

22 January 2024

Case reference: IC-274013-V6J9

We are now in a position to respond to your information request of 21 December 2023.

Request

Your original information request was as follows:

"I'd like to request any information (including emails, correspondence, meeting or briefing notes, internal position papers, or other documents) relating to:

*(i) any changes in the data breach reporting requirements under PECR 2003 or:
(ii) any discussions on that topic.*

In particular, I'm interested in:

- any information relating to the ICO's decision to no longer take action over data breaches which are not reported within 24 hours, so long as they're reported within 72 hours;*
- any information about changes to the materiality threshold for data breach reporting under PECR 2003 (for example, to match the threshold for breach reporting under the UK GDPR) or which outlines the ICO's view on that topic (even if the ICO's position is that it would prefer that threshold to remain unchanged);*
- any correspondence with the Government, DCMS or DSIT on those topics.*

I'm prepared to further clarify my request to avoid any issues under s.17 and I'll say now that I'm not interested in any information relating solely to the UK GDPR's breach reporting requirements."

We asked for clarification on the specific information you were seeking. You kindly provided the following reply on 21 December 2023.

"...I am not looking for information on the change for PECR reporting timelines from 24-72 hours. I am looking for information about other potential changes to PECR breach reporting, especially where the ICO has been consulted by Govt departments."

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

Our response

We have considered the cost of complying with your request and can confirm that it exceeds the 'appropriate limit' as set out in section 12 of the FOIA.

Section 12 of the FOIA makes clear that a public authority is not obliged to comply with an FOIA request if the authority estimates that the cost of complying with the request would exceed the 'appropriate limit'. The 'appropriate limit' for the ICO, as determined in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 is £450. We have determined that £450 would equate to 18 hours work.

As explained in our request for clarification, the drafting of legislation is the responsibility of the sponsoring department in central government but as regulator we may be consulted on any proposed changes.

Clause 112 of the Data Protection and Digital Information Bill (DPDI) amends the reporting timeline in Regulation 5A from 24 hours to 72 hours to align with the UK GDPR. You can view the relevant version of the Bill online at: <https://bills.parliament.uk/bills/3430/publications>

This reporting change followed lengthy discussions both internally and with central government. We have been advised by our Legislative Reform team that information within scope of your request goes back to December 2022. The information you have requested therefore covers a long timeframe.

Whilst we note that you have stated you are not interested in the change from 24 to 72 hours, any other proposed changes to PECR breach reporting would be contained within this correspondence and would need to be identified, collated and reviewed to extract the information within scope of your request.

The only way we could identify the information you have requested would be to manually review these records from December 2022.

A number of colleagues in Legislative Reform have been conducting searches on their department files to identify information in scope. This has taken a significant amount of time, and has enabled us to estimate that the total time it would take to conduct the manual searches required for records held across the ICO over the relevant timeframe would exceed the cost limit at section 12. We are not obliged to conduct searches up to the 18 hour limit.

In addition to the records held by Legislative Reform in their department files, relevant information is likely to be held by other ICO teams, as well as individuals who would need to conduct their own searches, e.g. emails etc. The searches already conducted identified 11 additional colleagues who may hold information in scope, but the total number is likely to be higher.

You can read the guidance on section 12 on our website [here](#).

Advice and assistance

You could consider narrowing the scope of your request to bring it within the cost limit, such as information covering a shorter time period and/or certain types of correspondence or documents. Please note that other FOIA exemptions may apply to information within scope of a new request.

This concludes our response to your request. We understand this response may be disappointing but hope the information provided above is helpful.

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

Yours sincerely



Information Access Team
Risk and Governance Department, Corporate Strategy and
Planning Service
Information Commissioner's Office, Wycliffe House, Water
Lane, Wilmslow, Cheshire SK9 5AF
ico.org.uk twitter.com/iconews

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