

13 May 2024

Case Reference IC-300415-L0C9

Your request

You asked us for the following:

"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 understand this is a refinement of a request responded to under IC-294721-T8J2.

Where your questions satisfy the criteria of a valid information request, we have considered your request under the Freedom of Information Act 2000 (FOIA).

Our response

We do not hold any information within scope of your request for the number of times the ICO has let an organisation "off the hook – by not taking enforcement action" for non-compliance with a decision notice.

The only way the ICO would be made aware that the ICO would be made aware of non-compliance with a decision notice would be if the subject public authority (PA) informed us or if the complainant informed us that they do not consider the DN to have been complied with.

Even finding out this information would require a manual search of all cases for which the ICO issued a DN, but even this would not give a reliable figure for the following reasons:

- If the PA has appealed a DN to the First Tier Tribunal but the other parties have not yet been informed, we may well receive a complaint from the complainant, but this would not be a case of the ICO letting said PA "off the hook" as this process is a right of the public authority.
- If the complainant and the PA disagree as to whether a DN has been complied with, we may receive a complaint from the former yet this not necessarily be upheld. Again, this would not be a case of "letting the PA off the hook".

- At any rate, such complaints are handled informally on the original complaint case by the case handler and no separate record is taken if the non-compliance is resolved.
- Should the public authority still not comply with the DN, the ICO may, according to section 54 of the FOIA,

... certify in writing to the court that the public authority has failed to comply with that notice... Where a failure to comply is certified under subsection (1), the court may inquire into the matter and, after hearing any witness who may be produced against or on behalf of the public authority, and after hearing any statement that may be offered in defence, deal with the authority as if it had committed a contempt of court.

We have never reached the stage of a court hearing due to non-compliance with a DN as all cases of non-compliance have been informally resolved by either our casework or legal departments.

You can find more about this topic on our [Director's update: the FOI year in review | ICO](#). This contains the following paragraph:

We have also been working with our legal colleagues to develop a process for using our powers to refer a public authority for contempt of court if they fail to comply with a statutory decision or notice. This power has never been used in practice and compliance is usually very good - with bodies responding quickly when we chase them on the rare occasions a deadline is missed. But we are now in a much better position to go down this route if it's necessary at any point in the future.

This concludes our response.

We hope you find this information helpful.