

27 March 2024

## **ICO Case Reference IC-291506-H2J9**

### **Request for information**

Request received 1 March 2024:

*"We write with regards to the above matter whereby the global information technology company Sita confirmed a large data breach in an official statement on 4 March 2021..."*

*As such, under the Freedom of Information Act, we would be grateful if you could supply the following information...:*

- *Details of the initial notification made to the ICO;*
- *Supporting documentation supplied by Sita;*
- *Details of the investigation conducted by the ICO;*
- *Details of the findings of the ICO following your investigation, including information regarding the security measures in place both prior and subsequent to the breach;*
- *Any other information relevant to the breach in question."*

Your request has been handled under the Freedom of Information Act 2000 (the FOIA). This legislation provides public access to recorded information held by a public authority unless an appropriate exemption applies.

### **Our response**

*Details of the initial notification made to the ICO*

This information is not held. SITA were the data processor and not required to notify the ICO of a personal data breach.

*Supporting documentation supplied by Sita*

We do hold information in scope of this request. All information provided to the ICO by SITA is withheld under section 44 of the FOIA. See below for further information about this exemption.

*Details of the investigation conducted by the ICO*

We do hold information in scope of this request. An investigation was opened on 28 September 2021 under case reference INV/0839/2021, and closed on 1 September 2022 with the outcome of 'No further action'. Technically this information is withheld under section 21 of the FOIA as it is already reasonably accessible to you in our [Cyber investigations](#) datasets (Cyber investigations - datasets Q2 2022/23). However, we have provided the information here for your convenience. See below for further information about this exemption.

*Details of the findings of the ICO following your investigation, including information regarding the security measures in place both prior and subsequent to the breach;*

*Any other information relevant to the breach in question.*

We hold some information in scope of this request. We hold a Recommendation Report but it is withheld under sections 31 and 44 of the FOIA. See below for further information about these exemptions. The investigation closure letter sent to SITA is in a format no longer accessible, and so for the purposes of the FOIA is not held.

**FOIA section 21**

Information already reasonably accessible to you is withheld under section 21 of the FOIA. Section 21 states that we do not need to provide you with a copy of information when you already have access to it.

**FOIA section 31**

This exemption applies when disclosure would or would be likely to prejudice our ability to carry out our regulatory function.

The exemption at section 31(1)(g) of the FOIA refers to circumstances where the disclosure of information:

*"would, or would be likely to, prejudice –  
... the exercise by any public authority of its functions for any of the  
purposes specified in subsection (2)."*

The purposes contained in sections 31(2)(a) and 31(2)(c) are:

*"(a) the purpose of ascertaining whether any person has failed to comply with  
the law"*

and

*"(c) the purpose of ascertaining whether circumstances which would justify  
regulatory action in pursuance of any enactment exist or may arise ..."*

These purposes apply when the Information Commissioner considers whether an organisation has met its obligations in respect of data protection legislation.

The exemption at section 31 is not absolute, and so we must consider the prejudice or harm which may be caused by disclosure of the information requested, as well as applying a public interest test by weighing up the factors in favour of disclosure against those in favour of maintaining the exemption.

We take the view that disclosure of the information requested could prejudice the ICO's ability to conduct investigations in an appropriate manner. For example, it is probable that any disclosure would discourage future discussions between the ICO and SITA. Disclosure could jeopardise the ICO's ability to obtain information for future investigations, either relating to this organisation or others. This would negatively impact our ability to carry out our regulatory work.

With this in mind, we have then considered the public interest test for and against disclosure.

In this case the public interest factors in favour of disclosing the information are as follows:

- Increased transparency in the way in which we carry out our investigations.

- The understandable interest of the public, and those data subjects affected by this incident in the details of the data breach.

The public interest factors in maintaining the exemption are as follows:

- The public interest in the ICO being able to maintain effective and productive relationships with the parties with whom we communicate. It is essential that organisations engage with us in a constructive and collaborative way without fear that the information they provide us will be made public if it is inappropriate to do so.
- Disclosure of this information would be likely to compromise our ability to conduct future investigations, and would therefore affect the discharge of our regulatory function in vital areas, including our ability to influence the behaviour of data controllers and processors, and to take formal action when appropriate.
- We consider that the public interest in disclosure of information relating to these matters is fulfilled to some extent by the information we have already placed in the public domain.

Having considered the arguments both for and against disclosure we do not find that there is sufficient weight in the arguments that favour disclosure.

#### **FOIA section 44**

Information provided to the ICO by SITA is being withheld under the provisions of section 44 of the FOIA which places prohibition on disclosure. This exemption is an absolute exemption which does not require consideration of the public interest test of the type required by a qualified exemption.

Section 44(1)(a) of the FOIA states;

*'(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it -  
(a) is prohibited by or under any enactment'*

The enactment in question is the Data Protection Act 2018 and specifically section 132(1) of part 5 of that Act. This states that:

*"A person who is or has been the Commissioner, or a member of the Commissioner's staff or an agent of the Commissioner, must not disclose information which—*

*(a) has been obtained by, or provided to, the Commissioner in the course of, or for the purposes of, the discharging of the Commissioner's functions,*

*(b) relates to an identified or identifiable individual or business, and*

*(c) is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources,*

*unless the disclosure is made with lawful authority."*

The information withheld relates to an identifiable business and we do not have lawful authority to disclose this information to you. Section 132(3) imposes a criminal liability on the Commissioner and their staff not to disclose information relating to an identifiable individual or business for the purposes of carrying out our regulatory functions, unless we have the lawful authority to do so or it has been made public from another source.

This concludes our response.

### **Next steps**

You can ask us to review our response. Please let us know in writing within 40 working days if you want us to carry out a review.

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 [raise a complaint](#) 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.

## **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

Information Access Team

Strategic Planning and Transformation

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