

4 January 2024

IC-278879-P5V5

## **Request**

*We have been advised by Fat Face's solicitor's, Clyde and Co, that you have closed your case in relation to this matter without any enforcement action being taken against Fat Face. Please can you provide us with your decision letter in relation to this matter and the reason for your decision.*

We received your request on 2 January 2024.

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

## **Our response**

I can confirm we hold information in scope of your request.

Our investigation into the breach has now concluded with an outcome of 'no further action'. This was communicated to Fat Face on 23 October 2023.

The decision letter and the final investigation report detailing our decision are both withheld under 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 laws 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 ..."*

Clearly, these purposes apply when the Information Commissioner has considered whether or not an organisation has met its obligations in respect of data protection legislation.

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.

Although the matter has now concluded, disclosure of the requested information would be likely to damage trust in the ICO. It is important that we maintain organisations' trust in us when reporting breaches and engaging with us during investigations.

Disclosure would likely result in parties being reluctant to engage with us in the future, impacting on our ability to effectively regulate the legislation we oversee.

With that in mind, we now turn to 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 Fat Face has responded to the ICO's enquiries;
- transparency in the way in which the ICO has conducted its investigation;
- the public interest in affected individuals being informed about the circumstances surrounding the matter.

The factors in withholding the information are –

- the public interest in maintaining organisations' trust and confidence that their engagement with the ICO will be afforded an appropriate level of confidentiality;
- the public interest in organisations being open and honest in their correspondence with the ICO, allowing us to conduct investigations appropriately;
- the public interest in meeting Fat Face's expectation of non-disclosure having ascertained their views on this individual request;
- the public interest in maintaining the ability to conduct thorough investigations with the full cooperation of organisations.

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 information 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](#) on our website.

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 sets out [your rights](#). Our [Retention and Disposal Policy](#) details how long we keep information.

Yours sincerely