

ICO Corporate Affairs policy

Communicating enforcement activities

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Document amendment log		
date	Section	Reason
21/9/10		To include dates for removing FOI enforcement from the website
21/9/10		To put the document in the new ICO corporate identity
21/9/10		To reflect the wording of the new vision and Corporate Plan
21/9/10	2.1, 4	To incorporate the freedom of information enforcement policy
11/11/10	2	To clarify that the ICO won't give advance warning of publicity around enforcement activity

1 Introduction

The ICO aims to be robust in resolving data protection and freedom of information complaints. Publicising our enforcement and regulatory activities is an important part of our role as strategic regulator, and a deterrent for potential offenders.

The ICO aims to get media coverage for enforcement activities, and this policy provides a clear set of internal guidelines for communicating our enforcement and regulatory activities generally. The aim of this document is to provide the ICO with a framework to allow us to communicate with confidence and to gain the maximum effect. It is in line with the ICO's data protection and freedom of information Regulatory Action Policies, and is in accordance with the ICO's Publication Scheme.

This is consistent with our Corporate Plan aims and our vision of being a model of good regulation. It also contributes to our communications objectives to encourage good practice and raise awareness of obligations.

This document covers publicising information proactively – for example, by issuing a news release or informing a journalist. However, it must be noted that information can get into the public domain in many other ways that are not within the ICO's control.

2 The principles of communicating enforcement and regulatory activities

2.1 Enforcement and regulatory activities can mean a number of things. For the purposes of this strategy, we intend the term to cover everything in the ICO's enforcement policies, some investigation work (ie significant issues) and significant freedom of information decisions.

Principle one The default position is that all formal enforcement and regulatory activities, plus

significant decisions and investigations, are to be publicised.

2.2 This policy is driven by the reputation the ICO wants to have as the authoritative arbiter of information rights, an educator and an influencer. Stakeholders have told us that they want to see us taking enforcement action (it is one of the criteria by which they judge the ICO's reputation). They also want us to have good relationships with them. We need to ensure these relationships are based on a mutual understanding that we will wield both the carrot and the stick. We will not risk damage to the reputation of the ICO by agreeing with an organisation that we won't publicise our action or that we will give advance warning. As an independent regulator there is no obligation for the ICO to contact the press office of an organisation we are taking enforcement action against in advance of issuing a press release. We will also not proactively share the content of releases with organisations or give out the likely date of issue. However, in our communication with an organisation about enforcement matters, we will make it clear that a press release may be issued. It is for that organisation to make their press office aware and to think about how they would respond to any calls from journalists.

Principle two The default assumption is that we will communicate our enforcement and regulatory activities (regardless of the stakeholder and our relationship with them). We won't promise non-publicity to an organisation during our investigations or regulatory/enforcement activity. The ICO will not give organisations

advance warning of publicity it may do around enforcement action. It is for organisations to decide how they will prepare for any media calls they may receive.

- 2.3** While there will be general agreements about how to communicate our activities, we do recognise that different cases may need different treatment. Each case will need careful consideration of the communication it requires in order to protect and promote the reputation of the ICO.

Principle three There will be general criteria about how to communicate the ICO's enforcement and regulatory activities, but flexibility will be allowed to take into account the needs of each individual case.

- 2.4** The relevant departments will work closely together, to allow time to identify issues likely to be of significant external interest and for timely and appropriate communications to be developed.

Principle four ICO departments will keep each other informed of enforcement and regulatory activities in advance of the event and will work together to plan the communications treatment.

- 2.5** We need to ensure that we have a clear line of authority to clear communications treatment of enforcement activities. Ideally, an agreement will be reached within the relevant working group if there is one (this should consist of a representative from Enforcement, Corporate Affairs and a lawyer). If the treatment cannot be agreed (or the fact that we are communicating the activities at all), then it should be referred to Executive Team

members: the relevant Deputy Commissioner and the Corporate Affairs Director. If no agreement can be reached at that level, the Commissioner will decide.

Principle five The ICO's existing publications clearance procedure applies to enforcement activities, as illustrated above.

2.6 In some cases, the ICO may be working alongside other regulators on an investigation. These organisations may have different policies on communicating enforcement and regulatory activities. In these circumstances, the relevant ICO departments will liaise with their counterparts in the other regulatory bodies to discuss and agree the approach to communications.

Principle six When investigating with other regulatory bodies, the ICO will discuss the communications approach with those bodies. Corporate Affairs staff will be consulted and kept informed.

3 General criteria for communicating enforcement and regulatory activities

As noted above (principle two) the default assumption is that we will communicate our enforcement and regulatory activities (regardless of the stakeholder and our relationship with them) and that (principle three) decisions on communication will be made on a case by case basis. However, it is possible to make some further general rules to help us in our decisions about whether to communicate.

