

Date: 9 January 2024

IC-275045-M2H3

Request

You asked us:

"In a recent interview, Information Commissioner John Edwards said:

"We are also naming; we are issuing reprimands more and we are publishing them more. So that's a new phenomenon under my leadership of the organization," he said. "And for the people who say, 'you don't enforce, this is a slap over the wrist with a wet bus ticket,' they should see the threats of litigation we get over the prospect of being publicly named. These are real sanctions, because then there's a public accountability."

The interview can be found here: <https://mlex.shorthandstories.com/in-cases-like-snap-ai-chatbot-edwards-seeks-agile-enforcement-for-final-three-years-as-ico-chief/index.html>

Please disclose the number of companies who have threatened litigation when there has been a prospect that they would be publicly named in a reprimand published by the ICO. If you cannot disclose names, please disclose the number of times this has occurred during commissioner John Edwards' tenure.

This request is similar to IC-268345-V3N5, which I also filed and to which you responded on 5 December.

Please note that I am now seeking the number of threats, regardless of whether the reprimands have been finalised, or whether the ICO chose not to issue a reprimand."

We received your request on 6 December 2023.

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, finding 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.

In order to explain why I consider the cost limit is reached, I would like to make you aware of a few things.

First, when issuing a reprimand, we will typically issue a notice of intent and then receive representations from the data controller before making a decision on whether or not to issue a reprimand. While it would be convenient to consider that threats of legal action would be exclusively limited to those representations, we cannot rule out that such threats could be made in the contents of interstitial correspondence between the notice of intent, the representations, or the decision to issue a reprimand. There's also nothing stopping such threats from coming in post-decision. With this in mind, threats could appear anywhere in the whole handling of the matter.

Second, although we are aware of a number of cases where such threats have been made, we do not hold a central register detailing *every* instance when an organisation has threatened to take legal action if we take or don't take particular actions. The language used to make such threats is also highly variable. We cannot therefore run automated searches to locate such threats, and this would require manual searching.

Third, during my consultation with one of our investigations teams, I enquired about the size and scale of the representations and correspondence held on reprimands. While they acknowledged that in some instances, the representations and correspondence are quite short, they advised that the vast majority are extensive, spanning dozens of pages. I have been advised that many individual cases would take more than an hour to conduct a thorough review to find such threats. During this consultation, I have been made aware that their assessment is that the searches would undoubtedly take more than 18 hours.

Finally, the above is predicated on being able to identify all cases in scope of the request. While we do have a central record of all reprimands that we have issued, as it is an exercise of our regulatory functions, we would have to manually search for the cases that did not result in a reprimand being issued. There are hundreds of investigations that would need to be checked in order to even identify which cases may contain information.

With all of this in mind, there is an immediate problem identifying all cases in scope of the request. However, based on the advice of my colleagues, there is a much larger issue of finding that information in scope of the request owing to the large number of documents attached to those identified matters, which would require a significant amount of manual resources to search. While we have not done a dip-checking exercise, I am satisfied based on the information shared with me in consultation that handling the request you have submitted would exceed the cost limit.

Advice and assistance

There is no doubt that the Commissioner is anecdotally aware of the push-back from some data controllers when the ICO advises them we're considering issuing a reprimand. Indeed, following conversations I've had with various colleagues in the business, it is clear that there is information in scope.

However, being aware that such things are happening and issuing a compliant response under FOIA are two very different things. The FOIA requires us to consider held information, not what we are aware of. While it was less of an issue for us to confirm that no information was held in scope of your first request concerning finalised reprimands, this present request presents a significantly greater challenge in terms of resources because it brings into scope approximately two years worth of reprimand work with practical difficulties presented by both finding all cases in scope and then resource concerns re-reviewing documents.

I want to ensure that you can make a request that is more likely to succeed without hitting the cost limit. To that effect, I have been advised that if you reduce the time period of your request, then it may be more plausible for us to locate information. For example, you could request 3-6 months prior to when the Commissioner issued the statement in the MLex interview, or the past 3-6 months. Alternatively, I could focus my attention to information only held by our legal team, because this would focus on cases which were deemed sufficiently serious that our legal team were notified and involved. Although I cannot

guarantee that these would be successful, reducing the scope to a shorter time period or a single team would help.

Please let me know if you would like to proceed on either of those bases.

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



Information Access Team
Strategic Planning and Transformation
Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF
ico.org.uk twitter.com/iconews
Please consider the environment before printing this email
For information about what we do with personal data see our [privacy notice](#)