance, please let us know if you have any questions about the way we've handled your request.

If we have answered your initial follow-up questions and you still think that we haven't supplied personal data when we should have done, or have other concerns about the way we've handled the subject access aspect of your request, you can make a formal complaint to the ICO as regulator for data protection. This complaint will be handled just like a complaint made to the ICO about any other controller. You can raise a complaint through our website:

<https://ico.org.uk/make-a-complaint/data-protection-complaints/data-protection-complaints/>

You also have the right to apply to a court if you believe that there has been a contravention of your rights under data protection legislation.

When we respond to FOI requests, you can ask us to perform an internal review of our response. Please note that we will only formally review our handling of the FOI aspects of your request. Please let us know in writing if you want us to carry out this kind of review. Please do so within 40 working days.

You can read a copy of our full review procedure on our website:

<https://ico.org.uk/media/about-the-ico/policies-and-procedures/1883/ico-review-procedure.pdf>

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:

<https://ico.org.uk/make-a-complaint/foi-and-eir-complaints/foi-and-eir-complaints/>

Your information

Our privacy notice explains what we do with the personal data you provide to us, and sets out your rights:

<https://ico.org.uk/global/privacy-notice/your-data-protection-rights/>

Our Retention and Disposal Policy details how long we keep information:

<https://ico.org.uk/media/about-the-ico/policies-and-procedures/4024937/retention-and-disposal-policy.pdf>

Yours sincerely



Information Access Team,
Corporate Planning, Risk and Governance,
Information Commissioner's Office, Wycliffe House, Water
Lane, Wilmslow, Cheshire SK9 5AF
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