



## ICO Disclosure Log – Response to Request

Request Ref: FOI/670

Date of Response: 09/07/07

1. The number of complaints received by the ICO in relation to breaches of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (Regulations) since they came into force, broken down by communication method (eg complaints in relation to automated calling system, telephone, email and fax)

Table 1

Year	Communication method	Total number of complaints likely breaches received by the ICO directly
2004	Email	574
	SMS/Text	973
	Voicecall	721
	Fax	1112
	Automated call	12
	Other	28
2005	Email	439
	SMS/Text	555
	Voicecall	1911
	Fax	880
	Automated call	618
	Other	24
2006	Email	224
	SMS/Text	132
	Voicecall	631
	Fax	820
	Automated call	135
	Other	6
2007 (to date)	Email	117
	SMS/Text	59
	Voicecall	175
	Fax	36
	Automated call	38
	Other	0

NB. Table 1 does not include complaints received where we did not have sufficient information to determine that there was likely to be a breach of relevant regulation, or where we did not have information to determine who was responsible.

We received one complaint under the Regulations in 2003 which was about an email.

**2. Any information regarding the nature of the complaints made to the ICO (eg failure to respect the preference services, failure to get consent etc)**

Unfortunately, we are not able to conduct an electronic search specifically for the nature of each complaint received in this way.

**3. Any summaries or reports provided to the ICO by the Direct Marketing Association in relation to the running of the preference services since they went live;**

Summary of the numbers of complaints received. Details of the summarised TPS, FPS and CTPS complaint figures are, however, provided in the tables below.

**Reported in quarterly figures**

**Table 2**

<b>Date complaint recorded by TPS</b>	<b>No of summarised complaints reported by TPS to ICO</b>
2001 – 2002 Q4	1174
2002 – 2003 Q1	1538
2002 - 2003 Q2	2255
2002 - 2003 Q3	N/A
2003 -2004 Q4	7318
2004-2005 Q1	5816
2004-2005 Q2	5977
2004-2005 Q3	0
2004-2005 Q4	5812
2005-2006 Q1	15842
2005-2006 Q2	12883
2005-2006 Q3	7256
2005-2006 Q4	12760
2006-2007 Q1	16118
2006-2007 Q2	*4564

\*TPS have now begun to remove ‘invalid’ complaints (for example from non-registered individuals) from the figures they send to us. This explains the lower figure to some extent.

**FPS**

**Table 3**

<b>Date complaint recorded by FPS</b>	<b>No of summarised complaints reported by FPS to ICO</b>
15/10/01 – 15/12/01	8189
18/04/02 – 18/06/02	19072
19/06/02 –	26328

19/08/02	
20/08/02 – 20/10/02	25636
22/12/02 – 22/02/03	24171
23/02/03 – 23/04/03	16229
23/04/03 – 23/06/03	5929
24/06/03 – 24/08/03	5949
25/08/03 – 25/10/03	4798
26/10/03 – 26/12/03	10829
28/02/04 – 28/04/04	14149
28/12/03 – 28/02/04	11260
30/04/04 – 30/06/04	18190
01/07/04 – 01/09/04	18409
05/03/05 – 05/05/05	6164
06/05/05 – 06/07/05	7229
07/07/05 – 07/09/05	6741
08/09/05 – 08/11/05	8441
09/11/05 – 09/01/06	3662
12/05/06 – 11/07/06	2836
13/07/06 – 13/09/06	2329
14/09/06 – 15/11/06	1980
16/11/06 – 16/12/06	1387
17/12/06 – 17/01/07	411
18/01/07 – 18/03/07	1914
19/03/07 – 19/04/07	1286
20/04/07 – 20/05 /07	798

**TPS  
Table 4**

<b>Date complaint recorded by CTPS</b>	<b>No of summarised complaints reported by TPS to ICO</b>
05/03/05 – 05/05/05	390
06/05/05 – 06/07/05	613
07/07/05 – 07/09/05	384
08/09/05 – 08/11/05	552
09/11/05 – 09/01/06	367
09/01/06 – 11/05/06	No reports held
12/05/06 – 12/07/06	280
13/07/06 – 13/09/06	230
14/09/06 – 15/11/06	229
16/11/06 – 16/12/06	158
17/12/06 – 17/01/07	183
18/01/07 – 18/03/07	430
19/03/07 – 19/04/07	286
20/04/07 – 20/05/07	105

CTPS figures were not initially provided on separate spreadsheets so will appear in the TPS figures before the above.

