

13 January 2025

IC-351671-M3R5

Request

You asked us:

- 1. "How many people have ended up with criminal records when their employer has supported them and said they authorised the illegal processing?"*
- 2. How many have you let off because of the support for the criminality from the employer?*
- 3. How many of those had children as their victims?"*

This was in response to an article that the ICO published regarding the illegal accessing of personal information. The article can be found here: [Manchester employee handed suspended prison sentence for illegally accessing personal information | ICO](#)

We received your request on 17 December 2024.

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

Our response

Conducting the searches necessary to confirm if we hold the information that you have asked for would exceed the cost limit set out by section 12 of the FOIA. The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 states that the 'appropriate limit' for the ICO is £450. We have determined that £450 would equate to 18 hours work.

The information that you have requested relates to convictions for the unlawful accessing and obtaining of people's personal information. It is an offence under Section 170 of the Data Protection Act 2018 (the DPA) for a person knowingly or recklessly to obtain, disclose, procure or retain personal data without the consent of the controller.

Whether the reporting organisation has stated that they believe the accessing or obtaining of the persona data was lawful, or not, is not information that can be easily extracted from our systems. Our case management system is unable to run a quick automated report on this type of information and we would therefore need to conduct manual searches.

To locate the information for questions 2 and 3, we would need to conduct a manual search of the data breach cases that the ICO has received relating to reports made under Section 170 of the DPA. Casework is retained in line with our retention period, which in most cases is two years. In the last two years the ICO has received 2,993 data breach reports that have a recorded incident type of "unauthorised access". To determine the views of the reporting organisation, we would need to manually review all correspondence in relation to the reports. This would include manually reading each report, email, note and letter in relation to the 2,993 cases. Further time would then be required to determine whether the victim(s) of the data breach included children.

Assuming that searches of each case would take approximately 3 minutes to complete – and it is certain that some searches would take much longer than that – this would equate to over 150 hours' worth of searching. This clearly exceeds the 18 hours which would accrue a charge of £450 or more, triggering the provisions of section 12 of the FOIA.

Therefore we are refusing your request on this basis.

Advice and assistance

It may help to explain that Section 170 of the DPA states:

"(1)It is an offence for a person knowingly or recklessly—

(a)to obtain or disclose personal data without the consent of the controller,

(b)to procure the disclosure of personal data to another person without the consent of the controller, or

(c)after obtaining personal data, to retain it without the consent of the person who was the controller in relation to the personal data when it was obtained."

We can advise that the ICO has not taken any cases to court where the employer (data controller) has "authorised illegal processing". This is because for the

offence to be proven, the accessing of the personal information must be without the controller's consent, as specified in the Act. We can therefore advise that the answer to question one is zero.

In relation to question 2 and 3, you did not give a timeframe for the information that you wish for us to search. We therefore considered all personal data breach reports identified as "unauthorised access" to fall within scope of your request. This included data breaches reported to the ICO in 2022, 2023 and 2024.

To reduce the costs incurred searching for the information that you have requested, we may be able to provide you with the requested information if you narrow your request to a one-month specified period. However, please note that this will still require manual searches of the personal data breaches that the ICO has received, and we therefore cannot guarantee the accuracy of results provided following these searches. This is because searching for the opinion of the reporting organisation may not be immediately obvious and therefore open to interpretation by the Information Access Officer. In addition, narrowing your request to a one-month snapshot is possibly not representative of the reports that we receive. We would need to consider if it is in the public interest for us to dedicate the resources necessary to carry out this kind of manual search, or whether it represents an unreasonable burden on us as a public authority, particularly given the issues regarding accuracy described.

This concludes our response to your request.

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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