

Date: 9 February 2024

IC-281825-K9S4

Request

In a request which we assigned case reference IC-275045-M2H3, 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 responded to advise that the cost of complying with this request would exceed the cost limit. We offered some advice and assistance to narrow the request. You responded with a revised request, which reads:

"As you have suggested, please search for the information I requested, but narrow it to the six months prior to the publication of the Mlex article and focus only on information held by the ICO legal team. If necessary, please treat this as a new FOI request."

We received your revised request on 12 January 2024. We have handled your request under the Freedom of Information Act 2000 (the FOIA).

Our response

As you will be aware from our previous response, your request is seemingly unsophisticated on the surface, but has proven surprisingly challenging to extract the relevant information in practice. I am happy to report that we can provide an answer under FOIA to your current enquiry. However, before doing so, I would like to make clear a few points of interpretation.

First and foremost, it is unclear on a re-reading of your request whether your request is simply for the number of threats of legal action, or whether you were also requesting the names of the organisations too. I have interpreted it as the latter, out of an abundance of caution and so as not to delay the matter further by seeking clarification.

Second, I have interpreted a 'threat of litigation' to describe where the organisation has submitted representations via legal representation (either internal or external) and/or where they have made an explicit or implicit threat of litigation should we progress with issuing the reprimand. I believe interpreting the matter in this way is sufficiently broad while also ensuring it encapsulates comments that are sufficiently serious to constitute 'threats'.

With this in mind, I can confirm that we hold information in scope of your request. We received 10 threats of litigation in the 6 months prior to the MLex interview. We cannot disclose the names of the organisations as this information is exempt under s.44 FOIA. However, we hope you find the numbers helpful.

I have provided further information about section 44 below.

FOIA section 44

Some information has been withheld under section 44 of the FOIA. Section 44(1)(a) states:

"(1) Information is exempt information if its disclosure (otherwise than under this

Act) by the public authority holding it -

(a) is prohibited by or under any enactment”

I consider that s.132 of the Data Protection Act 2018 prohibits disclosure. It states:

“A person who is or has been the Commissioner, or a member of the Commissioner’s staff or an agent of the Commissioner, must not disclose information which—

(a) has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner’s functions,

(b) relates to an identified or identifiable individual or business, and

(c) is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources,

unless the disclosure is made with lawful authority.”

In the present case, the threats of litigation have been received in the course of the ICO discharging one of our functions, specifically whether to issue a reprimand to an organisation. The name of the organisation and the associated threat clearly would relate to an identified business. Finally, this information is not available to the public from other sources at the time of disclosure and I also do not consider it has previously been made available.

Accordingly, I consider s.132 prevents disclosure of the names of the organisations who have threatened litigation. Section 132(2) does list the circumstances in which a disclosure can be made with lawful authority. However, I do not consider they apply here. As a result, the information is exempt from disclosure.

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](#)