

24 August 2022

IC-183382-G6J1

Request

On 28 July 2022 in relation to the EasyJet data breach you asked us:

Please could you provide me with either a summary, or the full report of the ICO's investigation into leaked data which was announced on May 19th 2020.

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

Our response

I can confirm that we hold information which falls within the scope of your request, however, our investigation into this breach has not yet concluded. As a result we are withholding the information you are seeking in reliance upon section 31 of the FOIA.

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).*"

In this case the relevant purposes contained in subsection 31(2) are 31(2)(a) and 31(2)(c) which state –

"(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 ..."

Clearly, these purposes apply when the Information Commissioner is in the process of an investigation into a data breach.

The exemption at Section 31 is not absolute, and we need to consider the public interest test by weighing up the factors for and against disclosure of the information we hold, as well as any prejudice or harm which may be caused by disclosure.

We believe that disclosure of the information you have requested would be likely to damage our ability to conclude our investigation in an efficient and effective manner without undue influence from third parties. This in turn would be likely to affect our ability to undertake future investigations in line with our regulatory duty if data controllers were concerned that we would disclose information to the public prematurely.

This exemption is not absolute. When considering whether to apply it in response to a request for information, there is a 'public interest test'. That is, we must consider whether the public interest favours withholding or disclosing the information.

Public interest in favour of disclosure –

- There is a public interest in the ICO being open and transparent regarding our regulatory activities. Such openness and transparency helps to promote public awareness and understanding of the ICO's regulatory functions.
- There is a public interest in the ICO publishing information which would help to demonstrate that it is complying with its duties.
- The understandable interest of the public, and those data subjects affected by this incident, in being able to see and understand the investigation undertaken by the ICO.

Public interest in favour of maintaining the exemption –

- There is a strong public interest in the Commissioner ensuring that no information is disclosed prematurely in a way that would or would be likely to cause harm to current or future investigations.
- There is a public interest in maintaining our ability to conduct investigations and carry out enforcement action in line with established processes and procedures without the risk of prejudicing these investigations and any subsequent enforcement action we may decide to take.
- There is a public interest in maintaining the ICO's ability to conduct investigations as it thinks fit without undue external influence.
- There is a public interest in the ICO being an effective and efficient regulator. It is essential to the efficacy of the ICO as a regulator that we are able to express our views and opinions in confidence where we need to. We need a safe space to formulate our conclusions and in which to communicate with those we regulate.

Having considered all of these factors we have taken the decision that the public interest in withholding the information outweighs the public interest in disclosing it.

You may be interested to know that the ICO publishes information about enforcement [action we have taken](#) on our website in line with our [Communicating our Regulatory and Enforcement Activity Policy](#).

I appreciate that this will not be the response you had hoped to receive, however I hope the explanation set out above is helpful.

Next steps

You can ask us to review of 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 [here](#).

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 set out your rights. Our retention schedule can be found [here](#).

Yours sincerely



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