

17 May 2024

**Reference number: IC-304158-V4J8**

**Request**

You asked us: *"I understand you recently wrote to a number of organisations about their use of Loyalty cards data...Please provide a list of the organisations you wrote to."*

We received your request on 30 April 2024.

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

**Our response**

Having searched our records, we can confirm that we hold information in the scope of your request, however, the information you have requested is exempt from disclosure under section 31(1)(g) of the FOIA. We can rely on section 31(1)(g) of the FOIA where disclosure:

*"would, or would be likely to, prejudice... the exercise by any public authority of its functions for any of the purposes specified in subsection (2)."*

In this case the relevant purposes contained in subsection 31(2) is 31(2)(c) which states:

*(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise ..."*

Section 31 is not an absolute exemption, and we must consider the prejudice or harm which may be caused by disclosure. We also have to carry out a public interest test to weigh up the factors in favour of disclosure and those against.

Our inquiry into these organisations is ongoing and, also, in the early stages. To release the information you have requested could prejudice the ICO's ability to conduct the inquiry as it could negatively hinder, or even stop, any ongoing discussions between the ICO and the relevant organisations. This would ultimately jeopardise the ICO's ability to obtain information which would make it difficult for the inquiry to progress or even result in it stopping altogether.

The disclosure of this information could also result in a negative bias towards the relevant organisations. This would negatively affect our ability to conduct and conclude the inquiry fairly and proportionately. As well as this, should a bias be created, this would be likely to have a negative affect their business. While this in itself is problematic, it would also have further negative impacts on the ICO as our relationship with the relevant organisations would be further damaged.

Should the above points become public knowledge, disclosure could result in other organisations stopping, or reducing, their engagement with us or being more guarded when they do so. As the regulator, our work into the legislations we oversee is continuous and ongoing and involves liaising with multiple organisations at any one time. Less engagement would make it much harder for us to disseminate and influence good practice in the legislations we oversee, which could potentially lead to a more 'hazardous' data protection landscape.

With this in mind, we have then considered the public interest test for and against disclosure.

In this case the public interest factors in disclosing the information are:

- Increased transparency into this inquiry.

The factors in withholding the information are:

- Disclosure at this stage would discourage ongoing discussions between the ICO and the relevant organisations. This may damage our ability to conduct and conclude our inquiry. This, in turn, could affect our ability to undertake any regulatory action, should we see fit to take this action, which is not in the public interest.
- There is a public interest in the ICO being able to act fairly and proportionately. Disclosure of this information could undermine our ability to do this.
- The public interest in maintaining the ICO's ability to conduct inquiries as it sees fit.
- It is not in the public interest for the ICO to create a negative bias against any organisation as this will negatively affect our relationship with all organisations making it more difficult for the ICO to complete its regulatory work.
- The public interest in the ICO being able to maintain a communication channel with all organisations. A lack of, or reduced, communications channels inhibits our work into the legislations we over see which is not in the public interest.

Having considered these factors, we are satisfied that it is appropriate to withhold the information.

This concludes our response.

### **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](http://ico.org.uk) [twitter.com/iconews](https://twitter.com/iconews)

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