

24 July 2024

IC-316303-D1F7

Request

You asked us:

"do you have any internal policies, processes etc on when the ICO would exercise discretion to certify a failure to comply with an FOI decision notice to the High Court (under section 54 FOIA)?

And can you disclose how many times in the last two years the ICO has made a certification under section 54?"

We received your request on 27 June 2024.

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

Our response

We can confirm that we hold some information which falls within the scope of your request.

Please find attached a section 54 process flow chart which falls within the scope of the first part of your request. We do not have any other policies or procedures which specifically cover when we would exercise our discretion to certify a failure to comply with a decision notice to the High Court.

Regarding the second part of your request, we have not made any certifications to the High Court under section 54 of the FOIA in the last 2 years.

Advice and assistance

We receive a very small number of complaints each year about a public authority failing to comply with the steps set out in our decision notices. We issued well over 2000 FOIA/ EIR decision notices and information notices last year so this is really positive. We have also found that bodies tend to respond very quickly when we chase them on the rare occasions a deadline is missed.

You may be aware of the [blog](#) written by our Director of Freedom of Information and Transparency, Warren Seddon. As a responsible regulator the ICO is keen to ensure our powers operate effectively. As the blog notes, our powers under section 54 of the FOIA have not been used fully to date but that we have been working to ensure we could apply to the court under this part of the Act should it be necessary in the future.

Although it does not fall within the scope of this request you may be interested to know that part of this work has involved obtaining external legal advice about section 54 and how it can be used. It would be our intention to create a new policy/process as part of our published service guide once a case has been taken through to completion.

This concludes our response to your request. I hope the information provided is helpful.

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



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