

12 April 2024

IC-294721-T8J2

Request

You asked us:

"This is an FOIA request.

Scope:

2022/2023 and 2023/4

How many times has the Information Commissioner's Office made Decisions and then decided to let the organisation concerned off the hook - by not undertaking enforcement action.

And what reasoning was given?"

We have interpreted your request as a request for the number of times we have issued Decision Notices with steps ordered, and have subsequently not taken formal enforcement action. 'Formal enforcement action' has specifically been interpreted as where we have formally referred the case to our legal team for potential legal action.

We received your request on 14 March 2024.

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

Our response

We hold information that falls under the scope of your request. However, retrieving the information would exceed the cost limit set out by section 12 of the Freedom of Information Act 2000 (FOIA).

The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 states that the 'appropriate limit' for the ICO is £450. We have determined that £450 would equate to 18 hours work.

This specifically relates to the part of your request in which you ask "*and what reasoning was given?*" about why Decision Notices did not result in enforcement action.

We do not keep statistics on compliance with Decision Notices that we issue. When a public authority is issued with a Decision Notice that orders them to take remedial steps, we ask the person who brought the complaint to notify us if they believe that those steps have not been complied with by the deadline set.

Retrieving the information requested, therefore, would require us to undertake manual checks for every Decision Notice we've issued in which we ordered steps, and check whether there had been any non-compliance with those Decision Notices that were not subject to formal enforcement action.

In the 2022/23 financial year, there were 826 occasions where we issued a remedial step, and 13 referrals to our legal team for enforcement action. In the 2023/24 financial year, there were 851 occasions where we issued a remedial step, and 9 referrals to our legal team for enforcement action.

We would therefore need to search through the 1655 occasions in which remedial steps were issued, but where there was no formal referral to our legal team. Assuming that each search would take approximately 3 minutes to complete – and it is certain that some searches would take much longer than that – this would equate to over 82 hours' worth of searching. This clearly exceeds the 18 hours which would accrue a charge of £450 or more, triggering the provisions of section 12 of the FOIA.

Advice and assistance

The latter part of your request, in which you asked for reasoning given for when no enforcement action was taken, is why section 12 has been engaged in this instance. However, you will note that the number of occasions where steps were ordered in the financial years in scope, along with the number of times a referral to our legal team was made, has been included as part of our reasoning for relying on section 12.

It should be noted that the number of Decision Notices issued with steps ordered

is not illustrative of how many have not been complied with by public authorities, but is rather the number of instances in which we have required a public authority to take steps to comply with the legislation. In many of these cases, there will be no instances of non-compliance with the Decision Notice, and so no further action will be needed on our part.

In the event that we are alerted to potential non-compliance with a Decision Notice by a public authority, there are a range of actions we would take before considering formal regulatory action. Case officers responsible for the particular complaint will try to resolve the issue themselves in the first instance. You may be interested in our guidance on our [FOIA complaints process and our enforcement powers](#), along with our [FOI and Transparency regulatory manual](#), for more information on this.

With regards to your request itself, you may be able to refine your request by asking for information within a smaller timeframe, or information that relates to a specific public authority. It should be noted, however, for the reasons laid out above, that any such search for information of this kind would still require manual searches.

In the event of a refined request that still requires manual searches, we would need to consider if it is in the public interest for us to dedicate the resources necessary to carry out this kind of search, or whether it represents an unreasonable burden on us as a public authority.

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

Yours sincerely



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