3.1 When we are likely to publicise enforcement and regulatory activities

- If it's already a news story. We would probably also publicise the fact we're investigating in these circumstances.
- Where there's an opportunity for education/prevention.
- If it's new, extreme, a first etc (standard news criteria).
- If it meets a communications, corporate or information rights objective.
- If it would help an investigation to publicise it.
- If there are aggregate stories showing trends etc.
- Where publicity is likely to deter others.
- Where publicity would be in the public interest.

3.2 When we are not likely to publicise enforcement and regulatory activities

- When releasing information could prejudice a trial.
- When an investigation is underway (and it could be hindered by publicity, or the investigation may come to nothing).
- When we have several similar cases and time or news constraints mean we have to choose.
- If it is too dull or technical to make the news.
- Where we would breach S59 of the Data Protection Act.

4 General criteria for communicating different types of enforcement and regulatory activities

4.1 Data protection

Preliminary notices

- More suited to aggregate story, unless there is an overriding public interest to publicise it, all parties agree, if it was already in public domain, or if there is a regulatory need.

Undertakings

- We will publicise undertakings depending on news value and/or if there is a need to address public concerns.
- Where they relate to section 55 and are given by individuals in lieu of possible prosecution they will normally be put on our website in an anonymised form.
- Undertakings will normally be kept on our website for two years.

Prosecutions

- We may inform journalists in advance.
- We will adhere to contemporaneous reporting rules.
- We may issue a news release.
- In some cases we'll provide the case summary to a journalist.
- We will report on prosecutions in our Annual Report to Parliament. This also goes on our website and will normally be kept on our website for three to four years.

Cautions

- We may publicise cautions depending on news value.
- More suited to aggregate story.

Enforcement Notices

- We will publicise these depending on news value.
- Enforcement notices will be put on our website and reviewed after two years.

S159 orders (Consumer Credit Act)

- We may publicise these depending on news value (they are more suited to an aggregate story)

Injunction application

- More suited to an aggregate story.

Application for Enforcement order

- We may publicise these depending on news value.

Inspection

- If publicity is desired, we will work with the relevant authority on communicating international inspections.

Negotiation

- More suited to aggregate story, unless all parties agree or it was already in public domain.

Information Notice

- We are likely to publicise if it's in the public domain
- We may publicise if it helps the investigation
- We are likely to publicise if there's an expectation of an update or we need to show we have taken action.

Search warrant

- We will publicise these in aggregate (eg in the annual report)
- We may publicise if it helps the investigation
- We are likely to publicise if it's in the public domain
- We are likely to publicise if there's an expectation of an update or we need to show we have taken action.

Penalties

- We will not normally publicise the notice of intent to serve a monetary penalty. This is more suited to aggregate story, unless there is an overriding public interest to publicise it, all parties agree, if it was already in public domain, or if there is a regulatory need.
- We will publicise the serving of a monetary penalty.

4. Freedom of information

Informal resolutions

- More suited to aggregate story, unless all parties agree or it was already in the public domain.

Decision notices

- We will publicise these (depending on the news value)
- We are likely to publicise if there's an expectation of an update or we need to show we have taken action.

Enforcement Notice

- We will publicise these depending on news value (or failures to comply with the notice).

S77 ("shredding offence")

- We may issue a news release.
- We may inform journalists in advance.
- In some cases we'll provide the case summary to a journalist in advance of the court case.
- We will adhere to contemporaneous reporting rules.

Information Notice

- We will publicise if it's in the public domain
- We will publicise if it helps the investigation
- We will publicise if there's an expectation of an update or we need to show we have taken action.
- We are likely to publicise if there's an expectation of an update or we need to show we have taken action.

Practice Recommendations

- We will publicise these, depending on news value.

Undertakings

- We will publicise undertakings depending on news value and/or if there is a need to address public concerns.
- Undertakings will normally be kept on our website for two years.

Assessment S47

- We may publicise these depending on news value (depending on whether it is subject to a confidentiality agreement and/or whether we have the agreement of the organisation); also suited to an aggregate story.
- We will consult with the National Archives and/or the Deputy Keeper of the Records for Northern Ireland if it relates to records management.

Monitored bodies

- We will publicise the names of public bodies we are monitoring for the purposes of assessing compliance with s10 FOIA, r5 EIR or internal reviews on a quarterly basis.

- We may also publicise the names of public bodies that have been brought to the attention of the Enforcement Team as a result of other types of poor practice.

Negotiation

- More suited to aggregate story, unless all parties agree or it was already in public domain.

5 Likely tools for communicating enforcement and regulatory activities

This is not an exclusive or exhaustive list, but gives a good indication of the ways we might choose to publicise ICO enforcement activities. The Communications Planning team will decide which to choose, in consultation with colleagues in relevant departments.

- journalists' briefings
- news releases
- website/internet
- Annual Report to Parliament
- e-newsletter
- social media eg Twitter
- personal letters
- briefings to stakeholder groups.
- Special reports to Parliament (on the decision of the Commissioner)

6 Review date

We will review this policy in one year's time.