**4. Number of investigations carried out by the ICO following complaints made under the preference services since the regulations came into force (eg how many investigations were carried out; type of data controllers investigated (ie industry sector); result of investigations)**

In each case where we receive a complaint about a likely breach of the Regulations, and are provided with sufficient information to identify the company likely to have breached the Regulations we will conduct an investigation.

This may involve simply writing to both parties to resolve matters in some cases, in other cases it may involve a detailed investigation leading to up to potential

enforcement. The cases we receive are listed in Table 1 above. In most of these cases we will have carried out some level of investigation. However our system does not list the exact investigation carried out in each case through a basic search.

Whilst we could theoretically conduct a manual search of the results brought back from the electronic search, reading all the documents that were sent and received in connection with this matter to determine what the nature of each complaint was, it is our view that it would take more than 18 hours to conduct this manual search and would, therefore, be exempt under section 12 of the FOIA.

**5. Any information regarding how many of the ICO’s investigations arising out of complaints made under the Regulations were upheld and how many resulted in enforcement action (ie preliminary notices, enforcement notices, undertakings)**

At present the ICO follows the guidance issued by the Council on Tribunals in relation to enforcement, in that it issues preliminary enforcement notices before formal notices are served. The Council on Tribunals is effectively the governing body of the Tribunal Service under which the Information Tribunal falls. This is the tribunal that deals with FOIA, DPA and therefore the Regulations matters. The Council on Tribunals has taken the view that preliminary notices should be served as a way of attempting informal resolution of cases. It puts a party on notice that the regulator is aware of breaches and is looking for compliance. It also gives the party an opportunity to puts its side of the case.

If compliance and/or explanations are received after a preliminary notice has been served and the Commissioner is satisfied that no further breaches are likely to occur, no further action may be taken although the situation will be monitored. The ICO may also consider asking the company to give a formal written undertaking to ensure compliance. This is a sort of hybrid situation where no formal action is taken, but the case is not just left to be monitored either. The advantage to this is that the company formally agrees to take the relevant steps to comply with the Regulations and if there are further breaches the ICO will go straight to formal enforcement notice.

If, however, no informal resolution is obtained, formal notices are served. Once served, the party upon whom they are served has a right of appeal to the Information Tribunal. If there is no appeal or the notice is upheld on appeal, a failure to comply can then result in the commission of an offence and at that stage the ICO does have the power to prosecute.

The table below shows the enforcement notices (including preliminary enforcement notices) and formal undertakings the Commissioner has served under the Privacy and Electronic Communications Regulations 2003.

**Table 5**

Organisation	Preliminary enforcement notice	Enforcement notice	Formal undertaking
Scottish National Party (Regulation 19)	03/06/2005	18/10/2005	

Conservative and Unionist Party (Regulation 19)	N/A	18/10/2005	
Bowater Home Improvements Ltd (Regulation 21)	14/08/2006	05/12/2006	
Bowater Windows Ltd (Regulation 21)	14/08/2006	05/12/2006	
Staybrite Windows Ltd(Regulation 21)	14/08/2006	05/12/2006	
Zenith Windows Ltd(Regulation 21)	14/08/2006	05/12/2006	
TalkTalk Telecom Ltd (Regulation 21)	15/08/2006		18/12/2006
Carphone Warehouse Group PLC (Regulation 21)	15/08/2006		18/12/2006
IDT Direct Ltd t/a Toucan (Regulation 21)	15/08/2006	05/12/2006	
H Morris & Co Ltd t/a Homestyle Kitchens and Bedrooms (Regulation 21)	12/04/2007		
Space Kitchens and Bedrooms Ltd (Regulation 21)	12/04/2007		
ADC Organisation Ltd (Regulation 19)			06/05/2007
LCI Travel (Regulation 21)			25/05/2007
Satellite Direct UK Ltd (Regulation 19 and 21)			01/06/2007
Satcover Ltd (Regulation 19 and 21)			01/06/2007
Clear Debt Solutions Ltd (Regulation 20)			29/06/2007

**6. A description of any criteria used by the ICO in order to determine whether to carry out an assessment or take other enforcement action against a particular data controller for failure to comply with the preference services.**

Please use this link

[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/data\\_protection\\_regulatory\\_action\\_strategy.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/data_protection_regulatory_action_strategy.pdf) for the details of the Information Commissioner's Office Regulatory Action Strategy (which includes the Privacy and Electronic Communications Regulations 2003).

A Request for Assessment is carried out under the Data Protection Act 1998 not under the Regulations. I therefore would presume that they would not be relevant to your query in this instance. However the criteria for circumstances in which the Commissioner must make an assessment are set out under Section 42 of the Data Protection Act 1998 which is available in full from our website [www.ico.gov.uk](http://www.ico.gov.uk).