

10 July 2024

IC-311990-F1J0

Review of response to information request

I write further to your email of 19 June 2024 in which you requested a review of the handling of your request dealt with under the reference number IC-311990-F1J0.

Section 45 of the Freedom of Information Act 2000 (FOIA) requires the publication of a code of practice, designed to assist public authorities handle requests under the FOIA.

This guide recommends that public authorities put in place an internal review process for FOIA responses, which our guide suggests should be triggered whenever a requester expresses dissatisfaction with the outcome of a request they have made.

The purpose of an internal review is to look again at your request, at our response, and to check that any exemptions applied were appropriate.

As a result we have conducted an internal review of our response to your information request. I am a Senior Information Access Officer in the Information Access Team and I can confirm that I have had no prior involvement in the handling of this request.

Request and response

On 9 June 2024 we received a request from you which sought the following information:

- 1. How many times in the last three years has the Information Commissioner's Office found organisations to have broken the law by destroying records?*
- 2. And, overall, are the Information Commissioner's Office longterm stats (if held) for finding organisations illegally deleting files rising, or dealingsince this seems practice seems to have become more prevalent worldwide .
eg One the famous case - Hillary Clinton.(31,830 emails,)*
- 3 And has the Information Commissioner's Office produced any reports on the problem of upholding the law, since it is presumably a function of the Information Commissioner's Office ?*

One example: The UK destruction of Parliamentary WhatsApp messages.

4 Or indeed ANY report on the illegal destruction files by organisations, or individuals - and how the Information Commissioner's Office might combat it.

On 19 June 2024 we responded by advising you that we were unable to respond to your request as parts 3 and 4 exceeded the relevant cost limit.

Review

Having considered the matters raised in your request for an internal review I can confirm that I do not uphold the review. I have explained the reasoning for this below.

I have addressed each matter in the order it was included in your email of 19 June 2024, so may wish to refer back to that.

Section 12

It appears from your correspondence that you requested an internal review as you consider that we had interpreted parts 3 and 4 of your request too broadly.

I have reviewed the wording of your request, and the response we issued, and I consider that it was an objectively reasonable way to interpret your request.

In order to respond to a request made under the Freedom of Information Act 2000 (the FOIA) we are required to undertake reasonable searches to locate information which falls within the scope of the request.

My colleague stated the following, when explaining why your request exceeded the cost limits:

A report can be defined as an account of a particular matter. This might cover anything from a case summary to a published report. The ICO might report on challenges associated with upholding the law in a range of contexts, for example, in relation to complaints, data breaches, audits, stakeholder engagement, policy or guidance. Similarly, information about how the ICO might address issues relating to illegal destruction of data could be summarised in a range of possible contexts, such as (but not limited to) the examples given above.

This clearly demonstrates that the information you are requesting could be located in a wide variety of documents across various areas of the business, including the case management system. They provided an estimate of the time it would be likely to take, just to search the case management system, which I consider to be a reasonable estimate.

I therefore agree with their assessment parts 3 and 4 of your request were so broad that they would require extensive searches which could not be undertaken within the costs limits.

Advice and assistance was also provided, detailing how you could refine your request to avoid exceeding the threshold. I consider that the advice and assistance provided was of an appropriate level.

You have attempted to refine your request, however, before we can begin to process it we require further clarification. This is covered in the 'Refined Request' section of this letter below.

Parts 1 and 2 of your request

In the advice and assistance section of our response my colleague explained that we do not hold information which falls within parts 1 and 2 of your request, which you dispute.

As my colleague noted, these parts of your request appear to relate to Section 77 of the FOIA and Section 173 of the Data Protection Act 2018 (DPA) which are both offences under the relevant Acts.

You requested the number of instances where organisations had been found to have broken the law and were dissatisfied with the explanation that we don't hold any records of prosecutions for the past three years. I have provided some more detail below which may explain things further.

We have not prosecuted any organisations under section 173(3) of the Data Protection Act 2018 (DPA 2018).

It may help to explain that the legislation refers to an individual ('person'). We would therefore not prosecute an organisation under section 173(3).

One DPA section 173 investigation resulted in a caution being issued to a letting agent in 2023.

There have been no prosecutions under section 77 of the FOIA against a public body. The two prosecutions pursued by the ICO have been against individuals and took place more than three years ago.

To be clear, the additional information was included in the links provided by my colleague to previous responses to similar requests.

Refined Request

In your email of 19 June you requested the following:

"So I would like to read any inclusive internal email briefings sent to these officers - on the destruction of data - within the last two years"

And

"just email 'round robin' reports to management committee/ senior managers dealing with what seems to be an increasing problem."

And

"The higher management emails on the issue would be fine."

Before we can begin to consider this request we need to be clear which senior staff at the ICO you are referring to.

The ICO's [decision making structure](#) is explained on our website. As you will see on the website, we have a Management Board and an Executive Team who undertake different functions. The terms of reference for each of these groups are included on the website and set out which roles make up the composition of the group. Some individuals are part of both the Management Board and the Executive Team but there are also individuals who are only part of one. Before we can respond to your request we would be grateful if you could confirm whether you are seeking the information in relation to the Management Board or the Executive Team?

It may also help to explain that emails are generally only held for 1 year unless they are moved to a corporate storage location such as our electronic document and records management system (EDRM).

It would also be helpful if you could clarify exactly what you mean by destruction of data. This is because it is unlikely that we would use that exact language in internal reports or emails so it would be difficult to undertake electronic searches, which means any further request may also exceed the section 12 cost limit. For example, are you interested in breaches of section 173 of the DPA18 and section 77 of the FOIA, or something else?

If you would like us to progress your request please respond providing further information as soon as possible. Once we receive further details which will allow us to undertake the necessary searches for the information you are trying to access we will respond to you within 20 working days.

Request for ICO Policy

In your email of 19 June 2024 you also requested the following:

"What is the Information Commissioner's Office's own destruction of data policy?"

Our [Retention and Disposal Policy](#) is available on our website. Sections 5 and 7 may be of particular interest to you.

Complaint procedure

If you consider that your request for personal data has not been dealt with correctly under data protection legislation, you have a right of appeal to this office in our capacity as the statutory complaint handler under the GDPR and Data Protection Act 2018.

To make such an application, please write to our public advice and data protection complaints department at the address below, or visit the '[Make a complaint](#)' section of our website.

If you are dissatisfied with the outcome of this review you can make a formal complaint with the ICO in its capacity as the regulator of the Freedom of Information Act 2000. Please follow the link below to submit your complaint: <https://ico.org.uk/make-a-complaint/>.

Yours sincerely